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Lev S. Batalov

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THE RUSSIAN TITLE REGISTRATION SYSTEM FOR REALTY AND ITS EFFECT ON FOREIGN INVESTORS

Lev S. Batalov

Abstract: The recent privatization of real property is an important step in Russia's transition from a planned to market economy. This privatization creates opportunities for foreigners in the Russian realty market. However, foreigners are not likely to enter this market unless rights to immovable property are certain and secure. This Comment describes the new Russian immovable property Registration Law and argues that, despite its drawbacks, it creates a workable system that will provide certainty and security in rights to Russian immovable property. Furthermore, the Comment advises foreign investors on how to avoid potential problems the new law creates.

Russia took an important step in its transition to a market economy when it passed a new law governing state registration of realty.¹ Although not without flaws, the Registration Law offers a generally workable system for registering titles to real property. As part of its economic recovery, Russia emphasized the importance of attracting foreign investments. The new Registration Law encourages foreign investment by reducing uncertainty concerning real property rights.² Prior to the Registration Law, different agencies governed registration of different real property, using various procedures. Often, determining right holders and rights constituted a heavy burden without any assurance that the determination was correct.

This Comment describes the new Russian registration scheme and argues that the new law will further the development of the real estate market and reduce the risks and burdens of foreign investment in immovable property. Part I provides background information about Russian real property rights, including foreigners' rights. Part II describes title registration systems in general. Part III describes the new Registration Law, providing an overview of the registration process and the information in the registry. Part IV analyzes the most important

1. RF Fed. Law No. 122-FZ "On the State Registration of Rights to Real Estate and of Transactions with It" art. 1 (July 21, 1997), *Sobr. Zakonod. RF*, 1997, No. 30, Item 3694, available in LEXIS, Intlaw Library, RFLaw File [hereinafter *Registration Law*].

2. See Ted K. Smith, *The Foreign Investment Regime of the Russian Federation: Progress Toward a System of Free Entry*, 11 *UCLA Pac. Basin L.J.* 310, 323-25 (1993) (arguing that ownership of buildings and structures above land, but not land itself, creates uncertainty of real property rights and predicting that until this uncertainty is resolved, foreign investment in Russia will be minimal).

problems the new law presents. Finally, Part V advises foreign investors on how to avoid these problems.

I. RIGHTS TO IMMOVABLES IN RUSSIA

A. *Russian Immovable Property Rights*

A discussion of the Russian system of immovables registration must begin with an explanation of the concept of Russian immovable property.³ The proliferation of laws that have evolved throughout the 1990s complicates determinations of rights to immovables and creates different rights for foreigners than for Russian citizens.

Russian property law is a branch of civil law.⁴ The civil law concept of ownership is distinctly different from the common law concept of estates. At common law, no one "owns" real property; people own estates. This system is often compared to a "bundle of sticks," where all the sticks (estates) add up to fee simple absolute. If an estate holder parts with some of the sticks, he is left with a lesser estate.⁵ At civil law, an immovable object can be owned by one person only.⁶ If an owner encumbers the property by giving another an inheritable possession for life, for example, the owner still retains the ownership right even though he has no possibility of possessing the property in the near future.

No single law governs rights to land in Russia. Many provisions of the 1991 Land Code⁷ have been repealed.⁸ This creates confusion and requires one to search a number of laws to determine which provisions

3. For a definition of immovables, see *infra* text accompanying note 10.

4. Andrei A. Baev, *The Privatization of Land in Russia: Reforms and Impediments*, 17 Loy. L.A. Int'l & Comp. L.J. 1, 15 (1994).

5. Roger A. Cunningham et al., *The Law of Property* § 2.1, at 27-28 (2d ed. 1993).

6. Baev, *supra* note 4, at 15.

7. ZK RSFSR art. 4 (1991), Vedomosti RSFSR, Issue 22, Item 768 [hereinafter *Land Code*].

8. Bradley J. Rorem & Renee Giovarelli, *Agrarian Reform in the Russian Far East* 24 (RDI Reports on Foreign Aid and Dev. No. 95, 1997). New statutes governing rights to land include: Decree of the President of the RF No. 337 "On the Realization of the Citizens' Constitutional Rights to Land" (Mar. 7, 1996), Ross. Gazeta, Mar. 12, 1996, available in LEXIS, Intlaw Library, RFLaw File; Decree of the President of the RF No. 1767 "On the Regulation of Land Relations and the Progress of the Agrarian Reform in Russia" art. 2 (Oct. 27, 1993), Ross. Vesti, No. 210, 1993, available in LEXIS, Intlaw Library, RFLaw File; Decree of the President of the RF No. 631 "On the Approval of the Procedure for the Sale of Plots of Land for the Privatization of State and Municipal Enterprises, the Extension of These Enterprises and Their Additional Construction, and Their Associations for Business Activity," pt. 1, para. 3 (June 14, 1992), Ross. Gazeta, June 18, 1992, as amended, available in LEXIS, Intlaw Library, RFLaw File; and Decree of the President of the RF "On Urgent Matters of the Performance of the Land Reform in the RSFSR," Zakonod. i Ekon., Issue 22, Item 45 (1992).

are still valid. The political struggle between the communist Duma on one side and the liberal government and the President on the other has so far prevented the ratification of a new Land Code that would be a single statute governing land rights.⁹

Foreign investors must realize that Russian law treats land and permanent fixtures attached to the land differently, even though the definition of immovables encompasses both types of property. The Russian Civil Code defines immovables as land plots, subsoil plots, solitary water objects, and objects firmly connected to the land that cannot be moved without causing damage (permanent fixtures).¹⁰ However, the law governing land has developed separately from the law governing permanent fixtures. Under the old Soviet law, people could own permanent fixtures as personal property, but only the State could own land.¹¹ Despite the abolition of the state monopoly on land in 1990,¹² this distinction is still noticeable in current legislation.¹³ Presently, the same rights that apply to personal property govern rights to fixtures.¹⁴ Rights to land, however, are different and very complex.

Chapter 17 of the Civil Code provides for five basic property rights with respect to land: ownership, inheritable possession for life, permanent use, temporary use, and lease.¹⁵ "Ownership" allows the owner to sell, give, pledge, or lease out, and otherwise dispose of the land, provided that it has not been excluded from market circulation.¹⁶ The owner can use the land plot at his or her discretion as long as the use does not violate the rights of others¹⁷ and is in accordance with the land

9. See Yeltsin Criticizes Some Aspects of Duma Lawmaking, TASS, Oct. 3, 1997, available in LEXIS, World Library, TASS File.

10. GK RF art. 130(1), pt. 1 (Oct. 21, 1994), *Sobr. Zakonod. RF*, 1994, No. 32, Item 3301 & pt. 2 (Jan. 26, 1996), *Sobr. Zakonod. RF*, 1996, No. 5, Item 410, available in LEXIS, Intlaw Library, RFLaw File [hereinafter *Civil Code*].

11. Patricia G. Woods, Comment, *From Feudal to Modern: The Evolution of Real Estate Finance in Russia*, 8 *Emory Int'l L. Rev.* 749, 752 (1994).

12. RSFSR Land Reform Law art. 22, para. 3 (Nov. 1990), in *New Laws of Russia* 6 (1991) [hereinafter *Land Reform Law*].

13. Recent legislation attempts to limit this distinction. See Decree of the President of the RF No. 485 "On the Guarantees to the Owners of Objects of Realty in the Acquisition as Ownership of the Land Plots Under Such Objects" (May 16, 1997), *Sobr. Zakonod. RF*, 1997, No. 20, Item 2240, available in LEXIS, Intlaw Library, RFLaw File.

14. The Civil Code contains separate chapters describing rights to land and dwelling premises, but has no special provision concerning immovable fixtures. *Civil Code*, *supra* note 10, chs. 17–18.

15. *Civil Code*, *supra* note 10, ch. 17.

16. *Id.* art. 260.1.

