Summary of Recent Amendments to the Civil Code of the Russian Federation in Respect of Immovable Property

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On July 2, 2013, Federal Law No. 142-FZ (the “Law”) was adopted, being the third part of the planned amendments to the Civil Code of the Russian Federation (the “Civil Code”), prepared within the framework of the civil law reform and becoming effective from October 1, 2013. The adopted Law contemplates making amendments to Chapters 6-8 of the Civil Code, where legal grounds of regulation of objects of civil law rights (movable and immovable property, securities, intangibles and etc.).

Let’s consider the amendments related to immovable property in more detail.

**Immovable objects**

First of all, I would like to note the fact that, according to the Law, a general definition of immovable property remains unchanged. As before, immovable objects (immovable property, real estate) include land plots, subsurface sites and everything which is inseparable from land, that is objects moving of which is impossible without causing incommensurate detriment to their designated purpose, including buildings, facilities, construction in progress.

In the legislator’s opinion, definition of real estate, by virtue of natural properties inherent in it, as listed in Article 130 of the Civil Code, is quite universal. This position is explained by the fact that the established legal doctrine and court practice show that definition of real estate as everything “… which is inseparable from land, that is objects moving of which is impossible without causing incommensurate detriment to their
designated purpose...", should be understood as existence of two mandatory criteria an object shall meet. Non-separability of an object with land should be understood as condition of its use as intended, the so-called physical link, which makes this characteristic the main criterion, in the legislator's opinion. In addition to the said criterion, the conditions were statutorily introduced, upon which such objects physically inseparable from land, such as buildings and facilities, are the only ones that can become the objects of title and other civil law rights. In particular, Article 222 of the Civil Code (here the issue is about unauthorized construction) enables to talk about the need of existence of not only physical, but also legal link between the said immovable objects and a land plot on which they are situated. This, in its turn, is explained by the fact that the present level of science and technology development make it possible to move from site to site almost any object (bridges, residential and non-residential buildings and etc.), except for, perhaps, land plots or subsurface sites. However, being moved, such objects can be classified as immovable only in case of restoration and maintenance of their inseparable physical and legal link with land.

Moreover, one of consequences of the legislator's refusal to amend Article 130 of the Civil Code is that aircrafts, seacrafts, inland-waterway vessels and spacecrafts will still be immovable objects.

Article 130 of the Civil Code that is left unchanged, already during discussion of the initial Draft of the Civil Code caused some criticism on the part of business community, since, in the view of opponents, the draft Law did not contain any criteria to determine an inseparable link with land and proportionality of damage upon movement of objects, though at the same time a characteristic of a link with land, in their opinion, allows for attributing to immovable objects facilities that are, in fact, improvements or accessories to a land plot (fences, pavements, drainage systems and etc.). Therefore, in the opinions of critics, in the cases when an owner of such objects does not have a title to a land plot, overload and complication of registration system and complication of civil turnover are possible.

In all fairness it should be noted that this problem is indeed a topical one in the court practice, including at the level of the Presidium of the Supreme Commercial Court of the Russian Federation.

Analysing the outlined problem, one should start from the fact that the Russian law attempts to combine within a single legal category of immovable property the objects characterised by significant differences in their nature. These differences result in unlikeness of their legal regimes. The question is not even about obvious differences of
immovable objects “by virtue of law” (vessels, spacecrafts, enterprises) from immovable objects “by nature”, but about differences existing among immovable objects “by nature” themselves – among buildings, facilities, objects under construction and etc. This fact certainly impedes discussion of the question about legal nature of immovable property in Russia. The difficulties occur when attempting to identify common essential features forming the unity of various objects within one legal category of immovable property.

