

Compulsory land acquisitions for public investments: Russian flavor



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Why this topic?

Countries retain powers of compulsory acquisition in order to enable governments to acquire land for specific purposes. The nature of these powers and the ways in which they are used are invariably sensitive and have wide implications, including from the perspective of international agreements on human rights and their national expressions. Compulsory acquisition is disruptive for those who are affected and whose land is taken and, if done poorly, will have serious negative impacts on people and their livelihoods.

-Food and Agriculture Organization (FAO)

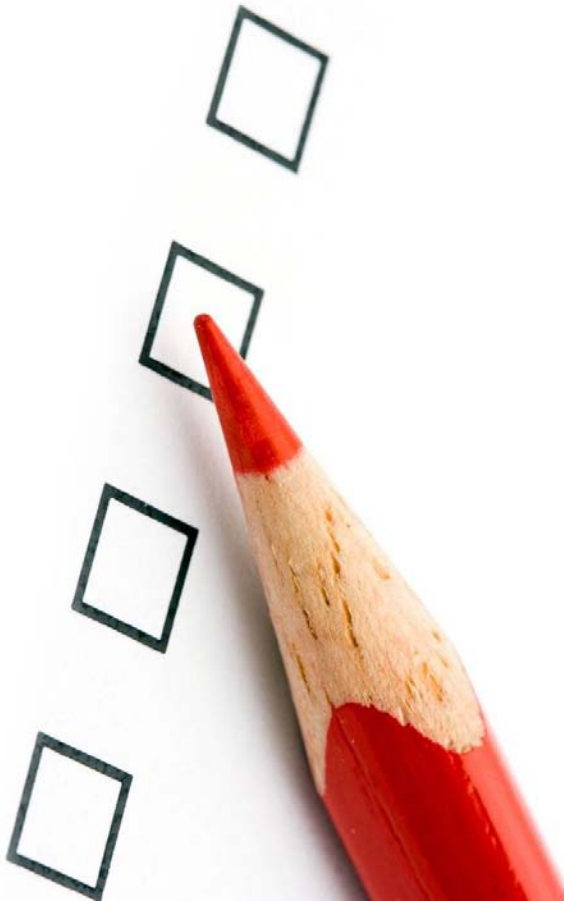
Presentation outline

1. Lack of trust between government authorities and private sector

2. Legislative update: what is behind compulsory land acquisitions

3. Efficient mechanisms required for land acquisitions

4. Economic motivation: fair compensation reflected in purchase price



Problem big like in most countries: what is special about Russia? (1)

Some examples that illustrate why development of the right techniques to implement compulsory acquisition of land by the government gains paramount importance:

1. Accumulation of considerable amount of monetary and financial reserves on the side of the government now allows approaching some large-scale projects (e.g. infrastructure). The bottom of the infrastructural iceberg is demand for land to complete new public developments.
2. Privatizing land parcels located within population centers or in close proximity requires land administration policies in the area of town planning and complex territorial development.

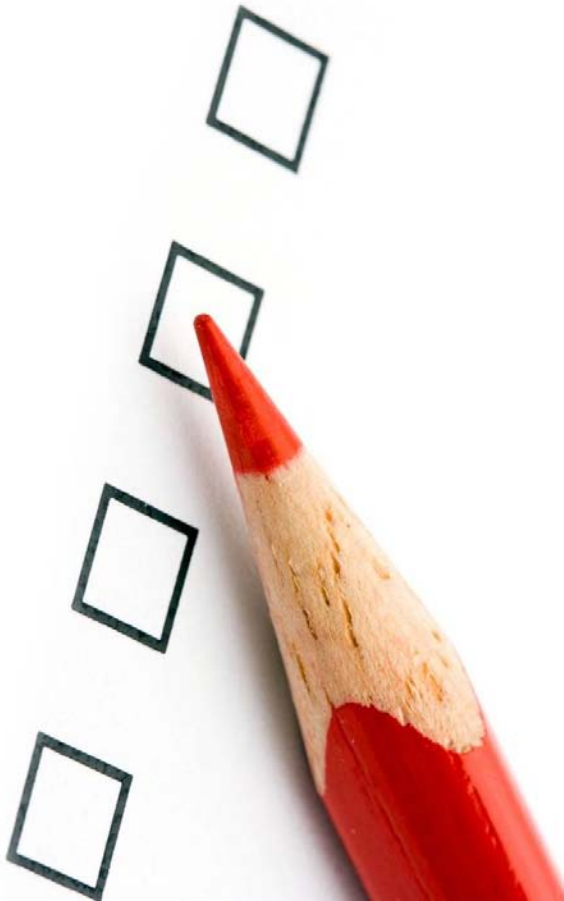
Problem big like in most countries: what is special about Russia? (2)

