EVOLUTION OF LAND REFORM IN RUSSIA: THE 2001 LAND CODE AND ITS IMPACT ON THE COMMERCIAL REAL ESTATE MARKET AND DIRECT FOREIGN INVESTMENT

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Abstract: Russia unambiguously established private land ownership when it adopted the 2001 Land Code, which, although limited to urban and commercial land, clarifies the concept of land ownership in general and allows foreign ownership of those lands. The Land Code permits security interests in commercial and industrial land, which should further stimulate Russia’s commercial real estate market, an important component of a functioning market economy. Perhaps the greatest strength of the new Land Code is its provision for foreign ownership, which allows foreign investors to conduct business according to the Western standards without being forced to engage in bribery or other violations of the U.S. Foreign Practices Corruption Act. Perhaps its greatest weakness is that it does not completely address all land issues in Russia; for example, it does not address the issue of agricultural land, it lacks a mechanism for land privatization, and it appears to contradict the current provisions of the Civil Code on the sale and permanent use of land. Russia urgently needs clarification of who owns what land and how it can be sold and bought. Nevertheless, while the Land Code is not a comprehensive reference guide for a foreign investor on how to purchase land, it eliminates the previous inequality between foreign and domestic land purchasers and provides foreign purchases with the security of title.

I. INTRODUCTION

Land tenure rights are the most basic and important institution, determining social and economic relations.1 Efforts to reform land tenure relations must focus on the system of laws to provide the framework for policy formulation and accomplishment.2 “A uniform land code can simplify land management, lower information costs of the legal process, and facilitate a land market by providing a systematic framework for governing land relations and analyzing land law.”3 The greatest advantage of uniform

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1 Tim Hanstad, Introduction to Agricultural Land Law Reform, in LEGAL IMPEDIMENTS TO EFFECTIVE RURAL LAND RELATIONS IN EASTERN EUROPE AND CENTRAL ASIA 1, World Bank Technical Paper No. 436 (Roy Prosterman & Tim Hanstad eds., 1999).

2 Id. at 7.

3 Id. at 12.
legislation is that the process brings together legal talent from various states or subjects of a federal system and results in uniformity and quality.\textsuperscript{4} Still, "[l]and codes are extremely rare even among the civil law countries of Western Europe where many bodies of laws are codified," because of the complexity inherent in establishing and passing an all-encompassing law.\textsuperscript{5}

On October 26, 2001, Russian President Vladimir Putin signed into law the new Land Code of the Russian Federation,\textsuperscript{6} permitting the sale of urban and commercial land across the country to both Russian citizens and foreign investors.\textsuperscript{7} Prior to that time, land tenure rights in Russia were not clearly guaranteed despite provisions in the Constitution and the Civil Code. Moreover, the Russian Constitution permits the President to issue edicts and directives, which have the effect of law, and thus contribute to the maze of administrative regulations on the use of land.\textsuperscript{8} Although Russia's adoption of the 2001 Land Code ended a decade-long debate in parliament over allowing private land sales in general, it left open the most controversial issue, the sale of agricultural land.\textsuperscript{9} However, while the new Land Code is not a comprehensive reference source for all land-related issues, it nevertheless marks a huge advancement in creating an infrastructure for land transactions.\textsuperscript{10}

This Comment tracks the potential impact of the 2001 Land Code on the emerging commercial real estate market in Russia and its significance for foreign investment. Part II provides a historical background on the developing concept of private land ownership in Russia, including foreigners' purchase rights. Part III examines how the new code establishes a framework for real estate transactions and its potential impact on foreign investment. Part IV analyzes the Land Code, highlights its gaps, and predicts the impact of the Code on the commercial real estate market.

\textsuperscript{5} Hanstad, supra note 1, at 12-13.
\textsuperscript{8} KONST. RF [RUSSIAN CONSTITUTION] (1993), art. 90, para. 2. The president's power to issue edicts allows the president to bypass the legislature without a counter-signature. Id. art. 90, cl. 1. The implementation of these edicts is mandatory throughout Russia. Id. art. 90, cl. 2.
\textsuperscript{9} Yevgenia Borisova, Land Code Awaits Putin's Signature, MOSCOW TIMES, Oct. 11, 2001, LEXIS, Russia Country Files.
\textsuperscript{10} Land law is highly controversial even in the developed legal and economic environments of Western Europe and the United States. Maggs, supra note 4, at 287. Efforts by the U.S. National Council of Commissioners on Uniform State Laws to create a "Uniform Land Transactions Act" have so far been largely unsuccessful. Id.
Finally, Part V concludes that despite its incompleteness, the Land Code symbolizes a fundamental step in the Russian transition from a totalitarian Communist state of nationalized land ownership to a functioning market economy.

II. HISTORICAL DEVELOPMENT OF THE LAND LAW IN RUSSIA

Lack of effective land privatization legislation has been considered the main obstacle to the development of a market economy in Russia. In the United States, private land ownership is the very foundation of the country. However, in Russia, private land ownership is a new and difficult concept. The legacy of state ownership—established prior even to the 1917 Bolshevik Revolution, and excepted only by limited aristocratic land ownership with a privileged few controlling the most profitable land—has prevented Russia from embracing private ownership. However, the urgent need for a commercial and urban real estate market has surfaced during the last ten years of transition from a communist to a market economy, resulting in a protracted debate over whether to allow unrestricted private land sales.

"The Western world does not automatically link land and agriculture, but rather views land ownership, evidenced by a document of title, as the unrestricted right to use, sell, transfer, mortgage, bequeath, and dispose of one’s land." In contrast, the concept of land in Russia has been used mostly in connection with agriculture and land cultivation, the cultural remnant of the rural and feudal history of Russia. In the Russian legal tradition, land use is highly regulated because land—the Motherland—is considered sacred and ought not to be bought or sold. As a result, buying and selling land in Russia has never been easy.

