

Comparative analysis of the provisions of Federal Law No. 214-FZ in light of recent amendments

The adoption of Federal Law No. 218-FZ on the Public Law Company for the Protection of Rights of Individuals Who are Shared Construction Participants in the Event of Insolvency (Bankruptcy) of Developers and on Amendments to Certain Legislative Acts of the Russian Federation of July 29, 2017 ("**218-FZ**") is the latest step in the major reform of legislation on shared construction.

After 218-FZ was adopted, the reform of Federal Law No. 214-FZ on the Participation in Shared Construction of Apartment Houses and Other Immovable Property Units and on Amendments to Certain Legislative Acts of the Russian Federation of December 30, 2004 ("**214-FZ**") continued with the approval of the list of the *instructions of the Russian President*¹ on issues of protecting the rights of shared construction participants and increasing oversight over developers.

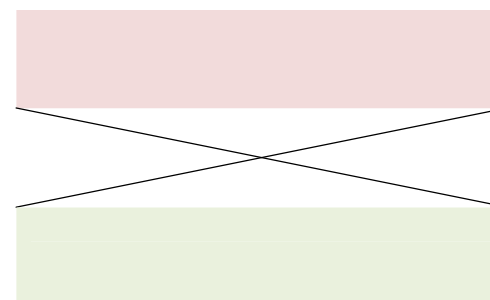
A draft law² specifying further amendments to 214-FZ was prepared and brought to the RF State Duma based on those instructions of the Russian President, and an action plan ("roadmap") was also developed and approved to gradually replace the funds of individuals raised to create apartment houses ("**Apartment houses**") and other real estate properties with bank loans and other forms of financing that may minimize the risks for individuals.

This draft law was adopted in the first reading and is currently to be finalized based on comments from the Ministry of Construction of Russia, the Bank of Russia and the expert industry community.

While preparations are underway to eliminate shared construction, 218-FZ introduced a number of amendments that will substantially affect developers' activity in the near future.

The table below shows the most important amendments made to 214-FZ in comparison with past provisions of 214-FZ that were in effect until the adoption of 218-FZ, most of which will apply to developers who receive a **construction permit after July 1, 2018**. However, some of the amendments are already in effect.

Key:



Provisions of 214-FZ that were
amended by 218-FZ

Provisions of 218-FZ that **were not in**
214-FZ

Provisions of 214-FZ in the current
version (after the adoption of 218-FZ)

¹ Instructions of the Russian Federation President No. Pr-2261 of November 5, 2017 (resulting from the meeting with members of the Russian Federation Government on October 25, 2017).

² Draft Law No. 322981-7 on Amendments to the Federal Law 'On the Participation in Shared Construction of Apartment Houses and Other Immovable Property Units and on Amendments to Certain Legislative Acts of the Russian Federation' and Certain Legislative Acts of the Russian Federation".

	PROVISIONS OF 214-FZ AMENDED BY 218-FZ	PROVISIONS OF 214-FZ IN THE VERSION OF 218-FZ
DEVELOPER'S STATUS	REQUIREMENTS TO THE DEVELOPER'S NAME AND EXPERIENCE	
		The developer's name must contain the words "specialized developer". ³
		It must have at least three years of experience participating in the construction of apartment houses with a total area of at least 10,000 m ² in aggregate.
	REQUIREMENTS TO THE DEVELOPER'S MANAGEMENT AND BENEFICIAL OWNERS	
	The developer's director and chief accountant must not have convictions for economic crimes or administrative disqualification.	The developer's director and chief accountant or individual beneficial owner ⁴ must not have convictions for economic crimes, or for crimes against the constitutional order and security of the state or administrative disqualification.
FINANCIAL ASPECTS OF THE DEVELOPER'S ACTIVITY		The developer's director, chief accountant or individual beneficial owner must not have in the past: <ul style="list-style-type: none"> i. been subjected to vicarious liability for a legal entity's obligations in bankruptcy proceedings; ii. been the director or owner of more than 25 percent of shares (participatory interests) of a developer that went bankrupt.
	REQUIREMENTS TO THE AMOUNT OF THE DEVELOPER'S FUNDS	
	The developer's minimum charter capital must be an amount proportional to the maximum area of the developer's shared construction facilities.	The amount of the developer's own (not borrowed) funds must be at least 10 percent of the planned construction cost of the apartment house.
		Ten percent of the estimated cost of construction must be on the developer's bank account with an authorized bank.
	HOW TO SECURE THE DEVELOPER'S OBLIGATIONS TO SHARED CONSTRUCTION PARTICIPANTS	
	Bank guarantee	Contributions of 1.2 percent of the price of each shared construction agreement ("SCA") to the compensation fund
	Insurance of the developer's third-party liability	

³ 214-FZ does not set the time from which the developer acquires this status. Apparently it is the date the first SCA is signed.

⁴ According to the provisions of 218-FZ, the requirements to the developer's director/chief accountant also apply to "the individual who ultimately directly or indirectly (through third parties) owns (has a predominant participation of more than 25 percent in the equity of) the corporate legal entity developer."

	PROVISIONS OF 214-FZ AMENDED BY 218-FZ	PROVISIONS OF 214-FZ IN THE VERSION OF 218-FZ
RESTRICTIONS ON THE DEVELOPER'S ACTIVITY		The developer may engage in construction on the basis of only one construction permit. ⁵
	There is an exhaustive list of 13 purposes for which the developer may spend funds.	There is an exhaustive list of 20 purposes for which the developer may spend funds (for example, the right to deposit funds and the right to use funds to support its operations, e.g., the actions listed in item vi below, have been added).
	The SCA can be terminated by court decision by a SCA participant if the developer improperly spends funds.	If the developer improperly spends funds, such transaction can be challenged under the claim of the developer , its founder (participant) or its creditors and the competent authorities if it is proven that the counterparty knew or should have known about the restrictions . ⁶
		The developer does not have the right: <ul style="list-style-type: none"> i. to raise credit facilities, loans or borrowings other than targeted loans for construction; ii. to provide loans or borrowings; iii. to create or be a participant in legal entities; iv. to make transactions unrelated to its core business (other than certain transactions specified in the exhaustive list of purposes); v. to have more than one settlement account at an authorized bank;⁷ vi. to spend more than 10 percent of the estimated cost of construction of the apartment house on expenses related to supporting its day-to-day operations (advertising, utilities, developer's office lease and other expenses).⁸

⁵ Developers will apparently have to establish a separate company for each project. The question arises of what to do with complicated projects that are implemented in several phases and for each of which a separate construction permit is issued.

⁶ The current version of 214-FZ provides that the counterparty should know about the established restrictions if the developer's name contains the words "specialized developer" (these words are one of the criteria for developer status).

⁷ According to 218-FZ, authorized banks shall monitor compliance of the purpose and amount of payments specified in the developer's order. If the developer violates the provisions of 214-FZ on targeted use of funds, the bank shall notify the competent authority supervising shared construction of this (e.g., in Moscow the Moscow City Committee for Supporting the Implementation of Investment Projects in Construction and Controlling Shared Construction (Moskomstroinvest) is that authority).

⁸ Please note that 218-FZ also eliminated the developer's right to use the funds of shared construction participants to reimburse costs of purchasing the land plot (in the current version the developer may use shared construction participants' funds only to pay for lease of the land plot). Thus, the developer must acquire title to the land plot (whether ownership or lease right) using its own funds of the developer's group without using shared construction participants' funds.

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