3. A parallel process to having new land policies requires resolving land rights disputes with property owners who have been effectively using their property since the Soviet times. Regardless of the fact of actual usage of land, the legal status of many property owners remains unclear.

4. A new wave of interest to compulsory land acquisition measures is related to winning the right to hold Winter Olympic Games 2014 in Sochi. A special procedure reflected in a separate law describes the particular case of compulsory land acquisitions in Sochi. However, the law is a subject to amendments with almost every new property acquisition performed by the government in Sochi.

The roots of the problem

1. Lack of trust between government authorities and private sector



Reasons: Russia was among the 1st to see a global crisis of trust

- Using a land acquisition instrument for public needs is not new for Russia. In the tsarist Russia as well as in the Soviet Russia there were policies that regulated withdrawal of land from land owners. Now we face the task of finding the right mechanism to work in the market economy.
- Problems faced in the area of building an adequate procedure of cooperation between private property owners and the government are mostly caused by small understanding of how to meet the goal of effective communications working under the rules of market economy.

Causes: Russians will protect their property at all cost, unless...

- The majority of population in Russia sees the government as a bureaucratic machine in the first place. Most of the attempts to interfere in private life (especially private property) are regarded as a threat to yield personal interests to prosperity of corrupted officials, not society as a whole. For this reason people strive to protect even illegal status of their property.
- Current legislation protects the constitutional right of private ownership. This is reflected in the land acquisition procedure that puts compensation first and only after that allows withdrawing land for the public needs. Still business practice is not always like that and along with psychological and cultural barriers this leads to massive property disputes.

Examples of misunderstanding of legal nature of disputes (1)



- Long-lasting scandal with one of the many residential communities in Moscow (“Rechnik” case) that have disputable legal status has reached its peak in 2010 resulting in forced demolishing of several buildings without consent of their owners. No compensations were provided.
- Easement in legislation that allows legalizing residential developments was not applicable due to the fact that “Rechnik” was an attractive target for the government. The case proved that enforcement is still an option when it comes to motivation to quickly resolve a problem.
- Owners of residential properties in “Rechnik” accused Moscow government of manipulating land legislation for its own benefits.



Examples of misunderstanding of legal nature of disputes (2)



- Legislation amendments to be made in order to increase efficiency of compulsory land acquisitions in Sochi were targeting specification of measures and procedures. Approximately 5000 people were to be resettled; 3000 ha of land had to be withdrawn from their users; 250 units of property were found illegal and are target for demolishing without compensation.
- Special factors that determine status of Sochi as international resort and Olympic city put limits on ability on the government to use enforcement instruments. With that, official legislative measures are not necessarily efficient, even with special regional law. Many of local residents who are subjects to resettlement currently try to protect their interests in court.