A. Pre-1991 Land Code

State ownership of land in Russia was established prior to the Bolshevik expropriation and nationalization of land in 1917. The Imperial Family and a small number of aristocratic elite owned the vast land expanses

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12 Id. at 5.
14 Id. at 268-69.
15 Baev, Privatization of Land in Russia, supra note 11 at 5.
of the Russian Empire.\textsuperscript{16} The Edict on the Imperial Family of 1797 established that un-owned land was considered the property of the Tsar and fell under the jurisdiction of the state treasury.\textsuperscript{17} Thus, new territorial acquisitions became the property of the state and not of the Imperial Family.\textsuperscript{18}

Land in Russia meant the agricultural means of production and was deemed too important to be trusted to the “simple-minded” Russian peasantry. Peasants never had true ownership of individual plots, even after the 1861 land reform meant to de-feudalize Russian society.\textsuperscript{19} As Count Vitte, the Minister of Finance, noted in his 1893 report on land reform to Tsar Alexander III, the Russian people did not need private ownership of land because they had faith in the Tsar to use the land for the necessities of the state, as well as for the benefit of the people themselves.\textsuperscript{20}

Following the October Revolution of 1917, landlord property rights were abolished and lands previously belonging to the Imperial Family, the government, and local municipalities were nationalized.\textsuperscript{21} The Soviet collectivization of land, as well as Communist centralized planning and land use management, reinforced the pre-existing Russian reliance on the state ownership of land. As a result, despite the industrialization of the Soviet economy, a liberal concept of real estate did not evolve because all land was owned by the state.\textsuperscript{22} The lack of private ownership and governance of industrial, commercial, and agricultural land use by restrictive bureaucratic committees (“Commitets”) provided no incentives for land development.

B. The 1991 Land Code and Other 1990s Legislation Pertaining to Land Ownership

On June 12, 1990, the Russian Congress of People’s Deputies voted for sovereignty, expressing the desire to become independent from the Soviet Union.\textsuperscript{23} On August 24, 1991, Russia declared its independence from

\begin{footnotes}
\item[16] Id.
\item[17] Id. (citing Rafail Nasirov, Opredelenie Gosudarstvennoi Sobstvennosti v Rossiskom Dorevolutionnom Zakonodatelsстве [Definition of State Property in Pre-Revolutionary Russian Legislation], in Aktualni Problemi Pravovedennia Na Sovremennom Etape [Actual Problems with Authority of the Law at the Present Stage] 1, 12 (Sverdlovsk Law Inst. ed., 1992)).
\item[18] Id. at 5.
\item[19] Id. at 7.
\item[20] Id. at 5.
\item[21] Id. at 9.
\item[22] Id.
\item[23] Lev Aksenov et al., Urgent—Russia Adopts Declaration of Sovereignty, ITAR-TASS, June 12, 1990, LEXIS, Russia Country Files.
\end{footnotes}
the Soviet Union in response to the failed coup attempt by a group of Communist leaders seeking to reverse democratization ("Perestroika") and freedom of speech ("Glasnost") reforms. The Soviet Union, with its failing communist ideology, ceased to exist in December of 1991.

During the 1990s reform period, Russia acknowledged the need for the land reform early on, which resulted in a plethora of confusing and conflicting legislation and administrative regulations. Urban and commercial real estate was still lumped into the general idea of land ownership, subject to the same scrutiny as the issue of agricultural land.

The greatest challenge to effective land reform was deregulation of Russia’s agricultural sector and the transition from large-scale “collective” enterprises into privately run small, medium, and large “corporate” enterprises. Private ownership of agricultural land still seemed too radical, and Russians remained sharply divided on the risks and benefits of private ownership, the role of land markets, and how to develop them. Political conservatives opposed fully functioning land markets, arguing that unregulated purchase and sale would lead to rapid consolidation of land ownership in the hands of a few large opportunists, resulting in increased landlessness of the rural population. Furthermore, the price paid by the Russian people for establishing state ownership had been so enormous that the thought that it was erroneous was, for some, psychologically inadmissible. For many Russians, genuine privatization of land would betray the ideas of equality for which so many of their predecessors had died.

Protections for the rights of private landowners were first established by the 1991 Land Code of the Russian Federation, adopted while the Soviet Union was still in existence. The 1991 Code granted the right to buy, sell, lease, and mortgage privately owned land and defined relations between land owners and building owners, which are separate types of ownership in

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26 ROY L. PROSTERMAN ET AL., A VISION FOR AGRICULTURAL LAND REFORM IN RUSSIA 1 (Rural Dev. Inst., Reports on Foreign Aid and Dev. No. 100, 1999).
27 Roy Prosterman & Tim Hanstad, Foreword, in LEGAL IMPEDIMENTS TO EFFECTIVE RURAL LAND RELATIONS IN EASTERN EUROPE AND CENTRAL ASIA, supra note 1, at v.
28 Id.
29 Leonard Rolfs, Jr., Land Privatization, in LEGAL IMPEDIMENTS TO EFFECTIVE RURAL LAND RELATIONS IN EASTERN EUROPE AND CENTRAL ASIA, supra note 1, at 46.
Russia. The 1991 Code provided that land owned by individuals and legal entities might be resold, but only under certain restrictive conditions. The sale or any other disposition of land, with the exception of inheritance, was limited to one buyer—the State, and only after the expiration of a ten year period from the date of the grant. Such restrictions presented a substantial problem because many categories of land could not be sold, leased, used for long time periods, mortgaged, or transferred by gift or inheritance. Private ownership of land was introduced for various small parcels including garden, dacha, and household auxiliary plots, but remained subject to similar substantial restrictions.

The 1993 Constitution of the Russian Federation granted the federal government exclusive jurisdiction to enact legislation on civil law. The previous Russian Federation Constitution and the 1991 Land Code restricted alienation of land according to the method of acquisition and length of ownership. However, the 1993 Russian Constitution adopted and guaranteed the right of private land ownership stating that "[t]he land and other natural resources can be in private, state, municipal and other forms of property.

Although attempts have previously been made to create a market for commercial real estate, those efforts have been sporadic and predominantly outside the existing legal framework. For example, Decree No. 631, enacted on June 14, 1992, expressly provided for the right of foreign citizens and legal entities to buy certain types of land for entrepreneurial activity. Edict No. 631 described the procedure necessary to buy land or to lease it with the

32 Land Code 1991, art. 11. See also Floroff & Tiefenbrum, supra note 13, at 250.
33 Floroff & Tiefenbrum, supra note 13, at 250.
34 Id.
37 Maggs, supra note 4, at 284.
38 Patricia G. Woods, Comment, From Feudal to Modern: The Evolution of Real Estate Finance in Russia, 8 EMORY INT'L L. REV. 749, 753 (1994)
39 KONST. RF [RUSSIAN CONSTITUTION] (1993), art. 9, para. 2.
40 Id.

option to buy, and required that the selling enterprise must itself be privatized in order to sell the land. However, these rights have not been codified, and although land sales did take place, their legal status was ambiguous and subject to substantial regional variation.