17. *Id.* art. 261.3.

plot's designated purpose.¹⁸ "Inheritable possession for life" is a right to possess a land plot.¹⁹ This right is transferable by inheritance²⁰ but cannot be alienated,²¹ except when the possessor transfers a fixed term lease.²² "Permanent use" is a right to use land for an indefinite period,²³ under which the right holder can lease or transfer the land for temporary use only with the owner's consent.²⁴ "Temporary use" is an inalienable right to hold land for up to three years.²⁵ "Lease" is a right to use land for up to fifty years.²⁶ Although the implementation of chapter 17 is delayed until enactment of a new Land Code,²⁷ these rights are generally recognized.²⁸

B. *Foreigners' Rights to Immovables in Russia*

Foreigners' rights to land are somewhat uncertain because laws regulating foreign investments do not directly address immovable property. The Soviet Union enacted laws to attract western businesses as early as 1987.²⁹ The Russian Federation law "On Foreign Investments"³⁰ is the basic statute that regulates foreign investments in Russia today. However, neither this law nor other statutes governing foreign investment³¹ offer guidance on immovables.

18. *Id.* art. 260.2.

19. *Id.* art. 266.1.

20. *Id.*

21. *Id.* art. 267.2.

22. *Id.* art. 267.1.

23. *Id.* art. 268.

24. *Id.* art. 270.

25. *Land Code*, *supra* note 7, art. 14.

26. *Id.* art. 13.

27. RF Fed. Law No. 52-FZ "On Putting in Force Part One of the Civil Code of the Russian Federation" art. 13 (Nov. 30, 1994), *Ross. Gazeta*, Dec. 8, 1994, *available in* LEXIS, Intlaw Library, RFLaw File.

28. *See* Woods, *supra* note 11, at 751-61 (discussing Russian rights to immovables).

29. David F. Black, Note, *So You Want to Invest in Russia? A Legislative Analysis of the Foreign Investment Climate in Russia*, 5 *Minn. J. Global Trade* 123, 125-26 (1996).

30. RSFSR Law "On Foreign Investment in the RSFSR" art. 1008 (July 4, 1991), *Vedomosti Ciezda Narodnykh Deputatov RSFSR i Verkhovnogo Sovieta RSFSR*, Nov. 29, 1991, *amended by* RF Fed. Law No. 89-FZ "On Amending the Legislative Acts of the Russian Federation in Connection with the Adoption of the Laws of the Russian Federation on Standardization, on Ensuring the Unity of Measurements, and on the Certification of Products and Services" (June 19, 1995), *Ross. Gazeta*, June 22, 1995, *available in* LEXIS, Intlaw Library, RFLaw File.

31. *See* Decree of the Council of Ministers of USSR No. 49 "On the Procedure for the Creation on the Territory of the USSR and the Activities of Joint Enterprises with the Participation of Soviet Organizations and Firms of Capitalist and Developing Countries" (Jan 13, 1987), *translated in* 26 *I.L.M.* 749 (1987) (encouraging foreign investments in joint ventures), *amended by* Decree No. 352

Foreigners' rights to immovables differ according to the type of property and the type of right. Foreigners can only own land for business purposes,³² not for agricultural purposes.³³ The 1991 Land Code provision prohibiting foreigners from having a right of inheritable possession for life is still in force.³⁴ Presumably, foreigners can hold land in permanent or temporary use, but Russian law does not expressly address the issue.³⁵

Foreigners can own buildings and structures attached to the land³⁶ because the 1991 Land Code does not govern their ownership. No restrictions exist on foreign ownership because the old Soviet law treated permanent fixtures as personal property.³⁷

II. TITLE REGISTRATION

A. *Title Registration in General*

Foreign investors, especially U.S. investors, must be aware that the Registration Law establishes a title registration system radically different from deed recording systems used to keep track of real property rights in the United States. Although title registration systems are prevalent in the rest of the world, they have never gained popularity in the United States.³⁸ To understand the new Russian Registration Law, one must understand the basic structure of title registration systems.

The core of a title registration system is the register. Unlike recording systems that allow title searchers to examine deeds and draw their own conclusions about the title's validity, the register describes all rights to and encumbrances on an immovable object. Ideally this description is conclusive.³⁹ When rights to the immovable object change, the register is

(Mar. 17, 1988) & No. 385 (May 6, 1989), translated in 29 I.L.M. 263 (1990) (allowing foreign investors to have more than 50% ownership in joint ventures). For descriptions of these laws, see Black, *supra* note 29, at 129–39.

32. Decree No. 631, *supra* note 8, pt. 1, para. 3.

33. *Id.* Decree No. 631 repealed the provision of the 1991 Land Code that prohibited foreign ownership of any land. See *supra* note 8.

34. Land Code, *supra* note 7, art. 7.

35. Woods, *supra* note 11, at 773–74.

36. Law on Ownership in the RSFSR arts. 27–28 (1990), Vedomosti RSFSR, Issue 30, Item 416, (1990).

37. See *supra* note 11 and accompanying text.

38. Cunningham et al., *supra* note 5, at 880–81.

39. *Id.* at 881–82.

up-dated.⁴⁰ It should, therefore, always reflect current rights. Generally, compilation of the register does not change existing rights, but simply identifies them.⁴¹

B. *Early Attempts to Establish Title Registration in Russia*

The confusion surrounding rights to immovables in Russia hampered earlier attempts to establish registration. Originally, different agencies registered different types of immovable objects.⁴² The Committee of Land Resources and Land Management (*Komzem*) registered land, the Property Committee and the Bureau of Technical Inventory registered non-residential property, and the Housing Committee registered residential property.⁴³ This division of responsibilities created inconsistent identification systems for parcels of land and the fixtures attached.⁴⁴ The Registration Law eliminates previous confusing registration arrangements by creating a single state registry that covers all rights to all types of immovable property.

C. *The Need for the New Registration System*

The new unified registration system is a great improvement over previous registration arrangements and an important factor in developing a market-based economy in Russia. First, the resulting clarification and security of real property rights creates greater tenure security,⁴⁵ which is especially important in an economy that is in transition from state to

40. *Id.*

41. S. Rowton Simpson, *Land Law and Registration* 194–95 (1976). Three general approaches may be employed to compile a register: voluntary-sporadic, compulsory-sporadic, and compulsory-systematic. Voluntary-sporadic is registration upon application by the right owner. Compulsory-sporadic is registration whenever the right is transferred or encumbered. Compulsory-systematic is registration of all land carried out area by area. G. Larsson, *Land Registration in Developing Countries*, in *XI World Cartography* 37–38 (1971).

42. Stephen B. Butler, *The Law of Registration of Real Property Rights in the Russian Federation* 7 (Six City Seminar on Title Registration, Land Use Regulation & Land Allocation, sponsored by World Bank & USAID, Jan. 26–28, 1994) (on file with author).

43. Joseph K. Eckert, *Conceptual Considerations for Title Registration in the Russian Federation* chart A (National Econ. Research Ass'ns 1994).

44. *Id.* at 7–8. Despite this, some regions established successful uniform registration systems. *The State of the Registration System for Immovable Property*, Russ. & Commonwealth Bus. L. Rep., Sept. 24, 1996, available in LEXIS, World Library, RCBLR File. Article 6.1 of the Registration Law recognizes the rights reflected in these registers and article 33.1 requires conversion of local registries to comply with the new standards. *Registration Law*, *supra* note 1, arts. 6.1, 33.1.

45. Larsson, *supra* note 41, at 34.

private ownership, such as Russia's.⁴⁶ Owners have greater incentive to expand labor and capital in their property if the state backs real property rights by putting the ownership beyond dispute. This leads to increased investment, better production, and higher incomes.⁴⁷ Second, registration provides right holders with easier access to credit.⁴⁸ Registration reduces risk to lenders because they can determine ownership of immovable property and establish priority of rights.⁴⁹ Thus, by being able to prove rights to their immovable property at any time, owners become credit-worthy. Third, transactions in immovable property increase because they become easier, cheaper, and safer.⁵⁰ Potential buyers do not need to perform expensive and time-consuming investigations to determine property rights when the register offers this information. Finally, registration advances development of the real property market by clarifying property rights and securing ownership.⁵¹ In turn, the real property market enables successful businesses to grow and allows reallocation of failed businesses' assets.⁵² This promotes economic activity in general and foreign participation in particular.