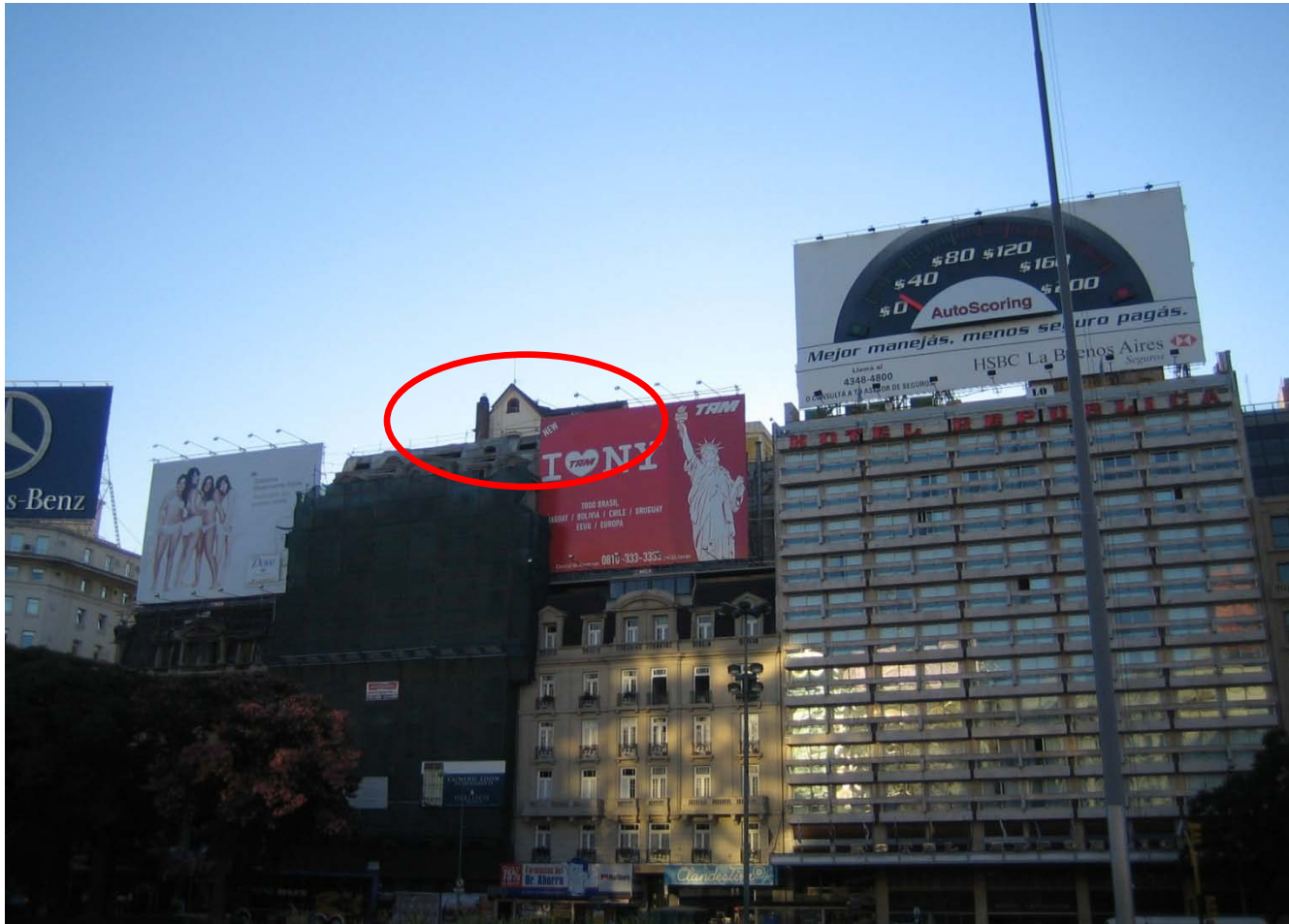
Ideas that can help to break the knot of mistrust (1)



- For the majority of population who became subject to resettlement compensation in the form of alternative real estate appears a much more attractive option rather than money compensation
- The drawback of this option for the government is extra costs that it bears. In particular in order to solve the problem of trust and push acquisition program forward the budget had to allocate additional sources, that were not initially considered. In total the budget of the Olympic Games have expanded 3 times over the last 3 years.



