REPORT ON TASK 4:
RECOMMENDATIONS FOR THE REQUIRED CHANGES AND ADDITIONS TO THE REGULATORY FRAMEWORK FOR IMPLEMENTING THE DEVELOPED STRUCTURES FOR FINANCING CAPITAL REPAIRS OF APARTMENT BUILDINGS

PROJECT:
«RUSSIAN URBAN HOUSING ENERGY EFFICIENCY PROGRAMME – MODEL DEVELOPMENT»

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PREPARED FOR:
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INTRODUCTION

The present report has been prepared in accordance with requirements set forth in the Terms of References for Consultancy Contract No: C22341/GEF2-2011-07-04 of July 18, 2011 concluded by the European Bank for Reconstruction and Development (hereinafter EBRD) and the Institute for Urban Economics under the Russian Urban Housing Energy Efficiency Programme – Model and Regulatory Framework Development (hereinafter Project).

Project is implemented by the Institute for Urban Economics (IUE) of the Russian Federation in association with Center for Energy Efficiency (CENEf), Russian Federation, Housing Initiative for Eastern Europe (IWO e.V.), Germany, and the Institute of Housing (Institute Byvania), Slovakia (hereinafter Consultant).

In compliance with the Terms of Reference (ToR), Phase I of the Project envisages the development of mechanisms of financing and expert analysis of their potential impact on public expenditures and condition of the housing stock.

Task 4 of this Phase is to develop recommendations on necessary changes and amendments to the regulatory framework for implementing proposed mechanisms of financing capital repairs and energy efficiency improvements, as well as measures of state support (Task 3.4 in compliance with the Terms of Reference).

Having reviewed various structures of financing capital repairs of apartment buildings and the best international practices, including the results of the cost-benefit analysis of implementation of every structure in question, the Consultant put forward an optimal for Russia structure of financing capital repairs and energy efficient refurbishment of apartment buildings (see Report 2, section II.1) (hereinafter the “combined” structure). Simulation of how the proposed mechanism of capital repairs financing works demonstrated the best performance across a number of parameters, including the volume of capital repairs in comparison with other financing Structures (Report 3, section 9). It was pointed out that implementation of the “combined” structure requires quite radical changes in the regulatory framework of the housing and civil legislation (see Report 2, section II.2).

In order to enable the “combined” structure to deliver the projected number of CR it is necessary to assure the adoption of legal provisions that would introduce the following mechanisms of financing capital repairs and energy efficiency improvements in apartment buildings:

- Mandatory payments by owners of premises in apartment buildings;
- Raising of long-term commercial loans;
- Provision of state support.

This report includes recommendations prepared by the Consultant pertaining to changes and amendments to the existing legislation required for implementing the proposed “combined” financing mechanism.

Recommendations are grouped by mechanisms of CR financing, by types of legislative acts that need to be amended and supplemented, and, finally, by issues, which can be resolved through implementing such changes in the legislation.
I. LEGISLATIVE ASSURANCE FOR MANDATORY PAYMENTS BY APARTMENT OWNERS FOR CAPITAL REPAIRS

The designed “combined” structure envisages the following (see Report 2, section II.1.1):

- A fund for capital repairs of apartment buildings must be established in every apartment building from mandatory payments by owners of premises for capital repairs; the amount accumulated in this fund may be spent only on capital repairs and energy efficiency improvements of such building, as well as on repayment of commercial loans obtained for these purposes;

- Funds accumulated in the fund for capital repairs of an apartment building shall be common assets of owners of premises in this apartment building irrespective of the building management option and must be spent only by decision of the general meeting of owners of premises in the apartment building (as well as by decision of the court in the cases provided for by law);

When establishing a fund for capital repairs of apartment building, it is necessary to address the following issues at the legislative level:

- Assure the adoption of a decision on establishing the fund of capital repairs in each apartment building and on the amount of mandatory payments to this fund to be made by homeowners;

- Assure the mandatory implementation of a decision on establishing the fund for apartment building repairs;

- Assure that assets accumulated in the fund for capital repairs of apartment building will always be the ownership of only owners of premises in this apartment building irrespective of the building management option or in the case of a change in the building management option or housing management organization;

- Assure target use of funds accumulated in the fund for capital repairs of apartment building;

- Assure the enforcement of mandatory payments to the fund for building repairs from owners of premises in the apartment building.