III. THE RUSSIAN REGISTRATION SYSTEM

A. *Compilation of the Register*

The Registration Law⁵³ creates a uniform title registration system for immovables. The primary purpose of the system is to clarify and secure rights to immovables and to provide certainty for such rights.

The Registration Law serves as the state recognition and confirmation of origin, encumbrances, transfer, and termination of rights to immovables.⁵⁴ The Ministry of Justice compiles and maintains the

46. Tim Hanstad, *Designing Land Registration Systems for Developing Countries*, 13 Am. U. Int'l L. Rev. 647, 657-58 (1998).

47. Greenville Barnes, *A Comparative Evaluation Framework for Cadastre-Based Land Information Systems (CLIS) in Developing Countries* 29 (University of Wis. Land Tenure Ctr. Paper No. 102, 1990).

48. Larsson, *supra* note 41, at 34.

49. Woods, *supra* note 11, at 767.

50. Larsson, *supra* note 41, at 34.

51. Hanstad, *supra* note 46, at 661.

52. *World Bank Project Preparation—Kazakhstan, Real Estate*, Asia Pulse, Dec. 3, 1996.

53. *Supra* note 1.

54. *Registration Law*, *supra* note 1, art. 2.1.

registration system, which is uniform throughout Russia.⁵⁵ The register itself contains information describing the immovable object, the right holder, and rights, including limitations.⁵⁶

Any interest in immovables is subject to registration. Article 4.1 of the Registration Law,⁵⁷ referring to article 131 of the Civil Code,⁵⁸ requires registration of rights of ownership, inheritable possession for life, and permanent use. Article 4.1 also explicitly requires registration of encumbrances, including servitudes, mortgages, trusts, and leases.⁵⁹

To facilitate the process of identifying right holders and limitations on ownership, the Registration Law establishes a compulsory-sporadic registration system,⁶⁰ which should gradually bring information into the register. The Registration Law requires right-holders to register all rights to immovable objects that arise after January 31, 1998.⁶¹ Rights that arose before this date are effective without registration, but may be registered voluntarily.⁶²

An attempt to register any right requires registration of all current rights and encumbrances concerning the immovable object. To register any new right to an immovable object, the registrar must record all previous rights,⁶³ including those that arose before January 31, 1998.⁶⁴ For example, a person who purchased a building before January 31, 1998 does not need to register it. If she leases it out after that date, she must register both the lease and the transaction that gave her the ownership

55. Decision of the Government of the RF No. 1378 "On the Measures for Implementing the Federal Law on the State Registration of the Rights to Real Property and Deals with It" (Nov. 1, 1997), *Ross. Gazeta*, Nov. 13, 1997, available in LEXIS, Intlaw Library, RFLaw File.

56. See *supra* notes 16–26 and accompanying text.

57. *Registration Law*, *supra* note 1, art. 4.1.

58. *Civil Code*, *supra* note 10, art. 131.

59. *Registration Law*, *supra* note 1, art. 4.1. Temporary use is an encumbrance similar to a lease and therefore must also be registered.

60. See *supra* note 41.

61. Article 4.2 of the Registration Law requires right holders to register rights, documents to which were concluded after the law's effective date. *Registration Law*, *supra* note 1, art. 4.2. Under article 33, section 1, the law is to "go into effect" throughout the Russian Federation "six months after official publication." *Id.* art. 33.1. Official publication was in the July 30, 1997 edition of *Rossiiskaya Gazeta*; thus, the six months expired on January 30, 1998.

62. *Registration Law*, *supra* note 1, art. 6.1.

63. Article 13.2 of the Registration Law provides that "registration of limitations (encumbrances) of the right, mortgage, lease, or any other transaction with an object of immovable property is possible only in the presence of state registration of the earlier emergent rights to the given object." *Id.* art. 13.2.

64. *Id.* art. 6.2.

right. Thus, registration of any right to an immovable object should reflect all current rights to this object.

Any right holder or party to a transaction in immovables can initiate registration. Right holders can always apply to register limitations to their rights.⁶⁵ Thus, landowners can always apply to register leases or encumbrances on their land. If the transaction is not notarized, all parties to the transaction must file a registration application. Any party alone can apply for registration if the transaction is notarized.⁶⁶ Further, a party can register by a court order if the other party is evading registration.⁶⁷

The Registration Law is silent on the consequences for right holders who fail to register their rights when registration is mandatory. It neither imposes penalties on holders of unregistered rights nor strips such holders of their rights.

B. *The Registration Process*

1. *Beginning of Registration: The Record Book*

The Registration system consists of three components: the record book, the Single State Register of Rights (the register), and the files. The record book is a log of applications accepted by the registrar. The register is a complete record of all registered titles to properties, including the right holders' names and the nature of their rights.⁶⁸ Files are collections of copies of right-establishing documents to immovables.

The registration process commences when an applicant, presumably in person, submits an application containing documents establishing rights to an immovable object.⁶⁹ A registration fee must accompany the application.⁷⁰ Upon receipt, the registrar records the acceptance of these documents in the record book,⁷¹ assigns a unique number,⁷² and issues a receipt indicating the application date.⁷³ The record book indicates the date of the application's submission. It contains all information on

65. *Id.* art. 13.2.

66. *Id.* art. 16.1.

67. *Id.*

68. Simpson, *supra* note 41, at 305.

69. *Registration Law*, *supra* note 1, art. 16.7.

70. *Id.* art. 16.4.

71. *Id.* art. 16.5.

72. The entry in the Register matches the assigned number in the Record Book. *Id.* art. 12.7.

73. *Id.* art. 16.6.

documents relating to the immovable object, the right holder, the applicant, and the rights subject to registration.⁷⁴

The registration process can be lengthy. Registrars must complete registration within one month from the date they accept an application.⁷⁵ However, registrars can suspend registration for a month to obtain information if they doubt the existence of legal grounds for registration,⁷⁶ and for an additional month if they need to examine the authenticity of documents.⁷⁷ Applicants may suspend registration for up to three months to correct deficiencies found by the registrar.⁷⁸ Such suspensions automatically reset the time periods the registrar has to conduct inquiries.⁷⁹ Theoretically, this process may continue indefinitely.

A person must pay a fee to register a right to an immovable object or to obtain registration information about immovables. The Registration Law does not establish a fee amount. Subjects of the Russian Federation⁸⁰ establish the amount of fees to register rights and to obtain information from the register, and these amounts must not exceed the federal maximum.⁸¹ The proceeds are used exclusively for establishment, support, and development of the registration system.⁸²

2. *Recording Actions: The Register*

The core of the registration system is the register, which reflects all interest in immovables. It has a separate section for each immovable object.⁸³ Sections are arranged by the cadastre number⁸⁴ of the object

74. *Id.* art. 12.2.

75. *Id.* art. 13.3.

76. *Id.* art. 19.1.

77. *Id.* art. 19.2.

78. *Id.* art. 19.3.

79. *Id.*

80. Subjects of the Russian Federation are administrative territorial subdivisions including Republics, Territories, Regions, and Autonomous Areas. Constitution of the RF art. 65 (1993), *Ross. Gazeta*, Dec. 25, 1993, available in LEXIS, Intlaw Library, RFLaw File.

81. *Registration Law*, *supra* note 1, art. 11.2.

82. *Id.* art. 11.3.

83. *Id.* art. 12.6.

84. Cadastre is a systematic description of the land units within an area. The description is made by maps that identify the location and boundaries of every unit, and by records. In the record, the most essential information is the identification number and the area of the unit. [T]he classical cadastre provides information concerning owners, land classes and values or land taxes.

