

Recent Civil Code amendments and Supreme Arbitration Court rulings affecting the office real estate market

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Recent CC RF amendments

I. Adopted Amendments to the CC RF

Transactions

- Previously there was a presumption that transactions contrary to legislation were void.
- As of September 1, 2013, transactions contrary to legal requirements are presumed to be voidable (art. 168.1 CC RF).

Effect:

- Large stabilizing influence on contractual relations concerning office real estate
- Reduction in abuse by bad faith counterparties (office lease agreements, lease and purchase-sale agreements, etc.)
- Aids the fight against bad faith transactions concerning office real estate

II. Adopted Amendments to the CC RF

Transactions

Liability for failing to obtain state registration of a transaction

- If a transaction requiring government registration is duly concluded, but one of the parties fails to register it, the court has the right, at the request of the other party, to render a decision on registration of the transaction.
- Previously the CC RF did not contain a special limitation period to enforce a party to an agreement to register the agreement.
- As of September 1, 2013 there is a one-year limitation period (art. 165.4 CC RF).
- Example: office long-term lease agreement

III. Adopted Amendments to the CC RF

Transactions

Liability for damages caused by delay in government registration of a transaction

- A party which unjustifiably refuses to perform government registration of a transaction must compensate the other party for the damages caused by the delay
- Previously the CC RF did not contain a special limitation period to enforce a party to an agreement to pay compensation.
- As of September 1, 2013 there is a one-year limitation period (art. 165.4 CC RF).
- Example: office long-term lease agreement

IV. Adopted Amendments to the CC RF

Exclusion of Works from the List of Civil Rights

- Previously, works were an independent subject of civil rights.
- As of October 1, 2013, only the results of works, not the works themselves, will be recognized inter alia as a subject of civil rights (art. 128 CC RF).
- This should be kept in mind when drafting the following agreements:
 - Office center construction contractor's agreement
 - Office fit-out construction contractor's agreement, etc.

Recent Supreme Arbitration Court Rulings:

- Supreme Arbitration Court Ruling Nr. 54 of July 11, 2011
- Supreme Arbitration Court Ruling Nr. 31 of January 25, 2013

Sale-Purchase of a Future Thing (Supreme Arbitration Court Ruling No. 54 of July 11, 2011)

What the Ruling says

RF SAC Plenum Ruling No. 54 of July 11, 2011:

Investment agreement



NB: Absence of title does not bar the undertaking obligations to dispose of the property.

What the agreement must say

- **Identification of the subject of the sale-purchase:**

- Existing approximate parameters
- Precise parameters in the transfer and acceptance certificate

NB: The judge must be able to determine the intention of the parties

- **Purchase price or means of calculating it**

- **Other conditions agreed by the Parties:**

- Obligations to acquire title
- Procedure for transfer of the property
- Payment of the purchase price

Rights of the parties: who has the best protection?

Seller

- Seller cannot be forced to “create” the property
- If the property is not determined, the seller retains title

Purchaser

- Can only demand the transfer of the property after registration of the title (or not?)
- Refund, payment of % for use of another’s funds, and reimbursement of losses

How to apply it in practice?

- Sale-purchase agreement for a future thing or Preliminary Agreement?
- Risk of requalification of an Investment Agreement as a Contractor's Agreement
- Our experience: More than 5 deals done!!!
- Sale-Purchase Agreement for a future thing in relation to a land plot for construction of office centers/office buildings

Lease of a Future thing (Supreme Arbitration Court Ruling No. 31 of January 25, 2013)

What the Ruling says

RF SAC Plenum Ruling No. 13 of January 25, 2013:

Ownership title must exist at the time of transfer of the leased property, not the time of execution of the agreement

What should be considered when drafting the agreement

- Identification of the leased property: the Ruling does not provide a clear statement of the RF SAC's position
- Term of the agreement
- Procedure for title registration and transfer of the property

Lease of Future Real Estate vs. Preliminary Agreement

- Difficulties compelling a landlord to conclude the main lease agreement
- Lease of a future thing: (i) compel transfer of the property or (ii) recover losses
- Size of losses under a Preliminary Agreement and under a Lease Agreement for Future Real Estate
- What to do with agreement registration?

Leases before title registration

- The lawful possessor may (sub)lease before registration of the ownership title
- Is lease before commissioning possible?
- Lease agreements for unauthorized buildings are void!

NB: Short-term agreement only

Conclusion

The recent amendments to the CC RF and recent Supreme Arbitration Court rulings are aimed at:

- Increasing stability of contractual transactions concerning office real estate
- Protecting the interests of buyers of office real estate which will be built/transferred in the future
- Reducing abuse by bad faith counterparties (preliminary lease and purchase-sale agreements, etc.)
- Liberalizing court practice concerning office leases

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