When using funds accumulated in the fund for building repairs, it is necessary to address the following issues at the legislative level:

- Exclude a possibility to use assets accumulated in the fund for building repairs without the approval of owners of premises in the apartment building;

- Assure timely decision-making by owners of premises in apartment buildings required to carry out capital repairs of the apartment buildings;

- Envisage a possibility of using assets accumulated in the fund for building repairs to carry out emergency works in order to eliminate the threat to safe occupancy of the apartment building in the event that owners of premises fail to make an appropriate decision.

To implement the mechanism assuring the mandatory payment by owners of premises for capital repairs of the apartment building as proposed in the “combined” structure, it is necessary to make relevant changes and amendments to the Housing Code of the Russian Federation, Civil

**I.1. REQUIRED CHANGES AND AMENDMENTS TO THE HOUSING CODE OF THE RUSSIAN FEDERATION**

It is proposed to amend the Housing Code of the Russian Federation with provisions on both the establishment of the fund for building repairs and the use of assets accumulated in the fund for building repairs.

**I.1.1. Establishment of the fund for building repairs and setting of the size of mandatory payment by owners of premises in apartment buildings for capital repairs**

A. In order to perform the task of mandatory accumulation of homeowners’ funds in every apartment building for capital repairs and concurrently exclude the obligatoriness of unlimited long-time accumulation of these funds with no spending thereof, the “combined” structure stipulates a mandatory minimum size\(^1\) for the fund for building repairs, which will allow them to minimize inflation losses (see Report 2, section II.1.1.1). For this purpose it is proposed to amend the RF Housing Code as follows (new Article 158\(^1\)):

- Oblige owners of premises in every apartment building to establish the fund for building repairs which amount should be no less than a mandatory minimum size of the fund for building repairs set by a subject of the RF;
- Define that the fund for building repairs shall be formed out of mandatory regular monthly payments for capital repairs of apartment building at the amount of no less than the minimum payment for this purpose set by a subject of the RF.

B. To assure that the fund for building repairs in every apartment building should be no less than the minimum threshold set, as well as simplify decision-making on the fund’s size required for building repairs and on the amount of mandatory payments to be made by owners of premises to form a fund for building repairs, it is proposed to amend the RF Housing Code as follows:

- Authorize the RF subjects (Article 13) to set:
  - Standard cost of comprehensive capital repairs of apartment buildings in a subject of the RF required to assure the safety of buildings and enhancement of their energy efficiency\(^2\);
  - Mandatory minimum size of the fund for building repairs to be defined as a percentage of the standard cost of comprehensive capital repairs of an apartment.

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\(^1\) Mandatory minimum size of AB fund for CR means that each apartment building there must be stand-by funds for (i) the financing of urgent repair work prior to the overhaul of the house and (ii) to show the bank (when obtaining a loan for major home repairs) that the owners already have their own funds and they regularly make payments to the overhaul, at the expense of which the loan will be returned. The minimum size of the repair fund of each house will be determined by the state authorities in accordance with the law. Therefore, such a value of the repair fund is mandatory.

\(^2\) The cost of such repairs can be differentiated for municipalities on the territory of a subject of the Russian Federation and types of apartment buildings – by design and floor plan parameters, level of improvements, and operation life.
building set by a subject of the RF;
– Minimum mandatory monthly payment for capital repairs of apartment buildings estimated per one square meter of premises that belong to an owner in an apartment building, which payment should be made without fail until the fund for building repairs reaches the threshold set for its minimum size.

• Authorize the RF Government (Article 12) to establish the rules of defining the standard cost of comprehensive capital repairs (renovation) of an apartment building, the minimum mandatory size of the fund for capital repairs of an apartment building and the minimum mandatory payment by owners of premises for capital repairs of an apartment building

• Define (Article 161) that entities managing apartment buildings (homeowners associations, housing cooperatives, and other special-purpose consumer cooperatives) and entities responsible for maintenance of an apartment building when this building is managed by owners of premises are obliged to:
  – Collect a minimum mandatory payment for capital repairs of a building until the fund for capital repairs of the building reaches the minimum mandatory size established by a RF entity or until it comes to the limit set by the general meeting of owners of premises in the building;
  – 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 an apartment building about the status of the fund for building repairs, and its compliance with the requirement for a mandatory minimum size provided by law;

• Define the powers of a regional housing supervising agency (Article 20) to:
  – Control the creation of the fund for capital repairs in apartment buildings;
  – Take actions secured in the law against entities managing apartment buildings which fail to carry out measures to form the fund for building repairs;

C. To assure the implementation of initiatives taken by owners of premises in an apartment building on establishing the fund for building repairs, it is necessary to amend the Housing Code of the RF (new Article 1581) as follows:

• Define that the general meeting of owners of premises in an apartment building is authorized to:
  – establish the fund for building repairs of a larger size than the mandatory minimum size established by a subject of the RF for such a fund;
  – set a larger amount of homeowners’ payment for capital repairs than the minimum mandatory payment for capital repairs required from owners of premises in line with the standard set by a subject of the RF.

