Recommendations for the required changes and additions to the regulatory framework for implementing the developed model for financing capital repairs of apartment buildings

Presentation of the Report, Task 4: «Russian Urban Housing Energy Efficiency Programme – Model Development»

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THE PURPOSE OF THE PROJECT:

To develop recommendations on necessary changes and amendments to the regulatory framework for implementing proposed model of financing capital repairs and energy efficiency improvements
Combined structure for financing capital repairs of apartment buildings

- Establishment of the fund for building repairs in each AB using mandatory payments by owners of premises in apartment buildings
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REQUIRED CHANGES AND AMENDMENTS TO THE HOUSING CODE OF THE RUSSIAN FEDERATION

I.1 For establishment of the Fund for Building Repairs

- Authorize the RF Government to establish the rules for defining the standard cost of comprehensive capital repairs (renovation) of an apartment building (AB), the minimum mandatory size of the fund for capital repairs of AB and the minimum mandatory payments by owners of premises for capital repairs of AB

- Authorize the RF subject to set:
  - Standard cost of comprehensive capital repairs of ABs assuring the safety of buildings and enhancement of their energy efficiency;
  - Mandatory minimum size of the fund for building repairs to be defined as a percentage of the standard cost of comprehensive capital repairs of AB set by a subject of the RF;
  - Minimum mandatory monthly payments for capital repairs of AB to be made without fail until the fund for building repairs reaches the required minimum size

- Define the powers of a regional housing supervising agency (the Housing Inspection) to:
  - Control the creation of the fund for capital repairs in ABs;
  - Take the actions envisaged by the law against entities managing apartment buildings that fail to carry out measures to form the fund for building repairs

- Obligate owners of premises in each AB to establish a fund for AB repairs through making mandatory payments for capital repairs, and the size of this fund should be not less than the minimum size for capital repairs of ABs set by the subject of the RF

- Stipulate that entities managing apartment buildings (homeowners associations, housing management companies) should:
  - Collect mandatory payments for capital repairs of a building until the fund for capital repairs of AB reaches the minimum mandatory size established by a RF entity or until it reaches the limit set by the general meeting of owners of premises in AB
  - Take legally defined administrative measures against the owners of premises who failed to fulfill their obligations to make mandatory payments for capital repairs;
  - Regularly inform owners of premises in AB about the status of the fund for building repairs and whether it meets the requirement about its mandatory minimum size provided by the RF subject
I. Legislative support for mandatory payments by apartment owners for capital repairs

REQUIRED CHANGES AND AMENDMENTS TO THE HOUSING CODE OF THE RUSSIAN FEDERATION

I.2 To assure target use of the assets of the Fund for Building Repairs

- Define that the money from the fund for building repairs can be used to cover all types of expenses related to capital repairs (renovation) of AB, response to accidents or prevention thereof, and energy efficiency improvements, including:
  - Energy audit and target technical inspection of AB;
  - Development and approval of project documentation on carrying out capital repairs (renovations) of AB;
  - Implementation of capital repairs (renovations) of AB;
  - Technical supervision of the progress with capital repairs (renovations) of AB;
  - Repayment of credits (loans) made available to finance capital repairs (renovations) of AB;
  - Implementation of urgent works to eliminate the threat to the safe occupancy of an apartment building, prevention of or response to accidents and their consequences, if payment for these works was not envisaged by the annual cost estimate for maintenance and repairs of the common property in the apartment building, or if the current payments are not sufficient to pay for these works;
  - Demolition of an apartment building in the event that it is recognized unsafe and not eligible for rehabilitation (renovation).

- Define that in the case when the assets from the fund for building repairs are expended to carry out capital repairs owners of premises in the apartment building shall be obliged to supplement the expended assets of the fund through mandatory monthly payments for capital repairs.
I. Legislative support for mandatory payments by apartment owners for capital repairs

REQUIRED CHANGES AND AMENDMENTS TO THE HOUSING CODE OF THE RUSSIAN FEDERATION

I. 3 To ensure that the assets of the fund for building repairs belong to the owners of units in this particular apartment building

- Assets accumulated in the fund for building repairs shall be targeted assets commonly owned by owners of units in this building and may only be spent to pay common expenditures for financing capital repairs (energy efficiency improvements) of the building.

- In the event that the right of ownership to unit in apartment building is terminated:
  - the money contributed by an owner of an unit into the fund for building repairs shall not be refunded to this owner;
  - the obligations of the former owner with regard to making an established payments for capital repairs of the apartment building shall be transferred to a new owner of the unit.