During this period, Russia enacted the 1994 Civil Code, the major piece of legislation on the private law, specifically regulating commercial transactions between private parties. The phrase "economic constitution" has been used to describe the Civil Code. The most important feature of the Civil Code was the introduction into civil commerce of land, enterprises, apartments, commercial paper, and securities, which were previously excluded from free civil commerce and given by the state only for use (e.g., land or apartments in state buildings). The Civil Code established mechanisms for private entrepreneurship by creating a legal framework for ownership, rents, leases, contracts, purchase and sale agreements, etc. It introduced concepts such as contract enforceability and fiduciary duty to the Russian legal landscape.

Part 1 of the Civil Code includes a chapter providing for full private ownership of land. "With the inclusion of land in economic commerce, the necessity arose to subordinate the rights to land and transactions with it to the general provisions of civil legislation and to establish in the framework of these provisions the particular features of the possession, use, and disposition of land parcels." It specifically addresses the issue of immovables, defined as land plots, subsoil plots, solitary waste objects, and objects firmly connected to the land that cannot be moved without causing damage (permanent fixtures). It also includes norms on other rights to land such as lifetime inheritable possession (Articles 265-267), permanent use (Articles 268-270), immovables that are on another's land (Article 271),

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42 Id.
43 Id.
45 Makovsky, supra note 44, at I.
46 Id. at li-lii.
47 CIVIL CODE, ch.17.
48 Maggs, supra note 4, at 287.
land servitudes (Articles 274-277), and taking land parcels from owners and users (Articles 278-287).  

Chapter 17 of the Civil Code, The Rights of Ownership and Other Rights in Land, reflects many core legal principles of the 1991 Land Code and its amendments. It deals with land transactions only, such as gifts, mortgages, leases, and other uses. Establishing rules for the development of land, Chapter 17 provides that owners of land may construct, renovate, or demolish buildings and other projects on their land and may permit others to build, renovate, or demolish on their land. It also provides for five basic property rights with respect to land: ownership, inheritable possession for life, permanent use, temporary use, and lease. However, since the Communist Party and its agrarian allies opposed private land ownership, Chapter 17 was declared inactive until a new Land Code was approved.

In 1999, the enactment of the law, On the State Registration of Rights in Real Property, helped establish a uniform system of registering land ownership, although it still did not clarify how to obtain title to land. The state registration system, Roszemkadastr, is experiencing a huge demand to register plots as a result of the Land Code enactment. However, Roszemkadastr is underfunded and is struggling to accurately take stock of the country's land supply.

The Law on Foreign Investment, effective July 12, 1999, contains basic legal protections for foreign investors, entitling them to rights no less favorable than domestic investors "with exceptions established by federal laws." Restrictions are allowed "only to the extent required" by a broad
laundry list of goals, such as protection of “public morals and health . . . [or] the defense and security of the State.” Special privileges may also be granted by law to promote Russian social and economic development. Foreign investors are entitled to make investments in any manner not expressly prohibited by law, and to reinvest or repatriate profits and other distributions freely, after payment of applicable taxes. Furthermore, foreign investors have the right to compensation for damages inflicted by illegal acts or omissions of Russian authorities, as well as to protection from seizure or nationalization of their investments, except when pursuant to federal law and with payment of compensation and damages. The law also establishes certain categories of investment that are entitled to special protection or privileges.

Despite this abundance of provisions in various laws and codes, none explicitly established private land ownership in Russia. For the purposes of economic activity, there were no legal institutions to protect the rights of the landowners from other individuals or from the state. Chapter 17 of the Civil Code on land transactions was inactive pending the adoption of the Land Code and slowed development of the rudimentary real estate market. At the adoption of the Civil Code in December of 1994, the lower house of the Russian Parliament, the State Duma, passed a Land Code, but the Federation Council, the upper house, rejected it, resulting in a seven-year struggle over the Land Code revisions. The ambiguity of federal law on land ownership and of local governments’ authority to regulate land use created a patchwork practice of land distribution. Consequently, owners did not know what rights they had to any land they acquired and had no guarantee of title in the event federal or local authorities sought to take the land away.

C. The Economic Effects of Restricted Land Ownership

The international community aiding Russia has categorically established that unless Russia embraces the concept of unrestricted land ownership, market reforms and investments will not be able to proceed. In


62 Federal Law on Foreign Investment, art. 4.


64 Id.

65 Id.

66 Id.

the absence of land reform, it is difficult to clear title to land and impossible to use land as collateral for loans. In addition, foreign investors wishing to buy or lease property on a piece of land had to form joint ventures, which depended entirely on the Russian partners' consent and participation.\(^6\) Property rights in Russia were what the government said property rights were,\(^6\) despite the adoption of the Civil Code.

1. Land Ownership and Foreign Investment

The Russian economy virtually imploded in 1998 after the government defaulted on many debts. The ruble lost two-thirds of its value, and the banking system collapsed.\(^7\) Russia's short-term debt was fully and unilaterally restructured towards long-term debt.\(^8\) "During the 1990s, investors entered Russia with money and, with only a few exceptions, departed empty-handed."\(^9\) In one year's time, the market volume of the Russian Trading System stock market exchange plunged from US$70 billion to a mere US$5 billion.\(^10\)

In Russia, where wear and tear on basic industrial facilities and equipment had reached 42% as early as 1990, a prompt injection of capital into its industries is crucial for economic revival.\(^11\) Land, labor, and most other business costs are still remarkably low in Russia, which should attract more outside interest. However, Russia's bureaucracy, along with taxes and bad management, still hold back growth.\(^12\) Additionally, despite the efforts to develop its legal system, Russia lacks effective law enforcement. As John Browne, the Chairman of BP Amoco PLC, whose company invested US$484 million in Russian oil, said, "I've always considered America to be governed by laws, not men. The reverse may be true in Russia."\(^13\) Investors watched helplessly when Russian banks crashed during August 1998.\(^14\) George Soros, a hedge fund billionaire and one of the largest donors and

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\(^9\) Billing, supra note 68, at 123.
\(^10\) Id.
\(^11\) Baev, Implications of Emerging Legal Structures, supra note 69, at 214.
\(^12\) Lucas, supra note 70, at 4.
\(^14\) Billing, supra note 68, at 123-125.
investors in Russia and other Eastern European countries, lost US$1 billion in Russia, declaring the loss “the biggest mistake of my investment career.”

The lack of efficient government and a central bank has further exacerbated the problem of capital flight. Fixed capital investment in Russia in 2001 was US$40 billion, up 8% from the year before, but far below the US$70 billion needed for the economy to tread water. Direct foreign investment has stagnated at US$5 billion. As a result, Russia is facing a daunting growth challenge without the funds necessary to support it.