D. To assure target use of the assets accumulated in the fund for building repairs and make it possible to spend these assets on carrying out urgent works aimed to maintain apartment
buildings in good technical condition, it is proposed to amend the RF Housing Code (new Article 158') as follows:

- Define that the money from the fund for building repairs can be used to cover all types of expenses related to capital repairs (replacement) of elements of the common property, renovation of the apartment building, response to accidents or prevention thereof, and energy efficiency improvements, if no payment for management, maintenance, and current repairs of the common property in an apartment building has been provided for, including but not limited to:
  - Energy audit and target technical inspection of an apartment building (with the exception of the annual technical inspection of common property to be carried out by an entity managing the apartment building in compliance with the Rules for common property maintenance in apartment building);
  - Development and approval of project documentation on carrying out capital repairs (renovations) of an apartment building;
  - Implementation of capital repairs (renovations) of an apartment building;
  - Technical supervision of the progress with capital repairs (renovations) of an apartment building;
  - Repayment of credits (loans) made available to finance capital repairs (renovations) of an apartment building;
  - 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 (renovations).

- Define that in the case when the assets from the fund for building repairs are expended to carry out selective capital repairs before the fund for building repairs comes to the threshold set for its minimum size by a subject of the RF, owners of premises in apartment building shall be obliged to supplement the expended assets of the fund through mandatory regular payments for capital repairs until the amount of the fund capita repairs reaches the minimum mandatory value set for its size;

- Define that once the fund for building repairs comes to the minimum threshold set by a subject of the RF for its size, the assets from this fund can be expended for the purposes specified in the Housing Code of the Russian Federation, provided that subsequently the minimum size of the fund for building repairs will be restored through mandatory regular payments by owners of premises for capital repairs of apartment building.

I.1.2. Ownership by owners of premises in apartment buildings of the assets of the fund for building repairs

A. To define the legal status of the assets accumulated through mandatory payments by

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owners of premises for capital repairs as commonly owned assets belonging to owners of premises in apartment building (see Report 2, section II.1.1.2), it is proposed to amend the RF Housing Code (new Article 158) as follows:

- Assets accumulated in the fund for building repairs through mandatory payments by owners of premises in apartment building for its capital repairs shall be targeted assets commonly owned by owners of premises 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 premises in apartment building is terminated, the money contributed by an owner of premises into the fund for building repairs shall not be refunded to this owner;
- In the event that the right of ownership to premises in apartment building is terminated, the obligations of the former owner with regard to making an established payment for capital repairs of the apartment building shall be transferred to a new owner of the premises;
- Disposal and refund of assets from the fund for building repairs to owners of premises proportionate to their share in the common equity ownership (with due account for their actual contribution to the fund for building repairs) is possible only in the case that there is a decision on demolition of the building recognized unsafe and not eligible for capital repairs (renovations), as well as in the case when owners of premises decide that the apartment building should not be rehabilitated if it was destroyed as a result of a natural or production induced calamity. At the same time, all expenditures related to demolition of apartment building should be covered prior to the disposal of the money sitting in the fund for building repairs and refund of these assets to the owners of premises.

B. To set apart the payments made by owners of premises in an apartment building towards capital repairs of the building from the assets of a housing management organization and/or the assets of homeowners associations, housing construction cooperatives, and other special-purpose consumer cooperatives, it is proposed to amend the RF Housing Code (new Article 158) as follows:

- Define that the assets of the fund for building repairs formed from mandatory payments by owners of premises for capital repairs of apartment building (as well as from other legal sources), shall be accumulated on a special bank account – the account for accumulating the funds for capital repairs of apartment building – to be opened by an entity managing the apartment building separately for each apartment building;
- The postal address of apartment building shall be used for identification of a special bank account Для идентификации специального банковского счета – the account for accumulating the funds for capital repairs of apartment building;
- Define that entities managing apartment buildings (homeowners associations, housing construction cooperatives, and other special-purpose consumer cooperatives, management organizations) and those responsible for maintenance of an apartment building when this building is managed directly by owners of premises are obliged to:
  - Open a special bank account separate for each apartment building (the account for accumulating the funds for capital repairs of apartment building) to accumulate the assets of the fund for building repairs, which is created out of payments by
owners of premises towards capital repairs, and remit on this account the payments collected for capital repairs;