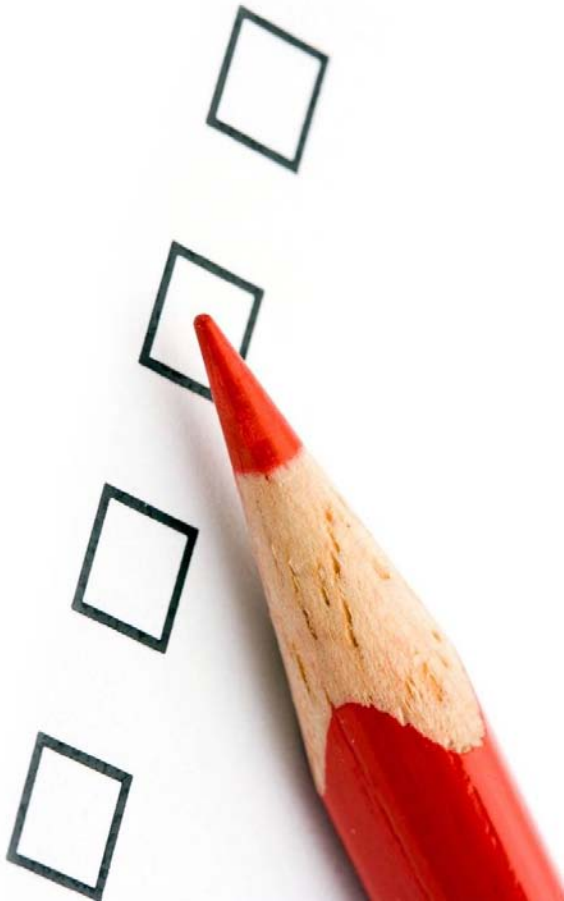
Ideas that can help to break the knot of mistrust (2)



A house was moved to the roof of the other building.
Buenos Aires, Argentina

Law and Order

2. Legislative update: what is behind compulsory land acquisitions



General legislative basis for land acquisitions



The most important legislation that regulates land acquisitions is: Constitution of Russia, Civil Code, Town Planning Code and Land Code. Some more color on the main articles of the latter:

- Authorities are obliged to justify land acquisitions.
- The most important requirement to the government in order to perform land acquisition is to guarantee preliminary and equal compensation.
- Compensation is based on agreement with land owner and if failed is ruled by the court.
- Market value of properties planned for acquisition is determined by independent appraisers (subjects to valuation activity in Russia)

Obstacles to effective legislation implementation (1)

- Regional differences in land relations are impossible to eliminate in such a huge country like Russia. However this factor was disregarded in the new history of the country. Starting 2000 the general regional policy was set towards building of so called “vertical of power” that aimed at concentrating the majority of functions in the federal center. The drawback of this decision has found its way through bureaucracy both on federal and regional levels.
- Unlike that, back in the Soviet there was a different view on how regional aspect of land acquisition policy should be developed. The actual withdrawal/ acquisition powers were yield to the local authorities who obviously were more aware of the regional specifics. This way, problems with land distribution were never a cause a slowdown or even stoppage of industrial or social development.

Obstacles to effective legislation implementation (2)