Gerhard Larsson, *Land Registration and Cadastral Systems* 16 (1991).

they describe⁸⁵ so the object can be easily identified on cadastre maps. Each section is further subdivided into subsections according to registered rights.⁸⁶

Because of the Russian dichotomy of immovable property,⁸⁷ land is described in one section, buildings in another, and apartments in yet other sections. Sections are arranged from general to specific. Sections on objects that are attached to or part of a larger object are placed in the register directly after the section on the respective object. For example, a section containing information on a building attached to a land plot follows the section describing the plot.⁸⁸ Sections containing information on components of the immovable object, such as individual apartments, follow the section on the building.⁸⁹

Each section contains three subsections and a “Special Notes” Column.⁹⁰ Subsection I contains the object’s address (location), type, size, and purpose.⁹¹ Subsection II identifies the right holder and the right holder’s interest and address.⁹² It also contains the names and essential elements of the right-establishing documents and the entry date, which is the date the right became effective.⁹³ Subsection III specifies encumbrances (such as servitudes, mortgages, and leases), the periods of their validity, beneficiaries, and parties to the transactions.⁹⁴ The “Special Notes” column contains all claims of right to the immovable object by persons other than the right holder.⁹⁵

Once the registrar examines an application and verifies the validity of the right-establishing documents, the registrar records the new rights or encumbrances in the immovable object’s section of the register. The registration date is the date of the recording.⁹⁶ After the recording, the section becomes a snapshot of all current rights to the immovable object,

85. *Registration Law*, *supra* note 1, art. 12.6.

86. *Id.*

87. For differences in the legal treatment of land and fixtures attached to it, see *supra* Part I.A.

88. *Registration Law*, *supra* note 1, art. 12.6.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* art. 13.1.

and thus a title searcher need examine only this section to ascertain all rights and encumbrances affecting the property.⁹⁷

3. *Supporting Documents: Files*

After recording new rights or encumbrances in the register, the registrar places copies of right-establishing documents in the files,⁹⁸ returns the original documents to the right holder,⁹⁹ and issues a certificate of registration.¹⁰⁰ Each file contains copies of all documents affecting the object.¹⁰¹ These documents stay in the files permanently.¹⁰² For each registered immovable object, the registrar keeps a file under the same cadastre number as the corresponding section in the register. The file serves two purposes: ensuring that the registrar can easily reconstruct lost sections of the register, and serving as a source for correcting mistakes in the register.¹⁰³

C. *The Register's Conclusiveness*

Ideally, the register's description of rights is conclusive.¹⁰⁴ The Russian register, however, may be corrected in certain situations. If rights are recorded incorrectly, the register may be rectified. Rectifications are exceptions to the register's conclusiveness and are generally allowed in cases of registrar mistakes or fraud.¹⁰⁵ The Registration Law provides for rectification in such cases.¹⁰⁶ However, it does not establish an assurance fund to compensate those who lost their rights due to the amendments.

97. Cunningham et al., *supra* note 5, at 882.

98. *Registration Law, supra* note 1, arts. 12.2–3.

99. *Id.* art. 18.5.

100. *Id.* art. 14. A certificate may be a separate document. *Id.* It may also be an inscription on the right establishing documents. *Id.* art. 14.1.

101. *Id.* art. 12.2.

102. *Id.* art. 12.4.

103. *Registration Law, supra* note 1, art. 12.8.

104. Cunningham et al., *supra* note 5, at 881–82.

105. Simpson, *supra* note 41, at 176–79. Other qualifications on conclusiveness, such as government power of eminent domain, are overriding interests. The Registration Law does not require overriding government rights to be recorded. However, as long as right holders know about them, they have sufficient notice and the certainty of property rights is not impaired.

106. *See infra* Part III.C.1–2.

1. *Registrar Mistakes*

Article 21 of the Registration Law provides for rectification when the registrar makes mistakes when recording rights. The registrar may correct technical errors without a judicial hearing if the correction will not prejudice any party.¹⁰⁷ The Registration Law obliges the registrar to correct errors within three days of detection or receipt of a written request.¹⁰⁸ If the registrar detects errors, he must notify interested persons about corrections.¹⁰⁹ At the same time, the Registration Law protects those who have detrimentally relied on erroneous entries in the register; article 21.2 requires a judicial proceeding if the correction would “cause damage or infringe” upon anyone’s interests.¹¹⁰

2. *Fraud*

Article 31.2 imposes liability on persons who distort information about rights to immovables or forge registration documents. In cases of fraud, the Registration Law provides for rectification via judicial proceeding,¹¹¹ which is recorded in the register and provides a warning to title searchers.¹¹² The defrauded party can amend the register against one who registered a right by fraud.

3. *Assurance Fund*

The Registration Law does not establish an assurance fund from which the state would compensate those who lose their rights because of rectification. Because the register is not absolutely conclusive, some people may lose their rights without government compensation. Injured persons will have to recover directly from the parties who caused their injuries. Article 31.2 holds persons liable for any material damage they cause any party by “intentional or unintentional distortion or loss of information related to the rights to immovables and real estate transactions registered.”¹¹³

107. *Registration Law, supra* note 1, art. 21.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* art. 28. Article 28 allows rectification upon a court order. Therefore, defrauded right holders must obtain a court judgment first to rectify the register.

112. *Id.* art. 28.2.

113. *Id.* art. 31.2.

D. Public Access to the Register

The Registration Law allows relatively liberal access to information in the register. Generally, any person who files a written request and presents identification documents may receive information about immovable objects, registered rights to them, and limitations on the rights.¹¹⁴ The Registrar has up to five days to provide the applicant with either the requested information or a written refusal, which can be appealed in court.¹¹⁵ Although the statute does not identify grounds for refusal, presumably the Registrar may refuse if the identification documents are somehow inadequate. The Registrar notes all requests for information and right holders can find out who has received information about their immovable objects.¹¹⁶

Access to documents in the files is more restricted than access to the register. Only right holders, individuals who have a power of attorney issued by the right holder, heads of local and regional governments, tax authorities, courts, law-enforcement agencies, and right holders' heirs can obtain information concerning the documents themselves.¹¹⁷

The Registration Law is silent on whether the public can have access to the record book. This suggests that the general public cannot obtain information from the record book because in Russia, anything that is not specifically allowed is prohibited.¹¹⁸

E. Application of the Registration Law to Foreign Investors

The Registration Law applies equally to Russian citizens and foreigners.¹¹⁹ It contains no provisions specifically directed at foreigners. Foreigners must register their rights to immovables and can access the information in the register in the same manner as Russian citizens. The law does not affect any existing rights to immovables. Thus, foreigners have the same rights to immovables as existed before the law.¹²⁰

114. *Id.* art. 7.1.

115. *Id.* art. 7.2.

116. *Id.* art. 7.4.

117. *Id.* art. 7.3.

118. Telephone interview with Leonard Rolfes, Staff Attorney, Rural Development Institute (June 25, 1998).

119. For advice on how foreigners may comply with the Regulation Law, see *infra* Part V.

120. See *supra* notes 15–26 and accompanying text.

IV. ANALYSIS OF THE REGISTRATION LAW

A. *The New Registration Law Is a Significant Step Forward*

The Registration Law establishes a generally workable registration system that should satisfy Russia's needs. It assures unambiguous identification of immovable objects and easy maintenance of records by dividing the register according to immovable objects and interests in them.¹²¹ Each section of the register clearly identifies the immovable object,¹²² its owner, and any limitations on the ownership right.¹²³ Public access to the register is relatively liberal.

A compulsory-sporadic registration system,¹²⁴ which calls for registration whenever a right is transferred or encumbered, suits Russian conditions well. Identification of rights and limitations should be relatively easy because the state has been granting rights to real property for a short time, and titles have not yet become entangled.¹²⁵ Every time right holders conclude a transaction involving an immovable object, they are required to record all rights that concern the immovable object. Over time, this will create a comprehensive reflection of rights. Also, by adopting compulsory-sporadic registration, the government has shifted the cost of initial registration from itself to applicants.¹²⁶

Rectification of the register in cases of registrars' technical mistakes should proceed promptly and smoothly. The rectification procedures are well-drafted and allow for expeditious corrections without a judicial proceeding when rectification would not prejudice a party.¹²⁷ For example, no judicial interference is necessary where the registrar has

121. *Registration Law*, *supra* note 1, art. 12.6.