- Remit the assets of the fund for building repairs to a special bank account (the account for accumulating the funds for capital repairs of apartment building) to be opened by a new manager in the event that the management of the building is assigned to another entity (when the method of management changes or a management organization is replaced by decision of the general meeting of owners of premises in apartment building) and submit to the new manager information about fulfillment of obligations by owners of premises in apartment building with regard to their contribution towards capital repairs at the moment of assigning the management of the apartment building to another entity.

I.1.3. Decision-making on implementation of capital repairs of apartment building and disposal of assets of the fund for building repairs

According to the proposed “combined” structure for financing capital repairs of apartment buildings, the decision about capital repairs (renovations) of an apartment building and disposal for this purpose of the assets accumulated in the fund for building repairs shall be made mainly by owners of premises in this apartment building at the general meeting as provided for by the effectual legislation (Housing Code, Art. 44, part 2, clause 1). Such a decision shall be made on the basis of proposals put forward by an entity managing the apartment building. At the same time, the “combined” structure provides a mechanism for decision-making on performance of emergency works to eliminate the threat to safe occupancy of the building (pursuant to a court ruling on the law suit filed by the State Housing Inspection body) using for this purpose the assets of the fund for building repairs in the event that owners of premises themselves fail to make necessary decisions (see Report 2, section II.1.1.4).

A. To assure timeliness of homeowners’ decision-making on carrying out capital repairs (renovations) of an apartment building and energy efficiency improvements, it is proposed to amend the RF Housing Code (Article 161) as follows:

- Define that entities managing apartment buildings are obliged to:
  - Conduct regular (at least annually) inspections of the common property of owners of premises in apartment buildings in order to evaluate its technical condition and compliance with mandatory safety requirements (including compliance with the requirements for energy efficiency);
  - Inform owners of premises in an apartment buildings about the common property condition and its compliance with the safety requirements (including compliance with the requirements to energy efficiency);
  - Prepare for the owners of premises in apartment buildings proposals on capital repairs and/or renovations of the buildings (timeliness, prioritization and comprehensiveness of works, cost, schedule, and expected effects from capital repairs, financing mechanisms, possible measures of budget support, etc.), which proposals will enable the owners of premises to pass a decision on carrying out capital repairs and/or renovation of an apartment building;

- Define that owners of premises in apartment buildings are obliged to review proposals submitted by an entity managing an apartment building as regards capital repairs,
renovations of an apartment building, energy efficiency improvements at annual general meeting (new Article 1581);
• Define administrative responsibility of:
  – Entities managing apartment buildings for their failure to conduct regular inspection of the common property in apartment buildings aimed at evaluating the technical condition of buildings and compliance thereof with the mandatory safety requirements and/or for their failure to inform owners of premises about the common property condition and/or to prepare proposals on conducting capital repairs, renovations of the buildings (Article 161);
  – Owners of premises in apartment buildings for their failure to pass a decision on conducting and/or financing capital repairs required to eliminate the threat to safe occupancy of the buildings (new Article 1581).

B. To make it easier for owners of premises in an apartment building at the general meeting to make a decision on capital repairs, renovations or energy efficient improvements in the building, it is proposed to amend the Housing Code of the RF (new Article 1581) with the provision that entails reduction of the number of votes required for appropriate decision-making:
• Define that decisions on conducting and financing capital repairs, renovations (without the revision of a share of owners of premises in the common equity property in apartment buildings) shall be made by a majority of votes of owners of premises in an apartment building.

C. To assure timeliness of emergency repairs aimed at eliminating a threat to safe occupancy of an apartment building in the event that owners of premises in this building fail to pass necessary decisions at the general meeting, it is proposed to amend the RF Housing Code (Article 20) as follows:
• Define that in the event that the owners of premises in the apartment building failed, within an established period of time, to make a decision on execution of capital repairs of the common property in accordance with the resolution of the body of state housing supervision (The Housing Inspection) on the necessity to address the discrepancy with the mandatory requirements to the building safety, the Housing Inspection is entitled to take administrative measures against the owners of premises and/or the entity managing the building; moreover, if necessary, the Housing Inspection can go to the court with a request to pass a ruling empowering the entity managing the apartment building to use the assets of the Fund for building repairs towards financing the works needed to remove the threat to the safety of the building, and forcing the owners of premises to make additional necessary payments to cover the cost of such works.