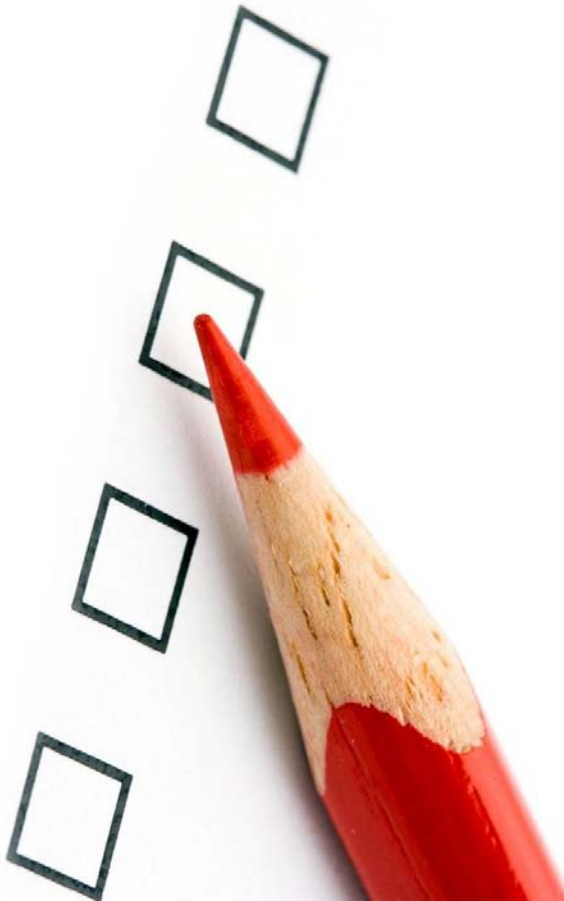


- Land acquisition in the northern regions of Russia will require a different approach from the one that could be used in the southern regions.
- Below is an example of such regions: northern Norilsk and southern Gelendzhik. Both cities have had a task to withdraw land for construction of airstrip.