- The assets of the fund for building repairs shall be accumulated on a special bank account – the account for the fund for repairs of the AB.

- The postal address of apartment building shall be used for identification of a special bank account (the account for the fund for capital repairs of apartment building).

- Define that entities managing apartment buildings:
  - open a special bank account separate for each apartment building - the account for the fund for capital repairs of apartment building;
  - when the management of the apartment building is assigned to another entity – to remit the assets of the fund for building repairs to a special bank account opened by the new manager for the fund for repairs of the AB.
I. Legislative support for mandatory payments by apartment owners for capital repairs

REQUIRED CHANGES AND AMENDMENTS TO THE HOUSING CODE OF THE RUSSIAN FEDERATION

I.4 For prompt decision-making on implementation of capital repairs of apartment buildings it is necessary to:

- Define that entities managing apartment buildings are obliged to:
  - Conduct regular inspections (at least once a year) of the common property to assess its technical condition;
  - Inform owners of units in an apartment buildings about the common property condition;
  - Develop proposals for owners of units in apartment buildings on capital repairs/renovations of ABs and methods of financing, which proposals shall be forwarded for the approval by the general meeting of owners

- Define that owners of units in AB are obliged to review proposals submitted by an entity managing an apartment building as regards capital repairs

- Define administrative responsibility of:
  - The entity managing the apartment building for its failure to conduct regular inspections of the common property in the AB, to inform owners of units about the common property condition and to design proposals on conducting capital repairs of the AB;
  - Owners of units in apartment buildings for their failure to pass a decision on conducting and/or financing capital repairs required to eliminate the danger to safe occupancy of the building

- Stipulate that decisions on conducting and financing capital repairs shall be made by a majority of votes of owners of units in the apartment building

- Stipulate that in the event that the owners of units in the AB failed, within an established period of time, to make a decision on execution of capital repairs in accordance with the resolution of the Housing Inspection, the latter is entitled to take administrative actions against the owners of units and/or the entity managing the building, and, if necessary, to go to the court with a request to pass a court ruling on the use of the assets of the fund for the building repairs by the entity managing the AB to finance the works required to eliminate the danger to the safety of dwelling in the building
I. Legislative support for mandatory payments by apartment owners for capital repairs

REQUIRED CHANGES AND AMENDMENTS TO THE HOUSING CODE OF THE RUSSIAN FEDERATION

I.5 To ensure that the assets of the fund for apartment building repair are protected from an unauthorized use:

- Define that the fund for building repairs shall be used solely based on the resolution of the general meeting of owners of units in the apartment building and, in cases defined in the law – based on the Court ruling on the law suit filed by the regional Housing Inspection
- Compile a list of documents required for the transfer of money from a special bank account – the account of the fund for AB repairs
- Define that no enforcement of debts of the entity managing the AB is permitted with regard to the assets on the account of the fund for AB repairs

I.6 To ensure that owners of units fulfill their obligations to make payments for capital repairs of the apartment building and other mandatory payments

- To stipulate that the registration of the pledge of owner’s unit in the Unified State Register of Rights to Real Estate and Transactions Herewith is possible if the arrears in mandatory payments last for 6-12 months (which makes the sale of the units without debt repayment impossible)
- To stipulate the possibility of foreclosure on the sole dwelling of the owner if he (she) is 12 months delinquent on mandatory payments
- To stipulate that it is possible to issue a court ruling on debt repayment using the sole dwelling of the debtor only if:
  - the debt exceeds the amount stated by the law;
  - there is no other property to cover the debt;
  - the debtor and his/her family are given enough time to repay the debt for capital repairs on their own;
  - provision to the debtor and his/her family the housing for the period of his/her purchase (rent) of other residential premise by the local government or an entity managing the apartment building
I. Legislative support for mandatory payments by apartment owners for capital repairs

OTHER REQUIRED AMENDMENTS AND ADDITIONS TO THE LEGISLATION

TO THE CIVIL CODE OF THE RUSSIAN FEDERATION

- To introduce a notion of a nominal bank account – an account to be opened by the bank for the account holder enabling him to carry out transactions with the monetary funds, which are not the monetary funds of the client
- To define that the right of the account holder to dispose of the money sitting on the nominal account is restricted by the law and bank regulations
- Claims with regard to the obligations of the account holder cannot be satisfied using the funds in the nominal bank account
- To stipulate that failure to make payments for the maintenance and repairs of the common property in the AB is one of the forms of negligent maintenance of this property (Article 293);
- To establish the right of the entity managing the AB to register the pledge on the owner's unit (arising in pursuance of a law) in the Unified State Register of Real Estate Rights and Transactions Herewith in cases specified in the Housing Code of the RF