On October 29, 2001, the World Economic Forum, a group of 300 top global investors held a meeting in Moscow, at which President Putin declared that Russia had overcome the financial crash of 1998 and was set to become one of the world’s fastest developing societies. Despite President Putin’s optimism, the World Bank has warned that Russia’s economic recovery is too narrowly based on windfall profits from high global oil prices, capital flight is still at catastrophic levels, and investment remains far below the amount needed even to sustain existing capacities. Similarly, the Center for Economic and Financial Resources opined pessimistically that “the lack of clear reform priorities threatens to derail the government program.”

There are many reasons for the failure of American and other foreign investments in Russia, but the most important is the lack of an investment-friendly legal system. Most of Russia’s laws are confusing and poorly drafted, and the constant mutation of laws causes legal instability and jolts investment-backed expectations. The constantly broken contractual obligations, crises of insolvency, an undeveloped commercial insurance

79 Baev, Implications of Emerging Legal Structures, supra note 69, at 126.
80 Weir, supra note 67.
81 Id.
82 Id.
83 Id.
84 Id.
85 Id.
86 Id.
87 In 1994, the Duma approved the first part of a comprehensive Civil Code containing rules on enforceability of contracts, but the specialized Arbitrazh Courts system for business dispute resolution does not have an enforcement mechanism. Billing, supra note 68, at 123-24. In the early 1990s, a voucher system introduced shareholder ownership of businesses, and soon a stock market and banking system emerged. Id. The Duma also put on hold Chapter 17 of the Civil Code, which authorized private land ownership until the new Land Code was adopted. Id.
88 Baev, Implications of Emerging Legal Structures, supra note 69, at 215.
system, piracy of intellectual property, absence of private land ownership, the oppressive tax system, lack of an entrepreneurial culture, the malfunctioning of the courts, ineffective judicial enforcement mechanisms, and the high level of corruption are all factors which cannot and are not disregarded by foreign business people looking for a new market.  

Ascertaining the ownership of a particular asset is extremely important to foreign investors planning to purchase an enterprise, extend credit, finance a project, or contribute capital to a joint venture with a Russian partner. Foreign investors are willing to take calculated risks, but they rarely do so without complete control of their own enterprises. Host country laws that require a local joint venturer or partial host government ownership drive away foreign investment and inhibit the ability of existing foreign ventures to compete internationally. This has certainly been the case in Russia as many Russian business partners took advantage of their foreign counterparts as a result of the fact that only the Russian partners’ names were on leases or other official documents. Such business practices deter other foreign investors from entering the market. Foreign investors need a legal infrastructure that provides at least minimal rights and protection of their assets.

Of course, the lack of private ownership of land did not completely deter foreign and domestic investors, who could effectively control land by acquiring a privatized company. Article 3 of the Foreign Investment Act guaranteed the right to acquire property complexes, buildings, and structures, making it possible for a foreign investor to buy a privatized state enterprise with extensive holdings while the foreigner’s ownership of the actual land tracts was never addressed. Investors entered into joint ventures and did business on land owned by local governments, state-owned enterprises, or recently privatized state enterprises. Nevertheless, the absence of well-defined rights in land prevented the guarantee of full ownership. The adoption of the new Land Code, however, signals the government’s willingness to loosen its grip on land and allow establishment

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89 Id.
90 See id. at 222.
92 Id.
93 Billing, supra note 68 at 124-125.
95 Smith, supra note 91, at 325.
96 Billing, supra note 68, at 167.
of a commercial real estate market with all its prerequisites, including absolute ownership.

2. Land Ownership and the Commercial Real Estate Market

As the world's largest country by territory, Russia's commercial real estate market has enormous potential; however, there is also a strong need to clarify the law regarding governmental distribution of real estate. Due to the ambiguity and inconsistency of the land legislation, the Russian land market has been unexploited and land transactions occur within a legal vacuum, leading to unproductive use of commercial space and impedes transfers of retail premises. For example, while legislation up until now allowed land sales by local municipalities, the practice was confined to long-term leasing due to the lack of federal law on land ownership. In addition, the Russian Constitution of 1993 proclaimed citizens' rights to hold land in private ownership, contradicting in part the still existing 1991 Land Code, which, although it allowed land ownership of auxiliary plots, prohibited unrestricted sales, leasing, and mortgaging. Likewise, when the Russian government enacted law on privatizing state-owned industry and enterprises, it only dealt with the factories, plants, and other industrial enterprises (the buildings and equipment), and not the land beneath those physical assets.

In Russia, the local governments have a virtual monopoly on land ownership, including commercial real estate, and local governments are not moving toward commercial leasing. Under Decree No. 631, foreign citizens and legal entities may buy certain types of land for entrepreneurial activity; however, the decree is not comprehensive and is often used by local municipalities according to their own political agendas. Consequently, previous users, who are contributing very little to local budgets, occupy valuable commercial space, while private sector development is blocked by

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97 Baev, Implications of Emerging Legal Structures, supra note 69, at 226.
98 Id.
99 KONST. RF [RUSSIAN CONSTITUTION] (1993), art. 9, § 2.
100 Zemelnii Kodeks RF [The Land Code of the RF] (1991), art. 11.
101 Baev, Implications of Emerging Legal Structures, supra note 69, at 226.
102 APRIL HARDING, COMMERCIAL REAL ESTATE MARKET DEVELOPMENT IN RUSSIA 1, (World Bank CFS Discussion Paper Series, No. 109, 1995).
104 Baev, Implications of Emerging Legal Structures, supra note 69, at 227.
unavailability of premises. The critical shortage of commercial premises is further exacerbated by the extreme difficulty of transferring residential or industrial real estate into commercial use or initiating new development.

Russia’s real estate market is in a state of flux with the exception of overpriced Moscow and St. Petersburg. According to a World Bank report, as late as 1995, the government still owned 95% of the commercial real estate in Russia. The local governments, oblast, and municipal bodies, still control virtually all state-owned commercial space. Mobile kiosks set up on the sidewalks in front of unused or underused shops are a visual reflection of persistent structural bottlenecks in the Russian commercial real estate market. Access to commercial real estate has been limited because of municipal administrations’ monopoly ownership and control of urban land. Difficulty in obtaining premises is consistently ranked as one of the most critical barriers to opening new businesses in Russia. In mass enterprise privatization, the land and often buildings were omitted, a fact which hastened the process of enterprise privatization. Rather than privatize the ownership rights, the central government granted the rights to these assets to local governments. Now the local governments on the oblast level own the majority of urban and commercial real estate. The inefficiency of government management seriously inhibits economic development and initiative.