122. Identification of immovables is accomplished by reference to the cadastre number, which eliminates confusion about the object by enabling researchers to locate the object on the cadastre map. *Id.*

123. A section should describe what is owned, who owns it, and encumbrances and rights adversely affecting it. Division into these three components is a common practice in most registration systems. These subsections are usually called the "property section," the "proprietary section," and the "encumbrances section." Larsson, *supra* note 41, at 44.

124. *See supra* note 41.

125. Hanstad, *supra* note 46, at 692-93.

126. Simpson, *supra* note 41, at 205.

127. *Registration Law*, *supra* note 1, art. 21.

misspelled the name of a transacting party, and where both parties have quickly discovered the mistake and requested to amend the record.¹²⁸

Although the Registration Law is a significant improvement over previous arrangements because it significantly clarifies rights to immovables, the system presents certain problems. The law fails to clarify the rights of bona fide transferees and to fix the date of application as the registration date. Problems may also arise with the limitations on public access to records, the omission of a registration fee amount, and the failure to establish an assurance fund.

B. *Failure to Protect Bona Fide Transferees*

The greatest flaw of the Registration Law is its failure to clarify and explicitly protect the rights of bona fide transferees. A bona fide transferee is one who acquires property for value without knowledge of defects in the transferor's title.¹²⁹ The Registration Law provides no clear resolution when rights of bona fide transferees conflict with other claims.

Ideally, rights of registered bona fide transferees should preempt all other claims. Generally, "no rectification can be allowed against a bona fide [registered] purchaser for value who is in possession and had no knowledge of the omission, fraud or mistake upon which the claim for rectification is based."¹³⁰ Stated differently, a transferee should obtain the title free of any defects if the transferee did not know and should not have known about the defect, paid the price equal to the market value, and registered the title.

Bona fide transferees rely on the registration system. Therefore, protecting bona fide transferees makes the system effective. No state registration of titles is completely conclusive because the system should allow changes in the register if equitable.¹³¹ However, the qualifications on conclusiveness should not make the system unpredictable, and

128. Simpson, *supra* note 41, at 178 (noting that system would fail if it did not allow correction when, for example, registrar mistakenly allowed two different persons to register same rights to same immovable object).

129. *Civil Code*, *supra* note 10, art. 302.

130. Simpson, *supra* note 41, at 179.

131. John L. McCormack, *Torrens and Recording: Land Title Assurance in the Computer Age*, 18 William Mitchell L. Rev. 61, 90 (1992); R.G. Patton, *The Torrens System of Land Title Registration*, 19 Minn. L. Rev. 519, 528 (1935).

changes should be kept to a minimum so registered owners can have titles that are as absolute as possible and guaranteed by the state.¹³²

A policy of prohibiting rectification against bona fide transferees also gives right holders incentives to register their rights. First, if a right holder has registered, another cannot claim bona fide transferee status because she should have known from the register about a defect in the transferor's right.¹³³ Second, if right holders believe they can rectify the register against bona fide transferees, they might simply neglect to register because the registration would neither weaken nor strengthen their rights.¹³⁴ By not specifying when the register can be rectified against bona fide transferees, the Registration Law creates uncertainty about the conclusiveness of the register and discourages registration. The law should be changed to prohibit rectification against registered bona fide transferees.

Currently, rights of registered bona fide transferees differ depending on who is attempting rectification against them. First, pre-existing right holders prevail over bona fide transferees. Second, in cases of fraud, defrauded right holders prevail only if the immovable property was taken from their possession against their will. Third, between two bona fide transferees, the one who registers first prevails.¹³⁵

1. *Bona Fide Transferees Lose Against Pre-January 31, 1998 Right Holders*

The Registration Law, while recognizing unregistered rights that pre-existed the law, does not protect bona fide transferees from claims of such unregistered right holders. The Registration Law validates pre-existing rights—rights that arose prior to January 31, 1998—without registration.¹³⁶ Thus, pre-existing rights are always valid, and pre-

132. C. Dent Bostick, *Land Title Registration: An English Solution to an American Problem*, 63 Ind. L.J. 55, 100 (1987).

133. See *Civil Code*, *supra* note 10, art. 302.

134. Simpson, *supra* note 41, at 191 (stating that deeming unregistered transaction invalid would compel persons to register).

135. These are borderline cases, and this Comment does not analyze issues with clear answers, such as simple fraud. For example, if a swindler sells one of St. Petersburg's bridges, the purchaser may have a claim against the seller for fraud, but will obviously obtain no interest in the bridge itself.

136. *Registration Law*, *supra* note 1, art. 6.1. This is a good provision as long as it does not affect bona fide transferees. It would be disastrous if right holders lost their rights because they overlooked the law and did not register. The divestment of rights previously granted by the state would undermine the government's credibility and the people's trust in market-oriented reforms. Further, article 6, which recognizes pre-existing rights, does not recognize pre-communist rights to

existing right holders can always rectify the register against bona fide transferees.¹³⁷ For example, if an owner has leased the property before January 31, 1998, the lease is valid without registration because it is a pre-existing right. Then, some time after January 31, 1998, the owner sells to a bona fide transferee who has received no notice about the lease from the register or examining the property. Because of the blanket validation of pre-existing rights, the bona fide transferee takes the property subject to the lease and the lessee can rectify the register by registering the lease.

This is an unacceptable outcome. The Registration Law should provide an exception to the absolute validity of pre-existing rights; it should prioritize claims of bona fide transferees over claims of pre-existing owners. Innocent applicants should be able to rely on the information, or lack thereof, in the register.¹³⁸ Otherwise, the certainty of rights to, and the marketability of, unregistered property will be greatly impaired. The public's reluctance to rely on the register will undermine the entire purpose of the Registration Law.

The problem is exacerbated because about forty percent of land is owned by the state,¹³⁹ which acquired its rights before January 31, 1998. The register would contain no information on state-owned immovable objects if the state did not encumber or transact with those objects after January 31, 1998.¹⁴⁰ However, the requirement to register all encumbrances and transactions arising after January 31, 1998 mitigates the effect of this problem. Most of the state-owned land is leased. To renew short-term leases, right holders will have to register them, thus bringing the land plot into the register.¹⁴¹ However, the register would depict

immovable property. History and past practice show that the determination of very old pre-existing rights is too complicated. See Kern Alexander & Jon Mills, *Resolving Property Claims in Post-Socialist Cuba*, 27 Law & Pol'y Int'l Bus. 137, 185-86 (Fall 1995).

137. See *Registration Law*, *supra* note 1, art. 6.1.

138. Bostick, *supra* note 132, at 100.

139. Woods, *supra* note 11, at 758 (noting that state owned all land until recently). According to former Russian First Deputy Prime Minister Boris Nemtsov, 37.9% of Russian land (83.7 million hectares) is state property. *Over 60 Percent of Russian Land Is Private Property-Premier*, TASS, Dec. 28, 1997, available in LEXIS, World Library, TASS File.

140. As with other pre-existing right holders, the Registration Law does not require the state to register its immovable property until a transaction occurs. Moreover, the person transacting with the state has the duty to register. *Registration Law*, *supra* note 1, art. 16.1.

141. Also, Russia just allowed privatization of land under previously privatized immovable objects. See *Decree No. 485*, *supra* note 13. Before this decree, very little land in Russia was privatized. *Yeltsin Decree Permits Purchase of Land Under Privatized Buildings*, Russ. & Commonwealth Bus. L. Rep., June 4, 1997, available in LEXIS, World Library, RCBLR File.

ownership rights more fully and accurately if the state had to register all its rights. Thus, the Registration Law should be amended to allow bona fide transferees' claims to preempt claims of pre-existing right holders, regardless of whether such right holders are private persons or the state.