I.1.4. Protection of the assets of the fund for apartment building repair from unauthorized use
To exclude possible use of the funds of owners of premises in an apartment building accumulated in the fund for building repairs without the approval of premises owners, it is proposed (see Report 2, section II.1.1.4) to amend the RF Housing Code (new Article 1581) as follows:
• Define that the fund for building repairs deposited to a special bank account shall be used solely based on:

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   Center for Energy Efficiency (CENEf)
   Housing Initiative for Eastern Europe (IWO)
   Institute Byvania (The Institute of Housing)
Resolution of the general meeting of owners of premises in apartment building adopted on the basis and in the order as set forth by the RF Housing Code;

Court ruling regarding the claim filed by a regional state housing supervision agency;

- Set forth a list of documents, against which funds from the special bank account for the apartment building repairs may be transferred;
- Define that the debt of the apartment building manager cannot be collected from the funds deposited to the special bank account – the account for accumulating the funds for capital repairs of apartment building.

I.1.5. Assurance that owners of apartment building premises will pay the charge for capital repairs of apartment building and make other mandatory payments

To make the enforced collection of the set mandatory payments for capital repairs of apartment building from owners of premises possible, it is recommended to add the RF Housing Code with the provisions extending the enforcement actions of an entity managing apartment building against delinquent owners of premises who fail to make mandatory payments for capital repairs of apartment building (and other mandatory payments) (see Report 2, section II.1.1.5).

A. To provide the opportunity of filing the claim against the owner of premises in arrears of mandatory payments for capital repairs, it is proposed to make the following amendment to the RF Housing Code (Article 161):

- Define that the management company, homeowners association, housing or housing and construction cooperative or representative of the owners of premises in an apartment building when the latter directly manage their apartment building, and owners of premises shall file the claim against the owner of the residential or non-residential premises who does not fulfill his/her obligations of sharing combined expenses of common property maintenance and repair or repaying the debt for capital repairs of apartment building;

B. To extend the enforcement actions against the delinquent owner of premises who failed to make mandatory payments towards capital repairs of the apartment building and other mandatory payments, it is proposed to make the following amendments to the RF Housing Code (Article 155):

- Define that the registration of the pledge of owner’s premises in the Unified State Register of Rights to Real Estate and Transactions Herewith is possible if the arrears of mandatory payment last for 6-12 months (which makes the sale of the premises without debt repayment impossible);
- Define that if the debt on mandatory payments for maintenance and repair of common property in apartment building, utility payments as well as payments for capital repairs of the apartment building exceeds 12 months, it becomes possible to foreclose the sole residential property of the delinquent homeowner pursuant to the court ruling.

C. In order to protect the right of the owner to his/her sole residential property when this premises are foreclosed because of the homeowner’s debt, it is recommended to make the following amendments in the RF Housing Code (new Article 351):
• Define that it is possible to take the decision in court on debt collection by foreclosing the debtor’s sole residential premises only subject to the following:
  – the debt exceeds the amount stated by the law;
  – lack of other property to cover the debt;
  – provision of sufficient time for the debtor and his/her family to repay the debt for capital repairs on their own;
• Define that the local government may provide to the debtor and his/her family the housing for the period of his/her purchase (rent) of other residential premises from the temporary allocated public housing stock. If it is not possible, then such housing shall be provided to the debtor under the lease agreement by an entity managing the apartment building. The lack of housing to move the debtor and his/her family to from the residential premises, which sale is planned for debt repayment should make the court ruling on the sale of the sole residential premises of such debtor impossible.

I.2. REQUIRED AMENDMENTS TO THE CIVIL CODE OF THE RUSSIAN FEDERATION

The necessity to amend and supplement the Civil Code of RF for implementation of the capital repairs (CR) financing structure is due to legislative introduction of the institution of a nominal bank account and securing the possibility to levy execution, based on a judicial order, upon residential property of an owner for CR payments in arrears and for other mandatory payments in arrears by a residential property owner in an apartment building (AB) (see Report 2, sections II.1.1.2 and II.1.1.5).