III. THE 2001 LAND CODE

On October 26, 2001, Russian President Vladimir Putin signed into law the new Land Code. The 2001 Land Code covers commercial non-agricultural land and allows for a uniform legal regime for most significant

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105 Harding, supra note 102.
106 Id.
107 Id.
108 In the Soviet Union [now the Russian Federation], an “oblast” is a territorial administrative division within a republic. American Heritage Dictionary of the English Language, supra note 35.
109 Harding, supra note 102, at 1.
110 Id.
111 Id.
112 Id.
113 Id.
114 Id.
land transactions. It permits the sale of commercial and urban land, which is about 2% of the country's 4.2 billion acres of land, and which attracts 75% of all investment in the country. It establishes already existing private ownership of urban and industrial land, and also legalizes the ownership of about forty million dacha plots. The Land Code is still not a comprehensive reference guide on how to buy land in Russia. Yet for some land, the code gives private owners full freedom to decide how to use and transfer their land and attempts to protect foreign investors from the whims of the state by giving them the title to the land.

A. General Provisions

The premise of the Land Code and related land legislation is summed up in Article 1, the Basic Principles of Land Law:

[A]ccount being taken of land's significance as the basis of human life and activities whereby regulation of relationships of land use and preservation is pursued proceeding from the idea that land is a natural facility preserved as the most important component of nature, a natural resource used as means of production in agriculture and forestry, and the basis of economic and other activities on the territory of the Russian


[T]he property of citizens and legal entities (private property) shall be plots of land acquired by the citizens and legal entities on the grounds laid down in the legislation of the Russian Federation.

1. Citizens and legal entities are entitled to have equal access to the acquisition of a title of plots of land. State-owned or municipality-owned plots of land may be transferred to citizens and legal entities to become their property, except for the plots of land, which cannot be a private property in compliance with the present Code and federal laws.

2. Foreign citizens, persons without citizenship and foreign legal entities shall not have title of plots of land located in the border territories recorded in the list established by the President of the Russian Federation in compliance with the federal legislation On the State Border of the Russian Federation and other territories of the Russian Federation specifically indicated under federal laws.

Id.
Federation and at the same time as immovable property, the object of a right of ownership and other rights relating to land.\textsuperscript{121}

This concept of land as a sacred entity permeates the Code.\textsuperscript{122} The priority of environmental preservation over unrestricted development is reflected in the provisions relevant to foreign ownership. Provisions such as Article 1 cited above are generally intended to reserve discretionary powers to the government to deny the sale of land, seize land, or otherwise control the land by virtue of claiming that it is acting in the interests of “nature” and the “organic community.”\textsuperscript{123}

The 2001 Land Code regulates issues of ownership, acquisition of ownership, land legislation, the powers of various federal and local government bodies to regulate land relationships, land transactions in certain contexts such as land purchase at auctions and tenders, and the application of international treaties and regulations. Generally, land relationships are regulated through the application of the principle of combining the pertinent civil law norms\textsuperscript{124} and land legislation regulating land use and privatization.\textsuperscript{125} The land legislation is made up of the Code,\textsuperscript{126} federal laws,\textsuperscript{127} regional laws, decrees of the President of the Russian Federation, and other regulatory legal acts of local government bodies within the scope of their powers and in compliance with the Land Code.\textsuperscript{128} This makes the Land Code just one of the laws governing land relations, and not the ultimate authority. In fact, the property relationships of possession, use and disposal of plots of land, and of making deals in them are governed by now-

\textsuperscript{121} Land Code 2001, art. 1(1).
\textsuperscript{122} Land Code 2001. Article 1(2) of the 2001 Land Code states:

Priority is given to the preservation of land as the most important component of the environment and means of production in agriculture and forestry over the use of land as a immovably property, meaning that the possessing, using, and disposing of land is exercised freely by the owners of the plots of land, unless it is harmful to the environment.

\textsuperscript{123} Id.
\textsuperscript{124} See, e.g., GK RF [CIVIL CODE OF THE RUSSIAN FEDERATION], Glava 17 (1994) (Russ.), ch. 17 [hereinafter CIVIL CODE].
\textsuperscript{125} Id., art. 1(1).
\textsuperscript{126} Id., art. 1(1).
\textsuperscript{127} id. art. 1(1).
\textsuperscript{128} Id., art. 1(1).
\textsuperscript{129} Federal Law on Delineation of State Ownership of Land Law No. 101, July 17, 2001, LEXIS, Russia Country Files, Garant 12023624.
\textsuperscript{128} Land Code 2001, art. 2.
active Chapter 17 of Civil Code, except as otherwise specified by special laws on land, forestry, water, sub-soil, and environmental protection. Chapter 17 was enacted in April 2001 in anticipation of enactment of the Land Code; however, it was not amended to comply with the Land Code draft provisions. In addition, the new Land Code does not completely address all land issues in Russia; for example, it does not address the issue of agricultural land, it lacks a mechanism for land privatization, and appears to contradict the current provisions of the Civil Code on sale and permanent use of land.

B. Foreign Purchase and Ownership of Land

The Land Code allows foreign investors to buy land now while it is cheap and to protect themselves from the uncertainties of investing in assets that sit on someone else’s land. The most pertinent provisions for foreign citizens and potential land buyers are Articles 5(2), 15(3), 22(1), 28(5), and 30-38. Article 5(2) defines the right of foreign citizens, persons without citizenship and foreign legal entities to acquire title to a plot of land. In addition, under Article 4, if an international treaty of the Russian Federation ratified in the established manner contains rules different from those set out in the present Code, then the rules of the international treaty apply. Russia has thus expressed its openness to international business by declaring the supremacy of international agreements over its domestic laws.

Chapter III authorizes foreign citizens, persons without citizenship, and foreign legal entities to have title to plots of land, except for land located in the border territories. Article 16 of the Land Code declares that all

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129 GK RF [CIVIL CODE OF THE RUSSIAN FEDERATION], Glava 17 (1994) (Russ.), ch. 17 [hereinafter CIVIL CODE].
130 Zemel’niy Kodeks RF [The Land Code of the Russian Federation 2001], No. 136-FZ Ross. Gazeta [hereinafter Land Code 2001]. Article 3 states that “the relationships of use and preservation of sub-soil, waters, forests, animal world and other natural resources, environmental protection, the preservation of specially protected natural territories and facilities, the preservation of atmospheric air and the preservation of objects of cultural heritage” is governed by the separate federal laws. Id.
131 Land Code 2001, art. 5 (2). Article 6(2) defines plot of land as a part of ground surface (in particular, soil) the boundaries of which are described and attested to in the established manner. A divisible plot of land is a plot of land that can be divided into parts, with each of these parts emerging after the division as an independent plot of land of which authorized use can be pursued without re-classifying it under another land category, except for the cases established by federal law. Id.
132 Id. art. 4.
133 Id. art. 15 (3). This provision states:

Foreign citizens, persons without citizenship and foreign legal entities shall not have title of plots of land located in the border territories recorded in the list established by the President of the Russian Federation in compliance with the federal legislation on the
the land not owned by citizens, legal entities, or municipal entities is declared state property, and can be acquired through a process set out in Article 28. Article 16 also sets out criteria for federal, regional, and municipal land ownership.