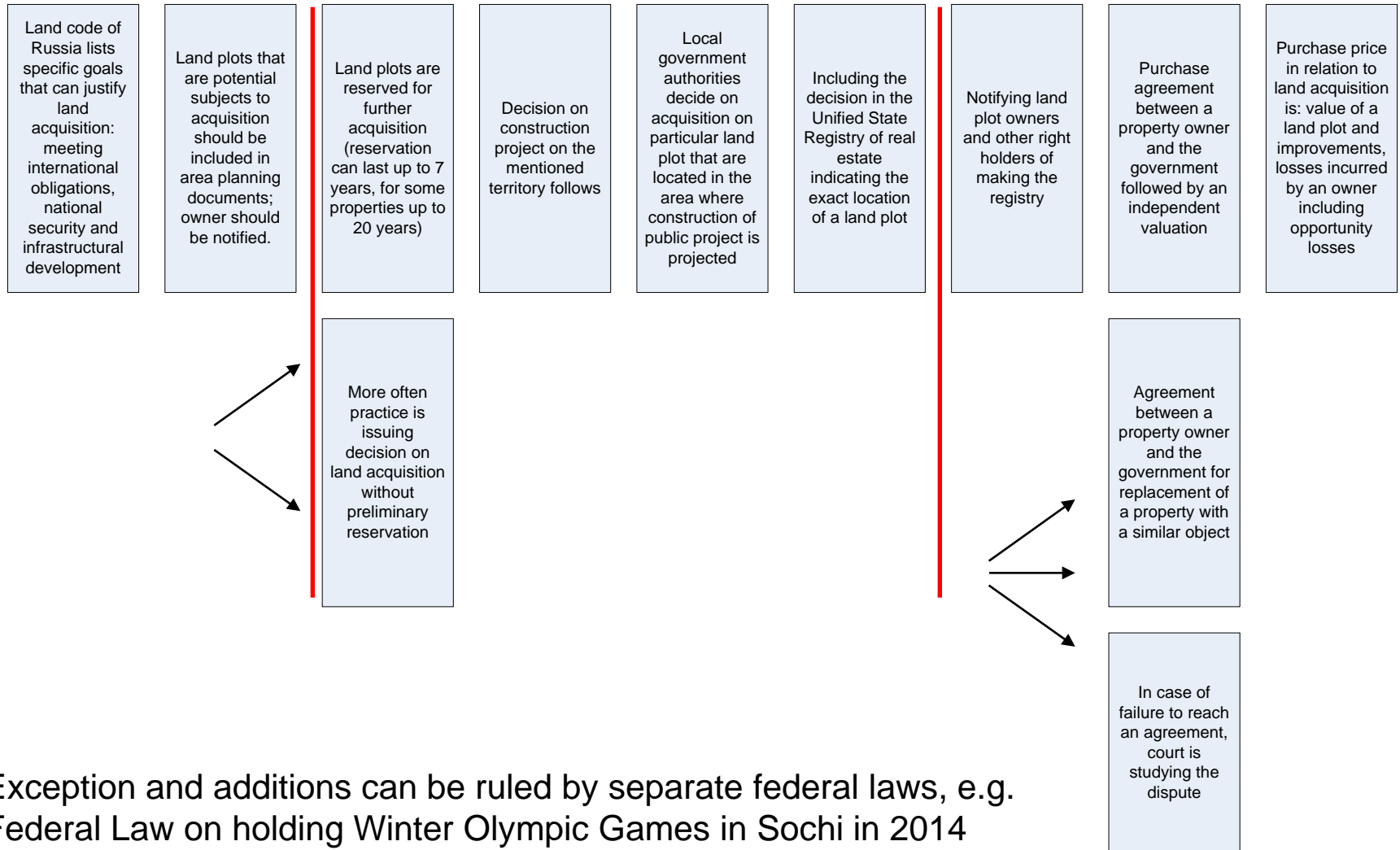


Acquisition process

3. Efficient mechanisms required for land acquisitions



Regular Land acquisition process



Land acquisition process according to the Law on Winter Olympics (1)

Some important additions to the regular procedure were introduced in Sochi. The most meaningful legislative novels are:

- Land acquisition process is financed through a special purpose vehicle, so called “state corporation OlympStroy” set up by the government.
- Land acquisition powers were granted on the regional level to Krasnodar region, where Sochi is located. At the same time duration and limits of powers are set by the law.
- Land acquisitions with properties that were not properly registered in the State Land Registry are allowed.

Land acquisition process according to the Law on Winter Olympics (2)

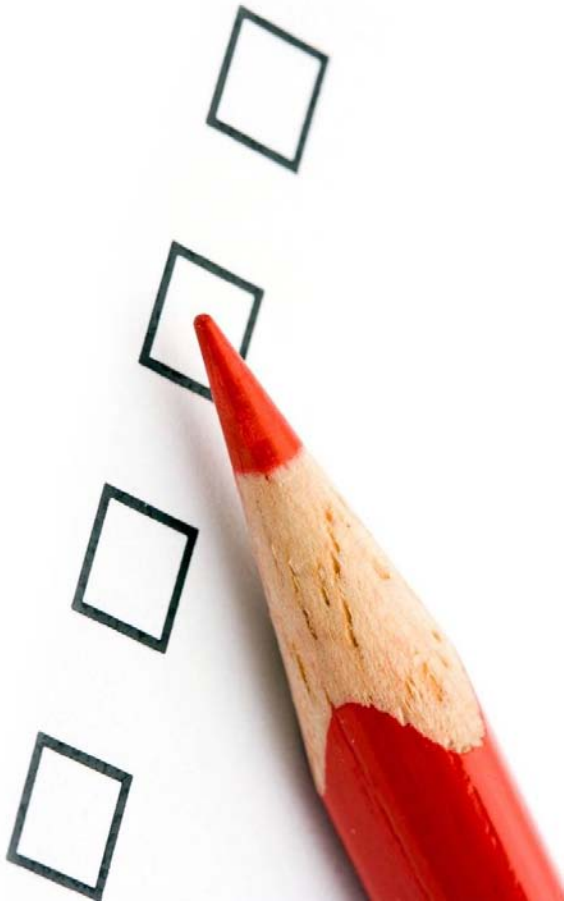
Not all the measures introduced by the government take into account interests of property owners. In particular:

- cut in the period of allowed negotiations on compensation from 1 year to 3 month;
- denial of the right of a court case to consider the need for acquisition of particular land plot;
- specifications on the list of appraisers allowed to estimate a property value.