2. *Bona Fide Transferees Probably Prevail Against Most Defrauded Right Holders*

The Registration Law does not specify whether defrauded right holders can rectify the register against bona fide transferees. Such a dispute may arise when a person has fraudulently registered a right as his own and then transferred that right to an unsuspecting third party. Although bona fide transferees probably prevail in most instances, this outcome is uncertain.

The Russian Civil Code provides that owners have the right to reclaim property from bona fide transferees only if the property was taken from the owners' possession against the owners' will.¹⁴² Thus, seemingly, an owner would prevail against a bona fide transferee if a mere squatter purported to transfer the ownership right. However, the owner would not prevail against a bona fide transferee if the owner leased the property and the lessee fraudulently purported to transfer the ownership right. The owner loses because the lessee possessed the property with the owner's consent. The Registration Law neither has a similar provision nor references the Civil Code.

This outcome is appropriate because it protects bona fide transferees in most circumstances. The problem is that the Registration Law creates uncertainty of rights by not explicitly providing for this outcome. As a result, investors in Russian immovable property risk losing their rights to defrauded right holders. If courts construe the law to grant rectifications generously to defrauded right holders, the registration system would provide no security for property rights and reliance on the register would make no sense. Bona fide purchasers must be able to rely on the register and should not be in constant danger that defrauded right holders will attempt to assert their rights against them.¹⁴³ This is of paramount importance for a successful registration system.¹⁴⁴ Therefore, the

Perhaps after this decree individuals will start buying land plots under buildings they own, which would speed up compilation of the register.

142. *Civil Code*, *supra* note 10, art. 302.1.

143. Bostick, *supra* note 132, at 100.

144. Patton, *supra* note 131, at 529.

Registration Law should be amended to clarify when, if at all, defrauded right holders can rectify the register against bona fide transferees.

3. *Between Two Bona Fide Transferees, the One Who Registers First Is Likely to Prevail*

The Registration Law does not clarify who prevails when two competing chains of title come into existence and two bona fide transferees are disputing their rights to the same immovable object. This may happen, for example, when an owner mortgages the same immovable object first to one party and then to another before the first party has a chance to register the mortgage. Also, this problem may arise when the owner transfers her ownership to a bona fide transferee, who neglects to register, and the owner later purports to transfer ownership to another bona fide transferee. Failure to determine priority of registration at the time of application filing may aggravate the problem.¹⁴⁵

It is not entirely clear who will have the right to the immovables: the bona fide transferee who registered the right first, or the one who acquired it first. Article 2.1 states that "state registration is the only evidence of the existence of the registered right" and may be interpreted to mean that a right is invalid until it is registered.¹⁴⁶ However, this statement is unclear and appears to be tautological. The Civil Code states clearly that an unregistered transaction in immovables is invalid.¹⁴⁷ Russian practitioners believe that although courts weigh all relevant facts to determine the rights to the immovable object, the bona fide applicant who registers the right first will have a significant advantage and probably will retain the right.¹⁴⁸

A system that awards the right to the party who registers it first promotes the register's reliability. This approach makes the registry a reliable source of rights to immovable objects because it calls for fewer amendments.¹⁴⁹ Also, this approach gives right holders an incentive to

145. A right is registered when the registrar makes the entry in the register, not when he accepts the application. *See infra* text accompanying note 155.

146. *Registration Law, supra* note 1, art. 2.1.

147. *Civil Code, supra* note 10, art. 165.1.

148. Telephone interview with Aleksey Pulin, Lead Attorney, Vladimir Oblast Land Reform Support Center (Sept. 2, 1997).

149. Liberal corrections of the register may ease a registrar's responsibility to accept documents for registration without taking extra precautions. Robert Megarry & H.W.R. Wade, *The Law of Real Property* 227 (5th ed. 1984). To ensure the credibility of the system, however, corrections of the register must be rare. Bostick, *supra* note 132, at 101. The system should not put those who rely on it at risk.

register promptly. Otherwise, right holders might neglect to register knowing that they can always amend the register in their favor. The system would lose its purpose if right holders avoided the registry.

Problems remain, however, because the Registration Law does not clearly state who prevails between two bona fide transferees and what happens to unregistered rights. The absence of a provision governing rights between bona fide transferees creates uncertainty and undermines the reliability of the register.¹⁵⁰ By not specifying what happens if a right holder fails to register when required to do so, the Registration Law may discourage some right holders from registering. The law should clearly state that the right reverts to the grantor if the right holder fails to register it within a specified time.¹⁵¹ To deem unregistered transactions valid would undermine the certainty of registered rights. Right holders would refuse to go through the somewhat costly¹⁵² and time consuming¹⁵³ registration process if their rights are valid nonetheless.

C. *Failure to Establish the Application Acceptance Date as the Registration Date*

Generally in registration systems, record books determine questions of priority of registration.¹⁵⁴ However, in Russia the record book does not determine the priority of registration, but simply acknowledges the receipt of the registration documents. Under article 2 of the Registration Law, the date of registration is when the entry is made in the register, not in the record book.¹⁵⁵ Under this approach, applicants may encounter problems determining the priority of registration. For example, when two or more individuals apply to register conflicting rights to the same immovable object, priority may go to those applicants who submitted documents second but whose rights were recorded first. This may happen if two different registrars accept applications regarding the same right, or if a registrar “prefers” one applicant over another.

150. See *supra* Part IV.B.2.

151. The Lithuanian Registration Law provides an example of such a law. See William Valletta, Essay, *The Hesitant Privatization of Lithuanian Land*, 18 *Fordham Int'l L.J.* 198, 214 n.66 (1994) (stating that failure to register transaction renders it void).

152. Article 11.2 requires applicants to pay registration fees. *Registration Law, supra* note 1, art. 11.2.

153. See *supra* notes 75–79 and accompanying text.

154. Simpson, *supra* note 41, at 354–55.

155. *Registration Law, supra* note 1, art. 2.3.

Moreover, the law does not allow individuals to examine the record book for pending applications.¹⁵⁶ Applicants have no opportunity to determine whether someone else is attempting to register a conflicting right or prevent registration of such rights.¹⁵⁷ Therefore, an applicant may discover conflicting rights when it is already too late—when the conflicting rights have been recorded in the register and the registry denies the application.

A real threat exists that some applicants may lose their rights because of priority issues. The registrar may delay registration for up to two months.¹⁵⁸ This gives the registrar enough time to record a conflicting right even though the application was submitted later. Russia's bureaucratic red tape¹⁵⁹ and widespread corruption¹⁶⁰ aggravate the situation. Even diligent applicants may experience delays in registration and, in the worst case, lose their rights because they lose priority.

The failure to establish the date when an application is entered in the record book as the registration date creates uncertainty and invites corruption. For example, the Russian Federal Securities Commission licensed a first mutual fund in Russia and registered its prospectus within one month, despite having applications pending from other companies for several months.¹⁶¹ This apparently happened because the counsel for the fund was an advisor to developers of the Russian law on mutual funds and worked closely with the Federal Securities Commission.¹⁶² Although this does not concern immovables, it depicts potential abuse of registration. In an example concerning immovables, Moscow registrants of immovables complain about “unforeseen expenses and delays [of]

156. *Id.* art. 7 (providing no procedures for examining record books).

157. The Registration Law provides for suspension of registration only when the registrar doubts the existence of legal grounds or the court issues an order in accordance with its decision or pending adjudication. *Id.* art. 19.

158. *See supra* notes 76–77 and accompanying text.

159. Matthew Brzezinski, *Russia Kills Huge Oil Deal with Exxon—Legal Irregularities Charged by Kremlin Official as He Cancels Bidding Results*, Wall St. J., Aug. 28, 1997, at A2 (noting that Russian bureaucratic hurdles have frustrated Western oil concerns eager to invest).