In this respect it should be paid attention at once to the fact that, in essence, in the prevailing legal order immovable property constitutes still legal but not natural and physical characteristic of an object, that is a special legal regime implying the need of state (public) registration of rights to a given object which is absolutely unnecessary for movable property, except for the cases directly provided for by law. This state, as was noted above, is confirmed by technical possibility to move (spatial movement) of any objects, including different structures and facilities and even surface layer of soil

Classic European legal orders traditionally enshrine “immovable objects by intended use” meaning objects placed by owner on a land plot for its maintenance and operation, or “permanently attached to it by owner”, that constituting elements of his/her farmstead, and livestock and agricultural tools; seeds (in accordance with BGB § 94 (1) – seeds after planting and plants after bedding); pigeons in pigeon-houses and rabbits in cages, and hives; standing crops; fruits on trees; fish in bodies of water; straw and fertilisers and etc. (Article 524 of the Civil Code of France). It sharply contrasts with ideas about immovable property, dominating in the modern Russian civil law, but does not argue for the unshakeable truth of the latter

According to the classic visions of pandects, most clearly reflected in the German civil law, the only type of immovable property are land plots. Since exactly in connection with the need of their wide economic use, a category of proprietary rights itself appeared. Thus, BGB sets against exactly land plots (Grundstücke) and movable objects (bewegliche Sachen), and a notion of immovable property (Immobilien) is particularly doctrinal.

1 In the Russian literature of XIX century there was a widely spread opinion that a criterion to divide things into movable and immovable items were their physical “ability to move” (see, for example: Ye.B. Vaskovskiy, Civil Law Handbook. P. 117 - 118). However, already at the beginning of XX century success of modern technologies made this criterion unreliable, whereupon it was substituted by the modern law (which then was understood as recently codified German and Swiss civil law) for a notion of immovable property “as lands and everything which is its constituent part” (V.I. Sinayiskiy, Op. cit. P. 127).


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Thereby, a land plot is understood not as a part of nature, but as some part of land in kind, and as a legal category – a part of land surface designated in the land register as a land plot, whereby, for example, a land plot being a whole in economic and household respect, can legally consist of several land plots, and, vice versa, several different land plots can be entered into the land register as one land plot. Structures located on a land plot and rights connected with title to a land plot (that is restricted proprietary rights – servitudes, usufruct, real encumbrances - Reallasten, mortgage) are included in its body as constituent elements (BGB § 94 (1) and § 96), that is they are not deemed as independent objects. Thus, here a classic principle supercicies solo cedit (surface yields to the ground) is, in fact, complied with automatically and does not lead to any serious problems. Inclusion of some proprietary rights into the immovable property also presents in the civil law of a number of other European countries (see, for example, Article 526 of the Civil Code of France and Article 813 of the Civil Code of Italy). This, however, does entail declaring such rights as “things” or mixture of things and rights (as sometimes specified in modern national literature), but results in establishment of special civil law regimes explained by particular historic and economic reasons.

The Russian system of immovable objects, as was shown above, does not correspond to the classic doctrine about immovable property. Notwithstanding the indisputable merits of the classic model, it is unlikely that in the coming years any mechanism can be created that would enable to implement it in modern Russia: a gap between title to buildings in private ownership and to state land plots under them cannot be overcome beyond the will of land owner that is not ready to dispose of plots free of charge, and that of owners of structures who, by virtue of economic reasons, do not always aim to purchase land plot under their structures.

At first sight it seems that the modern Russian civil law, having expanded the classic notion of immovable property (on account of immovable property by law), thereby, turned it to more legal one, since, in fact, a proposed compromise in the form of indication to the need of existence of both physical and legal link of an immovable object to land considerably loses its meaning by further use of namely legal, but not physical characteristic for qualification of particular objects.

At the same time allegation that the only common legal feature uniting immovable objects into one category was the need of state registration of rights to them shows only the consequences of attribution by law of the objects to the immovable property category, but

not the reasons for such attribution. Thus, narrowing the essence of immovable property only to the requirement about state registration leaves unanswered the question – why are there some other objects which are not recognised as immovable objects, the rights to which do not arise and terminate without state or another special registration (objects included in the Museum Fund of the Russian Federation, shares and etc.). One should not forget about the fact that the law does not provide for the requirement about registration of right in respect of some types of immovable property, for example, common areas in blocks of flats, land plots under blocks of flats, subsurface sites.