Comparison of acquisition under a regular and “Olympic” scenario

	Regular acquisition process	Acquisition process for the Winter Olympics (special law)
Who is making decision on acquisition?	Government authorities at all levels	Government authorities at a local level, Krasnodar region
Who is paying compensation?	State budget	State corporation OlympSroy
Ability to apply to court in order to put in issue acquisition of a particular land plot	Yes	No
Is it required to have registered rights to make acquisition?	Yes, decision on acquisition should be registered in the State Registry of Rights	No, disputes on property rights is not an obstacle for acquisition; decision on acquisition doesn't have to be registered in the State Registry of Rights
How is land owner notified?	Written notification of registered decision on acquisition with required registration in Russian Registry of Rights	Before making a decision on acquisition – notification through mass media. After the decision is made - written notification of registered decision on acquisition with required registration in Russian Registry of Rights.
Minimum time frame at which land owner should be notified?	Not regulated by law	7 days after decision on acquisition was made
Who is determining a purchase price?	Independent appraiser, compensation should be according to valuation report, inspection of valuation report by SRO	Independent appraiser accredited by OlympSroy, valuation is done no longer than 30 days, valuation date is within 30 days from decision on acquisition, compensation is within the limits of valuation report
Minimum time frame for voluntary agreement with land owner (before applying to court for compulsory acquisition)	1 year starting notification of planned acquisition, up to 3 years (2 years for housing)	1 month after land owner is presented a valuation report (works in theory after 2 month after decision of acquisition)
Can put in issue court decisions on compulsory valuations?	Yes	Immediate implementation of court decision

It's not the money –
It's the amount of money



4. Economic motivation: fair compensation reflected in purchase price

Calculation of purchase price of land as a part of acquisition process

- Compensation to land owners who are process of government land acquisition is based on several figures: value of a land plot and improvements, losses incurred by an owner including opportunity losses
- Losses incurred by an owner have been further explained in the Land Code and include: losses due to a change of location, losses of having a permanent housing, movement costs, possible brokerage and legal fees related to purchase of new property, etc
- One of the main problems in estimating compensation is considered to be within the boundaries of calculation of market value of a property in the context of valuation statement.

Valuation: professional judgment or witchcraft? (1)

Drawing valuation statements is linked with two very critical issues:

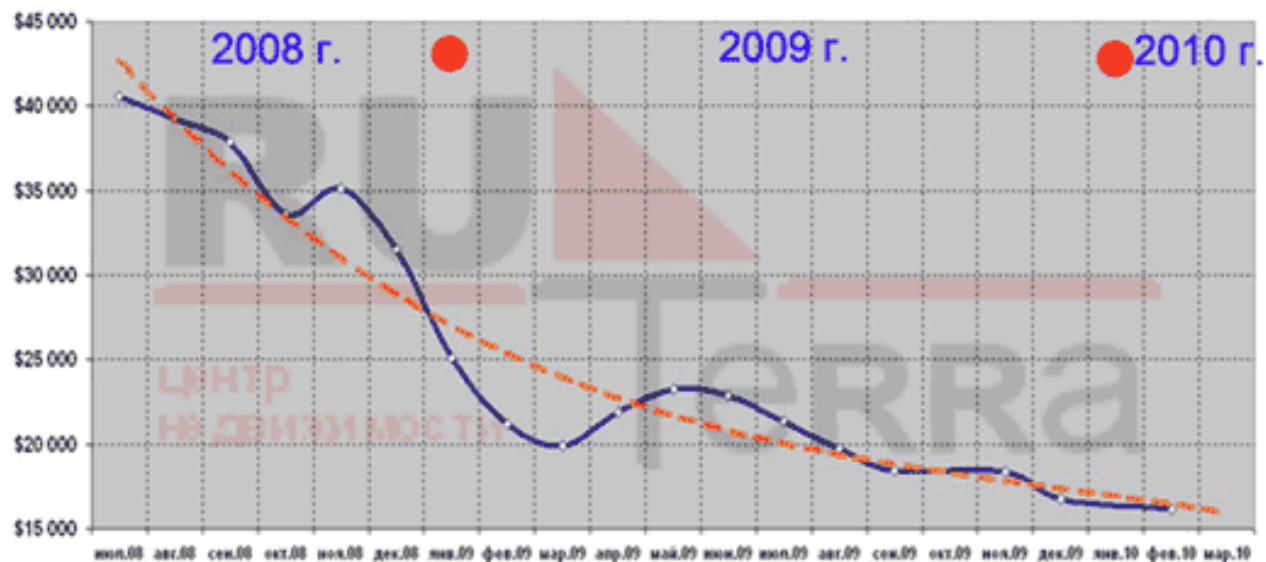


1. Differences in valuation of similar properties which often appears excessive. In particular, if adjacent land plots with similar characteristics are valued differently this becomes a reason for market distortions and social unease.