160. *U.S. Investors Gain Optimism on Russia, New Survey Reports*, Wall St. J., Aug. 22, 1997, at B8G (noting that, despite their optimism, U.S. investors remain concerned about corruption in Russia).

161. Carla Anne Robbins & Steve Liesman, *Aborted Mission: How an Aid Program Vital to New Economy of Russia Collapsed*, Wall St. J., Aug. 13, 1997, at A6.

162. *Id.*

registration.”¹⁶³ Often, “unforeseen” registration costs exceed the purchase price of the immovable object that needs to be registered.¹⁶⁴

The Russian legislature could easily avoid this problem of dueling rights by relating the date of registration to the time when the registrar accepts the application and enters it in the record book.¹⁶⁵ To further eliminate priority uncertainties, the record book should specify not only the date of the entry, but also the minute and hour.¹⁶⁶

To win the race to the register, foreign investors should register their rights as soon as they obtain right-establishing documents. Although there is no guaranty that the applicant who applied first will register first, prompt filing increases the applicant’s chances.

D. *Limitations on Public Access to the Records*

Although the Registration Law allows relatively liberal public access to the register, it contains some restrictions that may create problems. For example, persons who inquire into the registry must present their identification document before receiving the information. The names of the inquirers are recorded and available to the owner. The law also limits the persons who can access files to search right-establishing documents.

Article 7 limits public access to information in the register by requiring applicants to present their identification documents and by allowing the registrar to take up to five days to fulfill the request.¹⁶⁷ Such provisions give registrars freedom to deny the public access to the register and solicit bribes.¹⁶⁸ This has happened with Kazakstan’s registration system.¹⁶⁹ Although article 7.2 allows appeal of a refusal to provide information, appeals take time, during which transactions with immovables cannot occur. Such delays impair the marketability of immovable property.

163. Lina Kalyanina, *Moscow City’s Revenues from Real Estate*, Moscow News, Feb. 12, 1998.

164. *Id.*

165. USAID: *Draft Law on Registration of Immovable Property Needs Some Revision*, Russ. & Commonwealth Bus. L. Rep., Sept. 24, 1996, available in LEXIS, World Library, RCBLR File.

166. Larsson, *supra* note 41, at 44.

167. See *supra* text accompanying notes 114–17.

168. Sally J. March & Francoise Richards, *Real Property: Risks in Russian Real Estate: Myths vs. Reality*, Cent. Eur. Bus. Guide, Aug. 1, 1997, available in LEXIS, Market Library, Iacnws File (reporting that bureaucrats deny registration of real estate transactions if they have slight opportunity to do so).

169. *Local Opposition Slows Kazakstan’s Implementation of Registration and Mortgage Laws*, Russ. & Commonwealth Bus. L. Rep., Nov. 18, 1996, available in LEXIS, World Library, RCBLR File.

Article 7.4, which allows right holders to obtain information about persons who inspect the records of their immovable objects, may discourage inspection of records. If owners who want to keep their ownership secret can trace and intimidate those who inquire about their rights, fewer persons will dare to inspect the register.¹⁷⁰ The register will not convey notice if persons are afraid to use it. Article 7 should be amended to allow for immediate access without requiring persons to present identification documents.

Further, the Registration Law limits access to right-establishing documents in the files to a small circle of individuals and organizations.¹⁷¹ This provision may contradict article 131(4) of the Russian Civil Code, which states that the registry must provide "information concerning the registration made and the rights registered to *any person*."¹⁷² Also, the general public has a strong interest in inspecting such documents because they contain relevant information, such as the price of immovable property. If this information is unavailable to the public, it may retard the development of a real estate market.

For the registration system to secure real property rights effectively, persons should have access to the information the register contains. The system would be useless for determining rights to immovable objects if it did not give notice of such rights. The more available the register is to the public, the better it conveys notice.¹⁷³

E. The Failure to Establish Fixed Fees

The failure of the Registration Law to establish a fixed registration fee and a fee to obtain registration information may become a problem. Article 11.2 gives the federal government the power to establish a maximum amount for registration fees and allows regional authorities to establish any amount below this maximum.¹⁷⁴ The federal government has not established this maximum. The establishment of state fees is a great improvement over the previous practice in which private notaries were charging high fees for notarization of ownership documents.¹⁷⁵ If

170. Memorandum from Robert Mitchell, Staff Attorney, Rural Development Institute, to the developers of the Registration Law 4 (Aug. 22, 1996) (on file with author).

171. *Registration Law*, *supra* note 1, art. 7.3.

172. *Civil Code*, *supra* note 10, art. 131.4 (emphasis added).

173. Bostick, *supra* note 132, at 99.

174. *Registration Law*, *supra* note 1, art. 11.2.

175. *Commentators Hail New Registration Law for Russian Real Estate*, Russ. & Commonwealth Bus. L. Rep., Aug. 27, 1997, available in LEXIS, World Library, RCBLR File.

fees are affordable, more right holders will be able to register their immovables, and the proceeds will facilitate the registration system.

However, some reasons for concern remain. Conservative regions that oppose market reforms and the alienability of immovable property may want to establish extremely high fees. High fees would not only discourage right holders from registering voluntarily, but would also discourage future transactions in immovables.¹⁷⁶ To avoid this, the federal government should set an affordable amount for the maximum amount fee.

F. *The Lack of an Assurance Fund*

In most registration systems, investors can recover against an assurance fund that the state establishes and the registrar operates to indemnify persons who have sustained monetary damage because of registration.¹⁷⁷ Examples of persons injured by the registration are (1) defrauded registered right holders who cannot rectify the register against bona fide transferees,¹⁷⁸ and (2) bona fide transferees against whom pre-existing right holders can rectify the register.¹⁷⁹ However, the Registration Law does not provide for an assurance fund.¹⁸⁰

Innocent parties injured because of errors in registration cannot recover from the state. Instead, they must attempt to recover from the individuals who caused the injury. If a registrar makes a mistake recording rights, the injured party may bring a lawsuit to recover damages from the registrar personally. The registry most likely will not compensate victims for staff mistakes.¹⁸¹ Similarly, if a person

176. In the past, high registration fees for the purchase of land plots were the main reason land privatization proceeded slowly. *Privatized Companies Slow Down Acquiring Land Plots*, TASS, Oct. 23, 1996, available in LEXIS, World Library, TASS File. Commentators have warned that this may occur. *Notes for Foreign Investors*, Russ. & Commonwealth Bus. L. Rep., June 4, 1996, available in LEXIS, World Library, RCBLR File.

177. Cunningham et al., *supra* note 5, at 882; Hanstad, *supra* note 46, at 682.

178. See *supra* Part IV.B.2.

179. See *supra* Part IV.B.1.

180. Curiously, article 11.3 states that fees collected by the registry should be used for "provision of state guaranties for registered rights." *Civil Code*, *supra* note 10, art. 11.3. This vague provision suggests that the state may compensate victims to some degree. However, absent a clear provision, parties injured by registration should not rely on state indemnity.

181. In Vladimir *Oblast*, where the pilot project registration system similarly allows injured parties to recover from registrars but not from the state, the registry pays injured parties in full for mistakes committed by its staff. Later, responsible persons reimburse the registry in installments. It is unclear whether this practice will be adopted in other regions of the Russian Federation or even

fraudulently obtains a right to an immovable object, the victim may seek redress from that person, but not from the state.¹⁸²

Although the lack of an assurance fund may leave some persons without recourse, it should not interfere with the general success of the Russian registration system. Some analysts argue that an assurance or indemnity fund is a necessary component of a registration system,¹⁸³ and that procedures allowing one to sue only the recorder are “woefully inadequate.”¹⁸⁴ However, these discussions focus on the current American recording system, where title registration is optional. Practical experience shows that state compensation through assurance funds is not vital to the success of a registration system in countries with compulsory registration.¹⁸⁵ With the Russian compulsory sporadic registration system,¹⁸⁶ the registrar must closely examine documents introduced for registration.¹⁸⁷ This reduces the possibility of mistake or fraud, thereby decreasing the number of possible claims to amend the register. Further, even in jurisdictions that have assurance funds, claims are infrequent.¹⁸⁸ The Russian legislature has wisely avoided assurance fund costs, which are often a disadvantage of title registration systems.¹⁸⁹

V. ADVICE TO FOREIGN INVESTORS

Although the Registration Law significantly clarifies rights to immovables and generally provides sufficient notice of these rights, the law’s shortcomings may present some problems for foreign investors.¹⁹⁰ Foreign investors will avoid most of the law’s pitfalls if they are prudent

whether Vladimir *Oblast* will continue this practice. Telephone interview with Aleksey Pulin, Lead Attorney, Vladimir *Oblast* Land Reform Support Center (Sept. 2, 1997).