I.2.1. Institution of a nominal bank account

In order to define the "nominal bank account" as a term it is proposed to amend the Civil Code of RF (Article 860) as follows:

• A nominal bank account shall be opened by a bank for a customer (account holder) to carry out transactions with monetary funds which economically are not owned by the customer. In case a nominal bank account is opened for making transactions with assets accumulated in a Fund for Building Repairs (FBR) of an AB, the account holder is a Homeowners' Association (HOA), a housing cooperative or a housing construction cooperative or a management organization;
• A nominal bank account agreement shall specify the party which is the holder of cash assets on a nominal bank account. In case of a FBR-account of an AB the holders of cash assets are residential property owners in an apartment building;
• The right of an account holder to dispose of funds in a nominal account is restricted by law and banking regulations;
• Claims on obligations of an account holder or on obligations of a bank customer may not be satisfied by use of funds in a nominal bank account.
I.2.2. Regulation of civil liability of residential property owners in apartment buildings for the fulfillment of obligations related to payment for capital repairs in apartment buildings and other mandatory payments

There is scarcity of instruments established in the Russian legislation for collection of mandatory payments for capital repairs of ABs from residential property owners, particularly but not exclusively required for repayment of loans raised for these purposes. There is no possibility established by law to register mortgage on residential property of an owning debtor and to discharge obligations of a debtor at the cost of real property, if such property is the single place of owner's residence. This increases the risks of HOAs and management organizations associated with repayment of loans raised for CR of ABs and, respectively, the exposure of banks which provide such loans (see Report 2, section II.1.1.5). In order to solve this problem it is proposed to supplement the Civil Code of the Russian Federation (Article 293) by the following stipulations:

- Failure to make payments for the maintenance and repair of the common property in an AB shall be considered as one of the forms of negligent maintenance of this property;
- The right of a party managing an AB shall be established to register mortgage arisen by authority of law on residential property of an owner in the Consolidated State Register of Real Estate Titles and Transactions in instances stipulated by the Housing Code of RF.

I.3. REQUIRED AMENDMENTS TO THE BANKING LAW

I.3.1. Establishing special type of a bank account. i.e. a FBR account of an AB

In order to separate assets in a FBR of an AB collectively owned by residential property owners in an AB from the assets owned by each residential property owner and from the assets owned by other parties (residential property owners in other ABs, HOAs, housing cooperatives, management organizations) and also to secure the intended use of funds under the “combined” structure it is proposed to institute a special type of a bank account on which the funds for CR of an AB shall be accumulated, which is the FBR account with special regulations on ownership of funds (joint ownership of apartment owners in apartment building) and for disposal of funds kept on it (see Report 2, sections II.1.1.2 and II.2.3).

The analysis performed by the Consultant revealed that in order to institute a special type of bank accounts, i.e. a FBR account, there is no necessity to make amendments to such laws as Federal Law No. 395-I "Concerning banks and banking activities" dated December 2, 1990 and Federal Law No. 161-FZ "Concerning the National Payment System" dated June 27, 2011. Special legal regime of the FBR bank account of an AB can be secured by regulations in the Civil Code of RF and in the Housing Code of RF on which basis amendments can be made to the Instruction of the Central Bank of Russia No. 28-I dated September 14, 2006 "Opening and Closing of Bank Accounts and Deposit Accounts" (as subsequently amended). These amendments and additions shall stipulate:

- the procedure for establishing the special bank account, i.e. a FBR account of an AB;
- the procedure for maintenance of the special bank account, i.e. a FBR account of an AB;
the details of making settlement transactions using funds in the special bank account, a FBR account of an AB, including the procedure for transfer of funds from the special bank account opened by the former management organization to another special bank account, identical in its regime, opened by a new management organization.

Banks, guided by the Central Bank Instruction on clearing transactions involving monetary assets of the Fund for repairs of AB, will exercise control over targeted use of these assets.

1.3.2. Protection of funds from residential property owners accumulated on the special bank account

To protect the owners’ savings accumulated on a dedicated bank account – the account of the Fund for AB repairs, it is suggested that in the event of the bank’s bankruptcy to make an amendment in the Federal Law No. 395-I "Concerning banks and banking activities" dated December 2, 1990 stipulating that protective measures in the event of bank failure identical to measures for protection of deposits of individuals are applicable to assets accumulated in a FBR to the extent of the minimum amount of a FBR as established by a respective subject of RF.