2. Compensation size strongly deviates from the market value. Generally the compensation received by land owners was driven by three subjective factors: price fluctuations on the property market, lack of information of actual transaction volumes and regulations related to minimum size of housing per person. All three were forcing the government to pay a compensation that exceeded the market value of properties subject to acquisition.

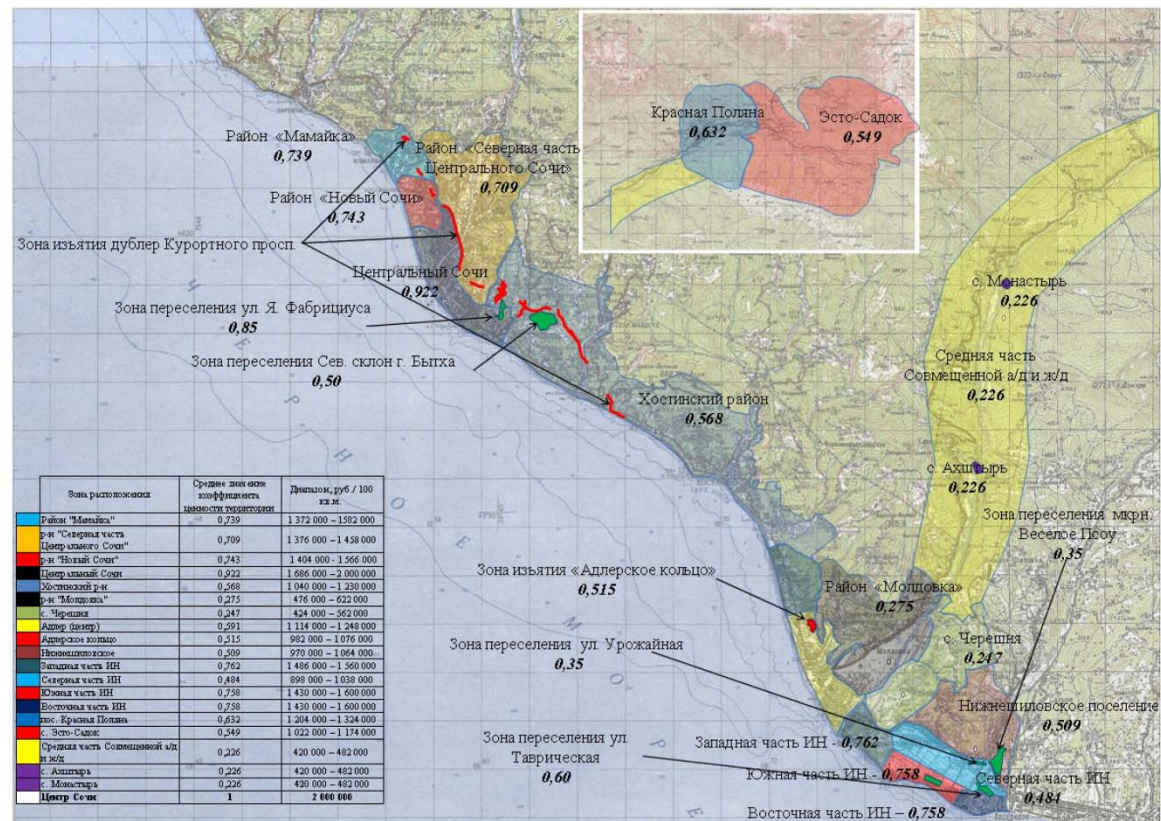
Valuation: professional judgment or witchcraft? (2)

For the period preceding announcement on winning the right to host Olympic Games 2014 land prices in Sochi were starting to look speculative. This trend was followed by a skyrocketing growth in the 1st half of 2007-2008 with a 60% drop from historical maximum between 2008 and 2010



Valuation: professional judgment or witchcraft? (3)

In order to stimulate more precise valuation of land in Sochi, National Council of Valuation Activities has passed several guidance notes along with price zoning of land in the areas of acquisition.



Questions?



Thank you!