Citizens who have a right to permanent use of plots of land also have a right to acquire ownership of those plots of land. This right does not apply to foreigners. In the sale of a state-owned or municipally-owned plot of land, the lessee of the plot of land shall have a preferential right to purchase it in the manner established by civil legislation governing the sale of a portion of common property to a third party. Plots from state-owned or municipally-owned lands can be granted to citizens and legal entities only by a decision of the executive governmental bodies or local government.

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State Border of the Russian Federation and other territories of the Russian Federation specifically indicated under federal laws.

Id. The list of border territories is established by the President of the Russian Federation, in compliance with the federal legislation on the State Border of the Russian Federation and other territories of the Russian Federation specifically indicated under federal laws. Id.

Id. art. 16.

Id. art. 16(1). Section 2 of Article 16 specifies that division of state ownership of land into property of the Russian Federation (federal property), property of Russian regions and property of municipal entities (municipal property) shall be effected in accordance with the Federal Law on Delineation of State Ownership of Land. See Federal Law on Delineation of State Ownership of Land Law No. 101, July 17, 2001, LEXIS, Russia Country Files, Garant 12023624. The Law on Delineation states that the lists of the plots of land to which the Russian Federation, the Russian regions and the municipal entities respectively obtain a right of ownership prepared and approved by the governmental bodies of Russian regions, local government bodies shall be subject to endorsement by the Government of the Russian Federation. Id. The ground for obtaining a right of ownership for the federal significance cities of Moscow and St. Petersburg shall be established by laws of these Russian regions. Id.

Zemel'nyi Kodeks RF [The Land Code of the Russian Federation 2001], No. 136-FZ Ross. Gazeta, art. 28(5) [hereinafter Land Code 2001]. This provision allows foreign citizens, persons without citizenship and foreign legal entities obtain title to land for a pay rate established by the Land Code:

1. for areas with population over 3 million people, the pay rate is 5 to 30 times the rate of land tax per square unit;
2. for areas with population from 500 thousand to 3 million people, the pay rate is 5 to 17 times the rate of land tax per square unit;
3. for areas with population under 500 thousand, and for areas beyond the city and township limits, the pay rate is 3 to 10 times the rate of land tax per square unit (as set at the beginning of the calendar year).


Land Code 2001, art. 16.

This usually refers to dachas. See supra note 35.

Land Code 2001, art. 20(5). The right applies only to the permanent use of plots of land owned by the state or a municipal entity that a citizen or a legal entity had acquired prior to adoption of the Land Code. Id.

This is true with the exception of cases specified in article 36(1) of the Land Code. Id. art. 22 (8).
bodies having the right to grant relevant plots of land within the scope of their powers under Articles 9, 10, and 11 of the Code.¹⁴¹

Plots of land from state-owned or municipally-owned lands may be granted for construction purposes either with or without preliminary approval.¹⁴² Without a preliminary approval, state-owned or municipally-owned plots of land allocated for construction may be obtained exclusively by means of a sale (e.g., tender, auction) under Article 38.¹⁴³ Land for construction, with a preliminary approval of the location, can also be permanently leased¹⁴⁴ by state and municipal institutions, federally owned enterprises, and local government bodies.¹⁴⁵ Foreign citizens, persons without citizenship, and foreign legal entities may obtain plots of land for construction in the manner established by Article 5(2),¹⁴⁶ Article 15(3),¹⁴⁷ Article 22(1),¹⁴⁸ Article 28(4)(5),¹⁴⁹ and Article 30.

¹⁴¹ Id. art. 29.
¹⁴² Id. art. 30(1).
¹⁴³ Id. art. 38. Acquisition of a Plot of Land out of State-Owned or Municipal Land or of a Right to Enter Into a Contract of Lease of Such a Plot of Land at Sale (Tender, Auction). Id. art. 30(2). Article 30(4) lists the procedure for granting land for construction purposes without a preliminary approval of the construction location as follows:

(1) the accomplishment of the works of formation of the plot of lands:
   a. preparing a draft land plot boundary layout and the establishment of its boundaries on the terrain;
   b. indicating the purpose of authorized use of the plot of land;
   c. setting out technical specifications for the connection of the facilities to transmission lines and pipelines;
   d. making a decision to hold a sale (tender, auction) or a decision to grant the plots of land without holding a sale (tender, auction);
   e. publishing an announcement of the sale (tender, auction) or of acceptance of applications for plots of land if they are going to be granted without a sale (tender, auction);

(2) recording the plot of land in the state land registry in keeping with the rules set out in Art. 70 of the present Code;

(3) holding a sale (tender, auction) for the purposes of selling the plot of land or selling the right to conclude a contract of lease in respect of the plot of land or granting the plot of land for lease without a sale on the application of a citizen or legal entity interested in obtaining the land. It is possible to lease the land without a sale on the condition that an announcement is preliminary and the availability of land offered for this transfer has been announced by publication and no other applications for the plot of land have been submitted as the result of such publication.

¹⁴⁴ Id. art. 30(3).
¹⁴⁵ Id. art. 30(4).
¹⁴⁶ Id. art. 20(1).
¹⁴⁷ Id. art. 5(2). This provision states that the right of foreign citizens, persons without citizenship, and foreign legal entities to acquire the title to a plot of land shall be defined in keeping with the Present Code and federal laws. Id.
¹⁴⁸ Id. art. 15(3) (The Land Code states that foreign citizens, persons without citizenship, and foreign legal entities shall not have title of plots of land located in the border territories recorded in the list
Foreign citizens and persons without citizenship may lease plots of land located within the territory of the Russian Federation, except for the cases specified in the Land Code.140 However, the 2001 Land Code contradicts the Civil Code’s provisions on permanent use. According to the Civil Code, the right of permanent use of state or municipal land can be granted by the respective state or municipality, and in the absence of any other claim to the land under a building, the building’s owner has the statutory right of permanent use of the land.151 But the new Land Code states that the right of permanent use can only be granted by governmental or municipal legal entities or authorities and provides no statutory basis for the creation of such a right.152 The Land Code states that the right of permanent use can be converted into either lease or ownership.153 The Duma is working on amending the Civil Code to reconcile the issue of building owner’s right of permanent use.154 Currently it is unclear what

established by the President of the Russian Federation in compliance with the federal legislation on the State Border of the Russian Federation and other territories of the Russian Federation specifically indicated under federal laws.).