LAWS ON BANKS AND BANKING

- The Central Bank instruction “On Opening and Closing Bank Accounts, Deposit Accounts” should specify:
  - the procedure for opening a special bank account – the account of the fund for AB repairs;
  - the procedure for maintaining the special bank account – the account of the fund for AB repairs;
  - the details of making settlement transactions using funds in the special bank account of the fund for AB repairs
- To define measures for protecting the assets of the fund for AB repairs (in the amount of the mandatory minimum fund for AB repairs) similar to the measures for protecting citizens’ deposits
I. Legislative support for mandatory payments by apartment owners for capital repairs

OTHER REQUIRED AMENDMENTS AND ADDITIONS TO THE LEGISLATION

THE CODE OF ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION

- Administrative sanctions applicable to parties managing the ABs shall be imposed for:
  - for failure to perform actions aimed at establishing a fund for repairs of the AB;
  - for failure to fulfill obligations with regard to regular inspections of the common property in the AB aimed at technical evaluation of the property condition and compliance with the binding safety requirements, and/or obligations to inform the owners of units about the condition of the common property, and/or obligations to design proposals on implementation of capital repairs/renovations of the AB
  - for failure to fulfill the obligation to remit the money from the fund for the AB repairs to a special bank account opened by a new manager, which obligation emerges when the AB management is shifted to another entity/person

- To define measures of administrative responsibility of owners of units in the AB for failure to make a decision on implementing and/or financing capital repair works in the AB to eliminate the danger to the safety of occupancy of the building

- To establish the procedure for issuing instructions on rectification of revealed violations of the legislation on the maintenance and capital repairs of apartment buildings and for imposing administrative penalty sanctions depending on the obligations and guilt of respective parties
I. Legislative support for mandatory payments by apartment owners for capital repairs

OTHER REQUIRED AMENDMENTS AND ADDITIONS TO THE LEGISLATION

TO THE LAW «ON THE HOUSING STOCK PRIVATIZATION IN THE RUSSIAN FEDERATION»:

- To specify that the former landlord *has* an obligation to capitally repair AB only towards a private individual – the former tenant of a municipal dwelling who directly participated in its privatization, and *has no* obligation to all other owners of units whose ownership rights emerged on other grounds.

- To specify that the former landlord has an obligation to participate in the financing of capital repairs of the AB only towards a private individual – the former municipal housing tenant, and that such an obligation exists only if it is an established fact that at the time of privatization of a residential unit the respective apartment building was already in need of capital repairs and that such capital repairs were not subsequently carried out.

- To define that the obligation of the former landlord is to finance the portion of capital repairs costs proportionate to size of residential unit in the AB, to the owner of which the former landlord has obligations.

- To specify that the obligation of the former landlord to finance capital repairs of the AB is to be fulfilled only if a resolution is adopted by the general meeting of owners of units in a given AB on execution of capital repairs and on the cost of the latter.

TO THE CODE OF CIVIL PROCEDURE OF THE RUSSIAN FEDERATION:

- To define the possibility of foreclosure on the sole dwelling in the event that its owner fails to fulfill obligations to make mandatory payments for maintenance and repairs of the AB and to pay utility fees.

- To establish the procedure for foreclosing on the sole residential unit of the owner necessitated by his arrears in payments for capital repairs of the AB and other mandatory payments.

- To establish a simplified procedure for court deliberations on the law suits filed by the entities managing ABs on the enforcement of arrears in payments for the maintenance and repairs of AB, utility fees and payments for capital repairs of AB.
II. Securing the possibility of mobilizing loans to finance capital repairs (renovations) of apartment buildings

REQUIRED AMENDMENTS TO THE HOUSING CODE OF THE RUSSIAN FEDERATION

- Making a decision on raising a loan for capital repairs (renovation) of an AB and instructing the entity managing the AB to apply to a credit institution for a loan, which will be repaid out of the payments for capital repairs made by owners of units in the AB (out of the fund for AB repairs), is exclusively within the competence of the general meeting of owners of units in this AB.

- The decision to raise a loan for capital repairs (renovation) of the AB is to be approved by the majority of votes of units’ owners in the AB.