Therefore, upon more detailed consideration, one can, at least, contend that the legal regime of immovable objects “by nature” explained by their natural (physical) properties differed significantly from the legal regime of movable objects even when state registration of right had not appeared, and preserves these differences until present time.

It can be explained by the following.

Only by virtue of its natural feature of non-movability, immovable property is capable to be an object of a considerable number of civil rights which cannot, in principle, be established for movable objects. There is a group of proprietary rights, including servitudes, emphyteusis, superficies (or building leasehold arisen from it), neighbor rights, which occurred by a need of effective use of immovable objects and are capable of occurrence only to them. Among all tangibles only immovable objects can in any time be easily identified and forfeited. Mechanisms created by a doctrine about restricted proprietary rights can be effectively applied only to immovable objects. Generally speaking, all other, expect for title (and lien), proprietary rights are designed to apply exactly to land plots and other immovable objects.

Non-movability, as a natural feature of the immovable property, conditions the need to establish special legal links between a land plot and objects on it. Impossibility to enshrine the classic model of such link in the Russian legal order, by which the objects inseparable from the plot are recognised its constituent elements, makes it necessary to establish special links between the plot and the objects inseparable from it. In the absence of these links irreconcilable contradictions between the plot owner rights and those of owner of structures on it will be observed.

Non-movability has a direct impact on classification peculiarities of immovable objects and resolution of a question about quality of immovable property. Thus, due to its

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5 Registration of joint ownership rights to such property is not mandatory by virtue of Article 290 of the Civil Code of the Russian Federation and Article 36 of the Housing Code of the Russian Federation; joint shared ownership right is acquired by owners of residential premises in a house, irrespective of their state registration.
non-movability, immovable objects "by nature" are individually defined things. Even the most typical structure presents an individually defined thing, and its location is one of its most important individualising features. Physical possibility to move buildings and facilities, generated by development of construction technologies, does not evidence the fact that buildings and facilities as immovable objects lost their non-movability feature. Owing to the fact that buildings and facilities are individually defined things, and there is a legal link between a building and a land plot, there are grounds to believe that upon movement entailing break of the link with former plot and loss of old and acquiring of new individualising features by the building, the old building ruins and a new one appears.

In addition, in contrast to movable objects, quality of immovable property is conditioned not only by its intrinsic features (soil fertility at land plot, suitability for construction of a particular building), but also by external factors which include location, availability of utility lines, transport accessibility, proximity of hazardous objects and etc.). Thereby, such external factors can play an important role upon resolution of questions about proper performance of obligations related to immovable property, deceit or wrong belief in respect of an immovable subject of transaction, determination of price of immovable property, including in cases of its compulsory seizure, and in other legal situations when it is necessary to determine quality of immovable property.

And, finally, now it is appropriate to return to the question of state registration. Pursuant to the Russian legal order, registration, as a general rule, is a legal fact completing accumulation of legal facts mediating creation, change and termination of rights to immovable property – that is how the principle of compulsory recording works. In cases when due to exclusion from the principle of compulsory recording, rights to immovable property arise without their state registration (for example, transfer of title under universal succession, creation of mortgage by law), further registration is required for introduction of this property into turnover. Simply said, for a person who acquired a right without registration to dispose of this right, compliance with the forms requiring registration of transfer of rights is necessary. Furthermore, registration of right of an initial owner is a legal fact failing which no respective object of immovable property arises.

Registration influences classification peculiarities of immovable property (groundlessness of recognising immovable objects as appendants, elements of an aggregate of things), protection of right thereto, resolution of question about good faith of acquirer of immovable property and in many other cases.