1.4. REQUIRED AMENDMENTS TO THE CODE OF ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION

A. In order to secure the possibility of imposition of administrative sanctions to persons violating the housing legislation with regard to carrying out and financing CR of ABs it is proposed to make the following amendments to the Code of Administrative Offences of the Russian Federation:

- Administrative sanctions applicable to parties managing the ABs shall be imposed for:
  - failure to perform actions intended to accumulate a FBR of an AB;
  - breach of duty, when transferring management of an AB to another entity (in case the method of management or a management organization are changed), to transfer the funds in a FBR to a bank account opened by the new management entity;

- Administrative sanctions shall be imposed on and applicable to:
  - parties managing ABs in default on obligation to hold regular inspections of the common property in an AB for evaluation of its technical condition and of compliance with mandatory safety requirements and/or to inform residential property owners on the condition of the common property and/or to work out proposals for carrying out CR or reconstruction of a given AB;
  - residential property owners in an AB for failure to make a decision to carry out and/or to finance CR works in an AB required to eliminate the danger to safety of dwelling in an AB.

B. A procedure shall be established for issuing instructions to rectify the discovered violations of legislation on the maintenance and capital repairs of apartment buildings and for imposition of administrative penalties subject to existing obligations and faults of respective parties.
I.5. OTHER REQUIRED AMENDMENTS TO LEGISLATION

I.5.1. Amendments to the law «On the Housing Stock Privatization in the Russian Federation»

To solve the problem of identification of persons-beneficiaries under the legalized obligation of local self-governance bodies to conduct capital repairs of ABs as former landlords and owners of the housing stock (see Report 1, section 6), it is recommended to make amendments to Article 16 of the Law "On the Housing Stock Privatization in the Russian Federation". These amendments consist in the following:

- It should be specified that the former lessor's duty is owed to individuals only, i.e. to the former residential tenants who directly participated in housing privatization, and is not applicable to all other residential property owners whose ownership emerged on other grounds;
- It should be specified that the duty of the former lessor to participate in co-financing of CR in ABs is owed to individuals only, i.e. to former municipal housing tenants, and that such duty exists only if it is established 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;
- It should be established that the duty of a former lessor is not to directly carry out capital repairs but to finance capital repairs of an apartment building and that only inasmuch as it concerns residential properties owned by persons whom the duty of a former lessor, defined according to the above procedure, is owed to;
- It should be specified that the obligation of the former lessor to finance CR in an AB is to be fulfilled only if a resolution is adopted by the general meeting of residential property owners in a given AB on execution of capital repairs and their costs.

I.5.2. Required amendments to the Code of Civil Procedure of the Russian Federation

In order to efficiently apply measures for collection of CR payment arrears and other overdue mandatory payments by residential property owners in an AB (see Report 2, sections II.1.1.5 and II.3.5) it is proposed to amend the Code of Civil Procedure of the Russian Federation as follows:

- The possibility should be legislatively established to levy execution, based on a judicial order, upon residential property as the only place of residence in the event that the owner of such residential property fails to fulfill obligations as to making payments for maintenance and repair of an AB.
- The procedure for levying execution upon residential property as the only place of residence of an owner due to CR payments in arrears and other mandatory payments in arrears shall be defined.
- A simplified procedure shall be established for adjudication of claims from entities managing ABs for recovery of overdue payments for maintenance and running repairs of an AB, overdue utility bills and overdue payments for capital repairs of an apartment building.
II. SECURING THE POSSIBILITY TO RAISE LOANS FOR FINANCING OF CAPITAL REPAIRS (RECONSTRUCTION) OF APARTMENT BUILDINGS

It is assumed in the proposed “combined” structure of CR financing that bank loans raised against the amounts of funds collected by means of CR payments from residential property owners in ABs and accumulated in a FBR will become the main source of financing comprehensive CR and energy-efficient upgrading (reconstruction) of ABs in Russia (see Report 2, section II.1.2).

In order to raise loans from commercial banks for financing capital repairs (reconstruction) of apartment buildings it is necessary to secure the possibility for a party managing an AB (Homeowners' Association or a management organization) and acting on the basis of a resolution of the general meeting of residential property owners in an AB, to obtain a loan guarantee and also to improve the reliability of such a party as a borrowing entity.

To handle these problems it is proposed to make amendments to the Housing Code of RF and to draft a federal law on the guarantee agency (see Report 2, sections II.1.2 and II.3.3).

