

# Some legislative barriers to municipal infrastructure concession projects are removed

## Legal Update No. 170

27 August 2010

Goltsblat BLP advises that **Federal Law No. 152-FZ of 2 July 2010 "On Amendments to the Federal Law 'On Concession Agreements' and Some Legislative Acts of the Russian Federation"** (the Law) came into effect on 6 July 2010. Its purpose is to remove certain legislative barriers to concession projects involving the municipal infrastructure and a number of other municipal facilities and to protect creditors financing such projects. The law also attempts to provide concessionaires and their creditors with guarantees regarding setting of prices (tariffs) and (or) relevant mark-ups.

The main changes are as follows:

1. A concession agreement may now apply not only to real estate (as was previously the case) but to technologically connected immovable and movable property intended for the activities envisaged by the concession agreement.
2. A new rule stipulates that, if the concession agreement applies to municipal infrastructure systems and other municipal facilities, these may, when transferred, belong to a state-owned or municipal enterprise by right of economic jurisdiction. This is because most municipal infrastructure facilities in the Russian Federation are under the economic jurisdiction of specialised enterprises. The legislation previously dictated that a concession agreement could apply only to a facility in no way encumbered by third party rights, which precluded conclusion of such agreements with respect to municipal infrastructure systems under the jurisdiction of such enterprises.

The given state-owned and municipal unitary enterprises are now authorised to exercise certain grantor powers, including granting concessionaires the rights to possess and use immovable property included in the subject of the concession agreement, as well as rights to land plots leased to these enterprises. Prior to the amendments, the legislation prohibited state-owned and municipal unitary enterprises from subletting land plots or assigning rights and obligations under lease agreements to third parties.

3. When a concession agreement is concluded in relation to municipal facilities, the rights it grants to the concessionaire may be used to secure discharge of the concessionaire's obligations towards creditors if it borrows funds.

If the concessionaire fails to fulfil its obligations towards a creditor, the concessionaire under the concession agreement is replaced by another entity chosen by tender by the grantor. A necessary condition of such a tender is the winner's commitment to discharge the concessionaire's obligations towards the creditor in the manner and on the terms agreed with the creditor.

This method for securing obligations can only be used in relation to one creditor.

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4. New material conditions of a concession agreement are introduced: (a) the procedure for reimbursement of the parties' costs in the event of early termination of the concession agreement and (b) the timeline for transfer of the subject of the concession agreement to the concessionaire. Violation of such a condition is deemed to be material and constitutes grounds for early termination of the concession agreement.
5. Other cases are specified when failure by the grantor to fulfil its obligations under the concession agreement constitutes a material violation and entitles the concessionaire to demand cancellation of the concession agreement (including failure to finance part of the costs under the concession agreement, etc.).
6. The possibility is envisaged of the decision on conclusion of a concession agreement establishing long-term parameters for regulating the activities of the concessionaire if the goods (work, services) produced by the latter are to be sold at regulated prices (tariffs) or in consideration of mark-ups to these. Such long-term parameters should be agreed with the state and local authorities regulating the prices (tariffs) and may also be set as tender criteria for conclusion of the concession agreement.
7. If the goods (work, services) produced within the scope of the concession agreement are sold at regulated prices (tariffs), the list of facilities created and reconstructed thereunder and the sources and volume of investment are established in accordance with the concessionaire's investment programmes.