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6 Strict individual definition of structures was recognised in the Soviet period when no category of immovable property was recognised.
However, by the reasons stated above, despite all its civil law importance, compulsory (right creating) state registration cannot be considered as the only or the main characteristic of immovable property. Allegation about its constitutive meaning for the notion of immovable property is true only in respect of the national legal order which not quite successfully, without serious grounds, attributed to immovable property the objects not possessing any essential features of immovable property. Sometimes they say that inclusion of seacrafts and aircrafts, spacecrafts into the group of immovable objects was made with a view that the legal regime of immovable property is applied to these valuable objects. Meanwhile, from the whole range of legal peculiarities inherent in the legal regime of immovable objects “by nature”, only the requirement of state registration of rights could be used for sea-, air- and spacecrafts.

Sea-, aircrafts and space objects, of course, can be joined with immovable objects “by nature” and a number of other objects rights to which are subject to state registration, into a special classification type — objects rights to which are subject to compulsory (right creating) state registration. However, irrespective of the fact, whether these objects will be excluded from the group of immovable objects, one should not forget that the legal regime of immovable objects “by nature” differs by the features inherent in them, that are conditioned by their natural properties.

At the same time the importance of physical (natural) properties of immovable objects, as specified above, for determination of their special legal regime, nevertheless, does not mean that immovable property represents not legal, but so-called factual (physical) construction. In other words, all notions used by the law are legal, but not “factual”, since they are elements of the ideological system — a system of rules created by a state free to put the meaning into them, as necessary for it. These are, in particular, notions of a subject and an object of rights. As the history of slavery shows, an individual who is recognised only a subject of right today, upon existence of all physical characteristics intrinsic to him/her, can also be recognised its object. In its turn, unauthorized structure possessing the characteristics of a thing (object of title) is not recognised as such.

However, when the question is about factual (natural, physical and etc.) character of the notion of immovable property, it means that an object shall be declared an immovable thing by virtue of only its physical properties: non-movability, strong link to land. Thus, if an object possesses common features of a thing (is a spatially restricted object of the

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material world) and, thereby, display specific natural features which immovable property shall have under Article 130 § 1 of the Civil Code, then it, in the opinion of adherers of the factual notion of immovable property, constitutes an immovable object from the very moment of its creation. Most often such kind of assumptions are expressed in respect of facilities (buildings, structures, objects under construction) and land plots. However, study of these immovable objects "by law" shows that no one from them can be deemed as a so-called "factual category". Here, as a small illustration, it can be said that the notion of land plot as an object of immovable property has legal nature even in the systems not knowing state registration of rights. It is due to the fact that a land plot does not have any natural (factual) borders, and since science and law enforcement practice have long been pursuing an answer to the question, whether it is lawful to consider a constructed structure as immovable property since before state registration of title to it.

Despite the fact that the legislator left unchanged the definition of immovable property itself, nevertheless, some steps towards development of this institute have certainly been made.

**Single real estate complex**

Thus, appearance of a new object of civil rights – a single real estate complex is the most noticeable one among them. As was established in Article 133.1 of the Civil Code, as amended by the Law, an immovable thing participating in the turnover as a single object can constitute a single real estate complex. When the Civil Code included provisions about an enterprise as a property complex, it was supposed that a company will be able to enter into transactions and register an enterprise, in general. But in practice it is easier to register each object separately. The problems occurred because it was impossible to register some objects (for example, infrastructure facilities) as a part of enterprise.

Pursuant to the Law, the single real estate complex means an aggregate of buildings, structures and other things unified by a common intended use, inseparably connected physically or technologically, including infrastructure facilities (railways, power supply lines, pipelines and others), or satiated on one land plot, if title to the aggregate of these objects, in general, is registered as one immovable thing in the unified state register of rights to immovable property.