182. *Id.*

183. Theodore B.F. Ruoff, *An Englishman Looks at the Torrens System* 13 (1957).

184. McCormack, *supra* note 131, at 80–81, 127.

185. Simpson, *supra* note 41, at 181 (noting that countries of continental Europe, Malaysia, Fiji, and Sudan successfully maintained their registration systems without providing assurance funds). For arguments that assurance funds in systematic registration systems are not necessary, see *id.* at 182–83.

186. *Registration Law*, *supra* note 1, art. 4.2.

187. *Id.* art. 13.1.

188. Sir Ernest Dowson, K.B.E. & V.L.O. Sheppard, C.B.E., *Land Registration* 141 (1952); Patton, *supra* note 131, at 530.

189. Martin Lobel, *A Proposal for a Title Registration System for Realty*, 11 U. Rich. L. Rev. 501, 517 (1977) (noting that state compensation through assurance fund is drawback of title registration systems).

190. See *supra* Part III.

when dealing with immovable property and prompt in registering their interests. Careful examination of the documents concerning immovables and visual inspection of the objects themselves should safeguard investors from overlooking any valid rights to such objects and give them at least bona fide transferee status. Prompt registration should protect investors from individuals asserting competing rights by providing notice and proof of the investors' rights. Finally, understanding the rights to immovables available to foreigners¹⁹¹ will prevent the government from subsequently taking the right.

Foreigners should remember that rights that arose before January 31, 1998 are valid without registration and may not be reflected in the register.¹⁹² Thus, before transacting in immovable objects not in the register, investors should (1) visually inspect the property for unexplained tenants and physical evidence of encumbrances, and (2) demand documents confirming the ownership and the absence of encumbrances.

While inspecting the property, buyers should identify any unexplained possessors and evidence of encumbrances. For example, before buying a land plot, one should visit it to see whether there are any buildings. If so, the transferee should ask for documents establishing ownership of these buildings in addition to the documents establishing rights to the land plot. Also, if persons live on the land—other than those the transferee is dealing with—the transferee should interview them to determine their rights. Preexisting, valid, unregistered rights preempt all other rights, even those of bona fide transferees.¹⁹³ Thus, failure to investigate fully the existence of such rights to immovable objects may be costly.

Documents the transferee should examine will vary with the type of unregistered immovable object.¹⁹⁴ They may differ depending on whether the investor is dealing with buildings and fixtures or with land.¹⁹⁵ To deal with legal entities, the transferee should also examine legal entities' articles of organization.¹⁹⁶ Finally, investors should inquire at the *Komzem*¹⁹⁷ about the designated purpose of the immovable object, such

191. See *supra* notes 32–36 and accompanying text.

192. See *supra* notes 136–41 and accompanying text.

193. *Id.*

194. *Checklist for Real Estate Registration and Transactions*, East/West Executive Guide, July 1, 1996.

195. *Id.*

196. *Id.*

197. See *supra* text accompanying note 43.

as business, residential, or agricultural.¹⁹⁸ Use in variance with the designated purpose could cause the new right holder to lose the right.¹⁹⁹

To avoid possible infringements on their rights, foreign investors should register their immovable objects even if registration is optional because their rights arose before January 31, 1998. Registration will secure their rights, make objects more marketable, and expedite future transactions. When registration is mandatory, right holders need to register their rights immediately after the conveyance, because unregistered rights may be lost.²⁰⁰ The transferor may convey the same right to a third party who, by registering promptly, will obtain the right to the immovable object. The system operates much like race-notice statutes in the United States.²⁰¹ Therefore, anyone acquiring rights to immovable property in Russia should register as soon as possible after obtaining the required right-establishing documents.²⁰²

Foreign investors should understand that the provisions concerning public access to the register and registration fees may lead to abuses by the registrars. Right holders should be aware that registries might become corrupt. Although this problem has no simple solution, foreign investors who are alert to it will best be able to protect themselves. For example, to avoid being charged excessive registration fees, investors should determine the proper amount from the regional ordinances that establish the fees.²⁰³ Also, investors should know that they must present their identification documents when examining the register or when registering transactions, and that right holders can find out who inquired about their immovable objects.²⁰⁴ Investors, therefore, will not be able to keep their inquiries secret. Generally, foreign investors who know about the dangers of the Registration Law and take precautions accordingly should be able to protect themselves from these dangers.

198. See *supra* notes 32–33 and accompanying text.

199. *Checklist*, *supra* note 194.

200. See *supra* notes 146–48 and accompanying text.

201. See Cunningham et al., *supra* note 5, at 826–27 (defining race-notice statutes as statutes that grant right to party only if he is bona fide purchaser and has recorded first).

202. Right-establishing documents are acts issued by government authorities, contracts, deeds (certificates) on privatization, certificates of the right to inheritance, legally effective court decisions, deeds (certificates) of rights to immovables issued by government authorities, and other proofs of transfer from the previous right holder to the applicant. *Registration Law*, *supra* note 1, art. 17.1.

203. *Id.* art. 11.2.

204. *Id.* arts. 7.1–2.

VI. CONCLUSION

By passing the Registration Law, Russia significantly reduced the uncertainty of rights to immovable objects and the confusion about transactions involving different types of immovable objects. The new law establishes a registration of titles system that is uniform throughout the country.²⁰⁵ Russia is one of the largest land masses in the world, and the new registration system secures the rights to these land resources. Although it contains several defects, the Registration Law offers a wholly workable system. Thus, the attractiveness of Russian immovable objects for foreign investors will probably increase.

The registration system is an important development in Russia's economic transition toward a market economy. First, registered right holders have greater tenure security and will be willing to undertake long-term improvement on their property, which leads to higher production.²⁰⁶ Second, lenders feel more secure taking registered property as collateral.²⁰⁷ This not only provides right holders with capital for improvements, but also encourages the credit industry. Third, transactions involving immovables become cheaper and safer, which increases marketability of the immovable property.²⁰⁸ Fourth, greater security of rights promotes development of the market for immovable objects.²⁰⁹ All these business opportunities will eventually attract more foreign capital to Russia, and this promotes development of the Russian market economy.

Despite the advantages the Registration Law offers, foreign investors should be careful about some drawbacks in the new system. Specifically, unregistered rights that arose before the effective date of the Registration Law (January 31, 1998) preempt rights of bona fide transferees,²¹⁰ and rights of bona fide transferees are not entirely clear.²¹¹ Because registration is optional for rights that arose before this date, initially the register will not contain information about all immovable objects. Therefore, to transact in such an unregistered object, transferees should closely examine all relevant documents and the immovable object

205. *Id.* art. 2.2.

206. Larsson, *supra* note 41, at 34.

207. Woods, *supra* note 11, at 767.

208. Larsson, *supra* note 41, at 34.

209. Hanstad, *supra* note 46, at 661.

210. *See supra* text accompanying note 137.

211. *See supra* Part IV.B.2.

itself.²¹² New right holders should register their rights as soon as possible because if they fail to do so, uncertainties in determining questions of priority of registration may cause them to lose their rights.²¹³ By watching out for these dangers inherent in the Registration Law, foreign investors should be able to protect their investments in Russian immovable property.

212. *See supra* text accompanying notes 194–99.

213. *See supra* notes 156–60 and accompanying text.