- The obligation to make payments for capital repairs of an AB for repayment of a loan raised for this purpose by the entity managing the AB pursuant to the decision of the general meeting of residential property owners is incurred by all unit-owners in such an AB.

- It is recommended to stipulate that during the period of repayment of the loan originated for capital repairs of the AB pursuant to a resolution of the general meeting, the owners of units shall be obliged:
  - to notify the bank in advance about the intention to change the method of management of the AB or to replace the entity managing the AB in order to agree upon the procedure for the transfer of obligations under the loan agreement to the new entity managing the AB;
  - to properly formalize the transfer of repayment obligations under the loan for CR of the AB to the new managing entity and to submit all necessary documents to the bank.

- It is recommended to enter amendments relating to the legal status of home-owners association (HOA):
  - HOA shall be defined as an association of units’ owners in the apartment building, which is not based on membership. The supreme managing body of HOA shall be the general meeting of units’ owners in the AB;
  - A condition for termination of the activity of the HOA prior to repayment of a loan raised pursuant to a resolution of the general meeting of units’ owners, shall be the selection of a new entity for management of the AB and the transfer to this entity of the rights and obligations associated with the disposal of assets of the fund for AB repairs.
II. Securing the possibility of mobilizing loans to finance capital repairs (renovations) of apartment buildings

AMENDMENTS AND ADDITIONS TO BE MADE TO OTHER LAWS ENABLING TO ISSUE GUARANTEES ON LOANS

- It is proposed to design and adopt a federal law *On the Federal Agency for Developing Lending for Capital Repairs of Apartment Buildings*

The purpose of establishing a Guarantee Agency is to develop a new popular loan product in the banking sector – loans for CR and energy efficient renovations of ABs.

Tasks assigned to the Guarantee Agency:

- Developing requirements to capital repairs (renovations) projects for furnishing sureties on loans mobilized by HOAs and management companies.

- Developing requirements to the borrower for furnishing a surety on the loan.

- Granting sureties to commercial banks on loans provided by such banks for capital repairs (renovation) of apartment buildings.
III. Measures of state support to housing owners for execution of capital repairs (renovations) of apartment buildings

III.1 Granting subsidies to HOAs and management organizations for capital repairs (renovations) of apartment buildings

It is recommended to design a new regulation, which will define:

- The purpose of granting subsidies (energy auditing of an AB, designing project documentation for comprehensive capital repairs (renovation) of an AB, execution of comprehensive capital repairs (renovation) of ABs, execution of capital repairs of the ABs that have a long service life so as to restore the safe condition of such buildings…)

- The conditions for granting subsidies (attainment of legislatively established parameters of safety and/or energy efficiency of ABs; financing the repairs by units’ owners using their own savings and borrowed funds in the established amounts; selection of contractors for capital repairs (renovation) of the ABs by HOA or management company out of minimum three bids…)

- The procedure for providing budget funds (decision on granting a budget subsidy for capital repairs of the AB shall be made prior to the commencement of repairs (prior to the conclusion of a loan agreement); the subsidy funds shall be remitted to the recipient of the subsidy after the completion and acceptance of the works…)

III.2 Measures of support to low-income households

Additions to the Housing Code of the RF:

- Mandatory payments for capital repairs of an AB shall be included in the subsidized expenditures of citizens-owners of residential units for AB maintenance and utility payments

- The rules for granting subsidies to low-income citizens-owners of residential units enabling them to pay for capital repairs of the AB shall be established by the Government of the Russian Federation

- To legally entitle a citizen-owner of a residential unit to transfer, at his own will and on a free-of-charge basis, the residential unit he owns to the ownership of a municipality, on the territory of which the residential unit is located, regardless of the term and methods of (grounds for) the acquisition of this residential unit in ownership, with the preservation of the right to use this unit on terms of social rent (“naim”).
CONCLUSION:

1. The majority of amendments and additions should be made to the Housing Code of the RF. Other amendments and additions to the effective laws are of supplementary nature. In this connection, it is advisable to prepare a draft federal law “On Making Amendments and Additions to the Housing Code and Individual Legal Acts of the Russian Federation with Regard to Ensuring the Financing of Capital Repairs of Apartment Buildings”

2. For the purpose of establishing the Federal Guarantee Agency involving state participation intended to facilitate lending services for capital repairs (renovation) of apartment buildings it is proposed to draft and to adopt a federal law on institution of such a Federal Agency for Developing Lending for Capital Repairs of Apartment Buildings