140 Id. art. 22(1). This provision states that foreign citizens and persons without citizenship may lease plots of land located within the territory of the Russian Federation, except for the cases specified in the Land Code.” Id.

149 Id. art. 28(4). This provision states:

It is prohibited to refuse granting state-owned or municipally owned plots of land for construction purposes to citizens and legal entities so that they become their property, except for the following cases:

(1) Exclusion of plots of land from alienability;
(2) A ban on privatization of plots of land imposed by a federal law;
(3) Reservation of plots of land for state or municipal needs.

It is prohibited to refuse granting state-owned or municipally-owned plots of land excluded from alienability to citizens and legal entities so that such plots become their property if a federal law has permitted to grant them to citizens and legal entities so that such plots becomes their property.

Article 28(5) states:

Under the present article foreign citizens, persons without citizenship and foreign legal entities shall obtain title to plots of land only for a pay, with the rate thereof being set by the present code.

Id., art. 28(5).


152 Borisova, supra note 151.


happens if the landowner refuses to lease or sell the land underneath the building to the building owner. If the legislature fails to address this issue, it will be left to the Russian courts to decide which code prevails.

IV. ASSESSING THE 2001 LAND CODE

The challenge of reforming the law of land tenure relations in transitional economies has been categorized into three fundamental and summary objectives: (a) achieving land tenure security for private landholders; (b) developing a market in land rights; and (c) defining and protecting remaining legitimate public interests. Land tenure security exists when an individual perceives that he or she has rights to a piece of land on a continuous basis, free from imposition or interference from outside sources, as well as the ability to reap the benefits of labor and capital invested in the land, whether in use or upon transfer to another holder. As demonstrated by the “profusion and proliferation of its land laws,” the Russian concept of land ownership is undergoing serious transformation. The 2001 Code was intended to tidy up a mass of sometimes indefinite and

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155 Prosterman & Hanstad, supra note 27, at 2.
156 Id. (citing Frank Place et al., Land Tenure Security and Agricultural Performance in Africa: Overview of Research Methodology, in SEARCHING FOR LAND TENURE SECURITY IN AFRICA 15, 19 (John W. Bruce & Shem E. Mighot-Adholla eds., 1994). The Anglo-American concept of land ownership is summarized by A.M. Honore’s list of eleven “standard incidents” that he claimed to make up private property, including the crucial rights to exclusive possession, personal use, and alienation. See A.M. Honore, Ownership, in OXFORD ESSAYS IN JURISPRUDENCE 107, 112-28 (A.G. Guest ed., 1961). The current code guarantees almost all rights except for the lack of any term on these rights, since the Code still leaves room for regulation by decrees of the President of the Russian Federation, local, and regional administrative regulations. Honore’s list is commonly accepted by property theorists as a starting point for describing the core bundle of private property rights in Western market economies. Honore’s full list of incidents includes:

(1) the right to exclusive possession;
(2) the right to personal use and enjoyment;
(3) the right to the capital value, including alienation, consumption, waste or destruction;
(4) the right to transmit by gift, devise, or descent;
(5) the right to manage use by others;
(6) the right to the income from use by others;
(7) the right to tenure security (that is, immunity from expropriation);
(8) the lack of any term on these rights;
(9) residual rights on the reversion of lapsed ownership rights held by others;
(10) the duty to refrain from using the object in ways that harm others; and
(11) the liability to execution for the repayment of debts

Id.

157 Woods, supra note 38, at 752.
contradictory legislation on Russian land issues; however, it is not a comprehensive solution to the land reform problem in Russia because it regulates only the sale and distribution of urban and other non-agricultural land. In addition, while the new Land Code provides the main framework of land transactions and ownership, it still leaves room for regulation by decrees of the President of the Russian Federation, as well as local and regional agencies.

A. Effect on Foreign Investment

The 2001 Land Code ends legal discrimination against foreign investors’ rights to buy and sell land and should increase the flow of foreign investment into Russia. According to Deputy Prime Minister and Finance Minister Alexei Kudrin, the Land Code and other economic laws will double investment in the next two years, with projected growth over the next five or six years up from the current $4-5 billion to $30 billion.

The new Land Code may also cure disproportionate foreign investments among different regions of Russia. Foreign investment inflow to Russia is strikingly skewed: close to 60% flows to Moscow City, Moscow oblast, St. Petersburg, and Leningrad oblast. Although the natural attraction of the two major cities accounts for some of this discrepancy, a guaranteed land title will help resolve the unpredictability of dealing with local officials in other regions, who previously had complete control over the regulation of land use issues within their jurisdiction.

Other non-legal factors may also account for decline and hesitation on the part of foreign investors to deal with the unstable Russian market. For example, traditionally, sources of land and capital were generally

158 Kenneth, supra note 116.
159 Leonard Rolfes, Jr., Land Code: Next Step, MOSCOW TIMES, Oct. 29, 2001, at 10. As part of the compromise needed to secure the passage of the Land Code, the key issues of agricultural land transactions and agricultural “land shares” were deferred to a future “federal law on turnover of land of agricultural designation.” Id. Farm minister Alexei Gordeyev has said that the federal law on farmland turnover would be “of a general character,” with individual regions given the right to conduct their own land reform programs. Agra Europe Ltd., Bill on Russian Farmland Sales Promised this Autumn, AGRAFOOD EAST EUROPE, Mar. 1, 2001. The minister noted that citizens already owned more than 100 million hectares of land, while twenty four million hectares were in the hands of legal entities. Id. “The sale of farmland is taking place and must be recognized,” said Gordeyev. Id. At present, buying and selling farmland in Russia is illegal under Soviet-era legislation. Id.
unavailable to foreign investors,\(^{162}\) as city or state officials in control of public resources—such as buildings and tax revenues—would usually make them available only to friends and relatives.\(^{163}\) In addition, although bribery sometimes provided access to public resources, American investors who engaged in such practices risked prosecution by the U.S. government under the Foreign Corrupt Practices Act.\(^{164}\) Therefore, Americans and other foreign investors had to have Russian partners in order to own land and were often victimized by their Russian partners.\(^{165}\) The Land Code helps level the playing field for foreign investors by eliminating some of the discrimination against them, as illustrated by the Code’s effect on Russia’s commercial real estate market.

