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Purchasing Public Land to Build Commercial Properties

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Any commercial property construction begins with selecting a land parcel. As early as the initial stage of project implementation, an investor needs to make an important decision regarding which land parcel to choose for future construction purposes and how to acquire ownership title to such parcel.

In general, no particular issues arise in respect to acquiring title to a privately owned land parcel: The main issue here is to negotiate commercial terms with the current title holder for the future purchase or lease of the parcel. Purchasing publicly owned land, however, is a whole different issue: Merely "negotiating" is not enough in this case, and many have made this mistake in practice. In this case, first of all, it is necessary to comply with all the procedures set forth by the legislation to ensure that this land parcel is not subsequently lost and no risks are created for the facility to be constructed.

So what are publicly owned lands? These are land parcels that are not owned (privately) by individuals or legal entities and that, accordingly, belong to the government or municipal authorities.

In the case of purchasing a government-owned or municipally owned land parcel for construction purposes, an investor must, first of all, inquire as to which government authority has the powers dispose over this land parcel. In practice, a large number of mistakes is made at this early stage.

If a land parcel is federally owned or owned by a subject/region of the Russian Federation or is municipally owned, you need to address the respective authorized body. However, government ownership of the majority of lands in Russia is not delineated at present, which produces a logical question: Who then is authorized to dispose over them?

According to the effective legislation, land parcels, the government ownership in respect of which is not delineated, may be disposed over by local self-governing authorities (acting as authorized entities, but not as owners), unless otherwise provided for by legislation of the Russian Federation as regards roads and road activities. Disposition over parcels located within administrative centers (capitals) of the subjects of the Russian Federation is carried out in a somewhat different manner. It is the self-governing authorities that dispose over such parcels, unless otherwise provided for by the legislation of the relevant subjects of the Russian Federation, which may empower regional authorities of the Russian Federation to dispose over such land.

Should the investor decide to acquire title to publicly owned land, he must decide under which option he wishes to acquire land.

There are two ways of acquiring a government-owned or municipally owned land parcel for construction purposes: with prior approval of facility location or without such approval. We will examine the instances of applying each of the indicated options.

Whether a land parcel is suitable for constructing a particular facility is determined not only by the fact that it is classified as land suitable for such construction. An investor must also determine whether the facility may be placed on the land parcel under the town-planning, ecological, sanitary or other regulations.

Authorized government bodies determine whether it is possible to build facilities in particular areas under town-planning and other regulations within the scope of territorial planning, town-planning zoning and area zoning project development. In such cases, transfer of a land parcel must generally take place without any prior approval of facility location • through a tender, provided that the facility is placed within an urban or rural settlement under town-planning documentation on development and area zoning.

However, at present, large-scale zoning and planning of areas is not implemented in all Russian regions, and that is why in certain cases a possibility of placing a contemplated facility on a land parcel is determined individually, namely, subject to prior approval of facility location, in which case there is no tender involved. It is within this procedure of prior approval of facility location that transfer of a land parcel is carried out based on an application from a stakeholder. An authorized body selects a land parcel for the applicant's particular purposes based on the application and all required town-planning, ecological, sanitation and other regulations. It is this procedure that shows the stakeholder the possibility to build his facility on the selected parcel even before acquiring title to that land parcel.

When acquiring title to publicly owned land for construction purposes, it is important to go by the following practical recommendations, namely:

- Within the scope of providing government-owned or municipally owned land parcels, an investor should, first of all, rely on the effective legislation instead of taking the lead from local authorities, which are sometimes guided not by the law but rather by "custom" or by "how things are usually done." Violation of procedure of land parcel title acquisition, as set forth by the legislation, may subsequently result in cancellation of a decision to hand over a land parcel and other adverse consequences tied

to recognizing invalid the transaction as regards land title acquisition.

- A land parcel should be inspected, and its suitability for facility construction purposes should be assessed:
- Compliance of the category and type of land parcel permitted use with the facility construction purposes, as well as a possibility and procedures as regards changing them to ensure such compliance with the stated purposes;
- Established encumbrances and restrictions on using the land parcel and their potential impact on facility construction (possible roads and road junctions, sanitary protection areas, communications protection areas and other potential restrictions as regards its use);
- Before making a decision on acquiring a land parcel for construction purposes, it is necessary to assess conditions for connecting the property to infrastructure facilities and the respective expenses.

Comprehensive legal support of procedures as regards selection and execution of title to land parcels is one of the key elements in implementing a project on commercial property construction.

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