The stated novel, among other things, is designed to simplify the problem of attribution to immovable property of such non-standard but widespread objects as infrastructure facilities, and other objects being single from technological point of view, but not related to traditional buildings, structures and facilities, and, furthermore, have in its
composition not only immovable property by its nature, but also movable property (for example, heating systems, sewer systems, power supply lines, communication lines and etc.).

Currently, there are several ways to solve this problem.

In some cases it is solved within the framework of an industry-specific legislation. Thus, pursuant to Article 8 § 1 of Federal Law No. 126-FZ dated July 7, 2003, On Communication, cable communication lines are immovable property. The term cable communication lines is defined as an aggregate of heterogeneous immovable things technologically forming a whole, connected by physical chains (cable) being movable property, having simultaneously the following features:

- existence of functional and technological interconnection;
- their fitness for use for common intended use for placement of a communication cable;
- existence of outstretch (length).

In other cases such objects are qualified as immovable property on the basis of analysis of their technical characteristics, and on the basis of legal acts regulating their functioning.

Qualification of sewerage facilities as immovable property can be given as an example. Thereby, courts understand sewerage facilities as a system of trenches, wells and other stationary elements located under the ground and inseparably connected with ground, moving of which is impossible without causing incommensurate detriment to their designated purpose.

Court made such conclusion relying also on provisions of the documents of sublegislative level and other technical reference documents.

Similar legal situation occurs also in respect of qualification of power supply lines as immovable property.

As was established by Article 133.1 of the Civil Law, as amended by the Law, provisions about indivisible things shall apply to single real estate complexes. In accordance with Article 133 of the Civil Code, as amended by the Law, where provisions about indivisible things are set forth, an inseparable thing appears in the turnover as a single object of proprietary rights.

It is interesting how several buildings, structures and facilities of principal or auxiliary nature technologically connected with each other as a single object are qualified in the court practice. This question is typical for disputes as to privatisation of a land plot under Article 36 of the Land Code and material for determination of area of the land plot required for
operation of these objects which is highly important for exercise of the right to land plot privatisation.

Thus, in particular, it is noted in one of the Decisions of the Presidium of the Supreme Commercial Court of the Russian Federation that if facilities of principal or auxiliary nature constitute a single object consisting of different elements united by common functional intended use, then such facilities are a single facility firmly connected with land, comprising immovable objects of auxiliary nature. State registration of rights to certain objects (including auxiliary ones) does not impede privatisation of land plot under the whole territory of this single object.

It is also reasonable to pay attention to the fact that the court practice knows the cases when a court, in fact, qualified an infrastructure facility as indivisible thing. Another court decision can be given as an example, where one of the infrastructure facilities (cable communication lines) was qualified as an individually defined thing constructive elements of which does not carry any independent meaning and cannot be reclaimed separately from the thing constituent elements of which they are.

I would like to pay attention to the fact that under the Draft of the Law in question (at the stage of adoption after the second reading) partial introduction and implementation of the so-called principle of "immovable object singleness" was proposed, under which such objects as a building, structure and facility being traditional for the Russian law were not objects of immovable property, but constituted an accessory or improvement of a land plot on which they are located.

However, at the present time the Russian law enshrines another though similar principle: a principle of singleness of fate of land plots and objects inseparable from them, under which all objects inseparable from land follow the fact of land plots, except for the cases provided for by the federal laws (Article 1 § 1 (5) of the Land Code of the Russian Federation).

At the same time proceeding from the provisions of Article 133.1 of the Civil Code, as amended by the Law, it can be concluded that the legislator abandoned the above state novel, since this Article does not contain a provision pursuant to which the single real estate complex and a land lot under it are a single object.

Finally, it should be noted that by virtue of new amendments the single real estate
complex is an indivisible thing and, thus, levying execution on it is possible only as a whole, except when a law or a court judgment establishes possibility to detach a constituent part, including for further resale.

Therefore, it can be stated that the Russian legislator goes towards improvement of the law in respect of such objects of civil rights as immovable property, though not at the pace we would like to see.