**B. Effect on the Commercial Real Estate Markets**

Prior to the adoption of new Land Code two critical and related factors have hampered the development of Russia’s commercial real estate markets: first, in Russia, the local governments have a virtual monopoly on land ownership, including commercial real estate; and second, local governments are not moving towards commercial leasing of these premises.\(^{166}\) “The critical shortage of commercial premises was further exacerbated by the extreme difficulty of transferring residential or industrial real estate into commercial use or initiating new development.”\(^{167}\)

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\(^{162}\) Billing, supra note 68.

\(^{163}\) Billing, supra note 68, at 126.


\(^{165}\) Billing, supra note 68, at 126.

\(^{166}\) Harding, supra note 102, at 1.

\(^{167}\) Id. “Secure land tenure rights are an important component of economic development.” Prosterman & Hanstad, supra note 27, at 2. Although all of the Central and Eastern European (CEE) countries have embraced the idea of urban land ownership, some CEE countries argue that their rural land markets are not yet sufficiently mature to open them up to westerners with much greater purchasing power. See AgraEurope Ltd., Farmland and the Free Market, AGRAFOOD EAST EUROPE, Jan. 1, 2001. In fact, Poland and Hungary, both applicants for membership to the European Union, are leading a campaign to prevent foreigners from buying agricultural land during a transitional period post-accession, a proposal which cuts across some of the most sacred tenets of the European Union Single Market (freedom to own property and non-discrimination on grounds of nationality, particularly). Id. Fears are widespread that the Eastern Europe and Russian countryside could be taken over by opportunistic landlords who have little real connection with the rural communities who depend on it. Id. At least in Central and Eastern Europe, unlike in Russia, the ideological battle over the desirability of private land ownership has largely been concluded. Id. So far Kyrgyzstan and, as of December 2001, Ukraine emerged as the first of the Commonwealth of Independent States to allow a largely free market in farmland. Id. Although the Ukrainian land code allows for sale of agricultural lands, Ukraine declared a five-year moratorium on agricultural land sale to establish infrastructure to manage it. Agra Europe Ltd., Ukraine Gives Green Light For Farmland Sales from 2005, AGRAFOOD EAST EUROPE, Nov. 1, 2001, LEXIS, Global News Service.
Due to the lack of comprehensive legislation on land ownership, partial measures to privatize commercial land with restrictions on rights to sell were undertaken by local and regional governments. However, the ambiguity of Russian legislation, coupled with unlimited discretion of the local governments, left the operation of the commercial real estate market vulnerable to the Russian bureaucratic machine, which is notorious for its inefficiency and corruption. In addition, the allocation of commercial space depended on the relationship between the renter or potential buyer and the local official in charge. As a result, the real estate market, particularly outside of Moscow and St. Petersburg, has been largely non-commercial, thus stalling creative entrepreneurship.

Russia's commercial real estate market should benefit from the 2001 Land Code, which protects the rights of owners and investors by making investment in the real estate sector less risky and subsequently more attractive. As stated by a real estate consultant for Colliers International:

The Code will formalize the transformation of land into a bona fide object of sale, as well as unifying all the different, and at times, contradictory regional laws on land. This will help set up a legal background conducive to the most effective use of land throughout the country.

Similarly, a legal advisor to a major local realtor notes:

Prior to the Land Code, land issues were regulated either by Presidential Decrees or were left to the mercy of regional governors, paving the way for a lot of corrupt practice. The approval of a unified legal document should put a stop to this practice... The Land Code also gives a green light to foreign investors to own land.

The new Land Code also provides local, Soviet-era industrial complexes with the right to privatize the plots of land on which they stand, without seeking approval from the local and city government, thus reducing

168 Harding, supra note 102, at 6.
169 Id.
170 Id.
171 Kenneth, supra note 116.
172 Id. (citing an interview with Sergei Marinin, Colliers International real estate consultant).
173 Id. (citing an interview with Svetlana Kondachkova of the Legal Department of Moscow Investment Real Estate Agency ("MIAN").
red tape and lawlessness practiced by regional administrators.\textsuperscript{174} These industrial giants with excessively large sites will now be able to sell or lease plots to property investors for project developments.\textsuperscript{175} The proceeds may then be used to reduce debt and modernize obsolete plant equipment.\textsuperscript{176} Already, retail space is improving in Moscow from the shopping center ratio of 48 square meters per 1,000 inhabitants, which is 7.6 times lower than comparable levels in Eastern European capitals.\textsuperscript{177}

The overall impact of the Land Code will most likely be a continuation of the piecemeal efforts by local governments to sell and privatize land already in private citizens’ permanent use. Because the President has not yet issued a decree delineating which lands are to be excluded from sale to foreigners, foreign purchases might be limited to the centrally located areas around Moscow and St. Petersburg, which have a more active and entrepreneurial approach to the land sales. Russian citizens may then proceed to sell to foreign or domestic investors and developers.

V. CONCLUSION

Russia officially acknowledged the importance of private land ownership when it adopted the 2001 Land Code, which, although limited to urban and commercial land, clarifies ownership in general and allows foreign purchase of those lands. This serves to reinforce the privatization process because it protects foreign investors from the whims of the state by giving them ownership of land. The new Land Code should, therefore, provide domestic developers and entrepreneurs incentive to explore opportunities in housing and industrial construction. By itself, the Land Code is not enough to create a fully functioning market of land transactions, primarily because it does not clarify who owns what land and how it can be sold or bought. Despite its incompleteness, it nevertheless symbolizes a fundamental shift in Russia’s transition from a totalitarian communist state of nationalized land ownership to a functioning market economy. This progress is quite remarkable in a country where the tradition of private property and private land ownership was weakly rooted before communism and completely destroyed in its wake.

\textsuperscript{174} Id. (citing interviews with Svetlana Kondachkova of the Legal Department of MIAN and with Sergei Yeliseyev, Marketing Director with INKOM-MCBN Realty).
\textsuperscript{175} Id. (citing an interview and with Sergei Yeliseyev, Marketing Director with INKOM-MCBN Realty).
\textsuperscript{176} Id.
\textsuperscript{177} Robin Munro, \textit{A Good Year for a Maturing Real Estate Market}, MOSCOW TIMES, Jan. 29, 2002.