

**DRAFT**

## **Amendments have come into force to regulate relationships that involve using and preserving cultural heritage sites**

*FAO: development companies' in-house lawyers, real estate owners*

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**Pepeliaev Group advises that, since 15 April 2024<sup>1</sup>, amendments have come into force to Federal Law No. 73-FZ “On cultural heritage sites (historical and cultural landmarks) of the peoples of the Russian Federation” dated 25 June 2002 (the “Law on CHSs”). In line with the amendments, demolishing potential cultural heritage sites (CHSs) is prohibited, while new situations are established when a state historical and cultural expert review is required.**

### **A prohibition on demolishing potential CHSs**

The amendments that have come into force have been brought in by Federal Law No. 472-FZ dated 4 August 2023 (“Law No. 472-FZ”). They provide for a ban on demolishing facilities that have features of a CHS.

We remind you that features of a CHS include, among others, the site having emerged as a result of historical events, as well as having value from the perspective of history, archaeology, architecture, town planning, art, science, technology, aesthetics, ethnology, anthropology or social culture. A CHS is a testimony of epochs and civilisations, a true source of information on how culture has emerged and developed.<sup>2</sup>

A facility with such features may be subsequently recognised to have been identified as a CHS. It is the regional authority for the protection of CHSs that resolves whether to include a facility in the list of CHSs after receiving information about the relevant facility.<sup>3</sup>

Consequently, in order for a certain building to be acknowledged as a facility with the features of a CHS, no executive directives need be adopted. The fact

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<sup>1</sup> Federal Law No. 472-FZ dated 4 August 2023 “On amending the law on cultural heritage sites (historical and cultural landmarks) of the peoples of the Russian Federation”.

<sup>2</sup> Article 3 of the Law on CHSs.

<sup>3</sup> Article 16.1(1) of the Law on CHSs.

itself that a building has features of a CHS allows for special rules to be applied to it. These are set out in the Law on CHSs, and include:

- the requirement to suspend work on a land plot if a facility with features of a CHS is found on it;<sup>4</sup>
- a ban on demolition introduced by Law No. 472-FZ.

### **Works that are permitted to be performed within the territory of identified CHSs**

In addition to the ban on demolishing facilities with features of a CHS, the Law on CHSs has been supplemented with a list of works that are permitted within the area of identified CHSs,<sup>5</sup> in other words, in the area directly occupied by such CHSs,<sup>6</sup> including land plots underlying them.

#### **Pepeliaev Group's comment**

We remind you that the Law on CHSs provides for two types of CHSs: identified CHSs and CHSs included in the register ('registered' CHSs). The legal treatment of identified CHSs is intermediate treatment and is established so that it is preserved for more detailed research during a state historical and cultural expert review. Once the expert review has been completed, identified CHSs may be included in the register of CHSs. Therefore, with respect to identified CHSs, the Law on CHSs provides for fewer restrictions and bans than for CHSs included in the register.

At an earlier stage the Law on CHSs already contained a list of permitted works that, according to case law, was already applied both to the area of identified CHSs and to the area of 'registered' CHSs.<sup>7</sup>

Now the legislature has provided for a special list of permitted works for the areas of identified CHSs. These works differ to some degree from the list of permitted works with respect to the areas of similar 'registered' CHSs.

Specifically, within identified CHSs it is permitted:

- to perform works with a view to preserving the security of the historical and town planning or natural environment of a CHS that is a cultural landmark;
- to carry out construction work at major facilities under construction within the framework of special measures aimed at preserving and regenerating the town planning or natural environment of the CHS;

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<sup>4</sup> Article 47.3(3) of the Law on CHSs.

<sup>5</sup> Article 1(1)(b) of Law No. 472-FZ.

<sup>6</sup> Article 3.1(1) of the Law on CHSs.

<sup>7</sup> Articles 5.1(1) and 5.1(2) of the Law on CHSs (as amended on 19 October 2023). See, for example, the Resolution of the Federal Commercial ('Arbitration') Court for the Far Eastern Circuit dated 21 July 2023 concerning case No. A60-40382/2022.

- to carry out limited construction and reconstruction work at major facilities under construction as long as the land use regime is complied with and there is no breach of requirements of town-planning regulations and protective zones of CHSs.

### **A historical and cultural expert review**

Law No. 472-FZ expands the list of situations where a state historical and cultural expert review must be conducted as well as the new facilities that must undergo state historical and cultural expert review.<sup>8</sup>

Among the new purposes of the review are:

- justifying changes in the borders of the areas of CHSs;
- establishing restrictions on the use of forests within the borders of CHSs' protective zones.

In view of the amendments, a state historical and cultural expert review must be conducted, among other things, with respect to documentation that justifies:

- requirements being established for conducting activities, restrictions on the use of forests and requirements for town planning regulations within the borders of a CHS that is a cultural landmark;
- more accurate information being provided about a 'registered' or identified CHS;
- a special regime being established for the use of a land plot, water body or part of it accommodating an architectural heritage site (that is a type of a CHS);
- determining the category of the historic and cultural significance of the CHS.

### **What to think about and what to do**

On 11 April 2024, the Constitutional Court handed down Resolution No. 17-P enabling courts to adopt measures of preliminary protection in the form of a ban on the demolition of a facility under administrative lawsuits in the area of protecting CHSs. In the case in question the owner had demolished a facility with features of a CHS before it was included in the register.

We believe that the amendments that have come into force may create additional complications for developers and owners of real estate. We presume that such persons will, in each individual situation, need to analyse whether the facility that they intend to demolish has features of a CHS. At the same time, it is difficult to establish with certainty whether or not such features are

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<sup>8</sup> Article 1(4)(d) of Law No. 472-FZ.

present, given that they encompass value from the perspective of history, archaeology, architecture, town planning, art, etc.

Insofar as the demolition of facilities with features of a CHS are concerned, the law does not stipulate measures of liability for demolishing such facilities. However, we do not rule out that in situations when facilities with features of a CHS are unlawfully demolished, state authorities and courts may apply by analogy, among other provisions, article 7.14.1 of the Code of Administrative Offences. This provides for liability (a fine up to RUB 20 million) for the destruction of or damage to a CHS.

### **Help from your adviser**

The lawyers of Pepeliaev Group are ready to provide the required legal support to developers and owners of real estate facilities, including advising on how legislation on cultural heritage should be applied.

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### **Contact details**



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