II.1. REQUIRED AMENDMENTS TO THE HOUSING CODE OF THE RUSSIAN FEDERATION

II.1.1. Decision making on raising loans for capital repairs of an apartment buildings

It is proposed to make amendments to the Housing Code of RF (new Article 158) establishing that, given any method of management of an AB:

- Decision-making on raising a loan for CR (reconstruction) of an AB and instructing a party managing the AB to apply to a lending institution for a loan which is supposed to be repaid by means of CR payments from residential property owners in the AB accumulated in the FBR shall be assigned to the exclusive competence of the general meeting of residential property owners in an AB;

- The decision to raise a loan for CR (reconstruction) of an AB is made by a majority of votes of residential property owners in an AB;

- The obligation to repay a loan raised for CR by the entity managing the AB pursuant to the decision of the general meeting of residential property owners is incurred by all residential property owners in such an AB, including those persons who voted against such a decision at the general meeting or who even failed to participate in it.

II.1.2. Improving the reliability of a borrower

Entities managing ABs, i.e. Homeowners' Associations or management organizations which will represent residential property owners in ABs when obtaining or repaying a loan raised for CR of such ABs, are entitled to apply to a bank for such a loan on behalf of residential property owners against obligations of the latter to make payments for CR of respective ABs.

Since the method of management of an AB, in accordance with the legislation, may be changed by resolution of the general meeting of residential property owners and the term of the management agreement is limited and a management organization may be replaced by another...
one and a HOA may be liquidated, the risk emerges that within the validity period of the loan agreement the entity managing a respective AB can be replaced (see Report 2, section II.2.2). Under the proposed structure a loan is repaid by means of payments from residential property owners for CR of an AB and these funds are placed on a special bank account, i.e. a FBR-account of an AB, opened by a management organization or a HOA. In the event that the method of management of an AB is changed or the management organization is replaced, it is necessary to establish the procedure for transfer of rights and obligations associated with management of the FBR account of an AB to a new building management entity selected by residential property owners.

- It is proposed to make amendments to the Housing Code of RF (Article 161) establishing that within the period of repayment of a loan for CR (reconstruction) of an AB raised pursuant to a resolution of the general meeting of residential property owners the latter are obliged:
  - to notify the bank in advance about the intention to change the method of management of an AB or to replace the entity managing an AB in order to agree upon the procedure for the transfer of obligations under the loan agreement to the new managing entity;
  - to properly formalize the transfer of repayment obligations under the loan for CR of an AB to the new managing entity and to submit all necessary documents to the bank.

II.1.3. Changing legal status of a Homeowners’ Association

A Homeowners' Association is the best entity to represent residential property owners in an AB when obtaining a loan for building repairs since, in contrast to a management organization, it is established for an indefinite duration. Therefore, a HOA can assume obligations under long-term loans pursuant to a decision by residential property owners. However, the current Russian legislation on Homeowners' Associations has a number of substantial disadvantages which create the risks to stability of HOAs' existence as legal entities related to the legislatively established requirement to liquidate a HOA in the event that the number of votes of HOA-members becomes less than fifty percent of the total number of votes of all residential property owners in an apartment building. In order to improve the reliability of HOAs as a representative of residential property owners when raising a loan for CR of an AB it is necessary to change the legal status of HOAs which is currently defined as an association of residential property owners on the basis of voluntary membership (see Report 2, section II.3.5).

It is proposed to amend the Housing Code of RF (Section VI) as follows:

- A HOA shall be defined as an association of residential property owners in an apartment building which is not based on membership. The supreme managing body of a HOA shall be the general meeting of residential property owners in an apartment building;

- Stipulations in Section VI of the Housing Code related to membership of residential property owners in a HOA shall be omitted and amendments shall be made as to regulation of rights and obligations of a HOA as a legal entity, competencies of the board and of the chairman of the board of a HOA.
• As a condition for termination of activity of a HOA as a legal entity prior to repayment of a loan raised pursuant to a resolution of the general meeting of residential property owners in an apartment building, the requirement shall be established to select a new entity for management of an AB and to transfer rights and obligations associated with the disposal of funds on the FBR account of an AB previously opened by a respective HOA to such a new entity.

II.2. AMENDMENTS TO OTHER LEGISLATION FOR FURNISHING LOAN GUARANTEES

In order to secure the possibility for an entity managing an AB (Homeowners' Association or a management organization) to obtain a guarantee to raise a loan for CR (reconstruction) of an AB, it is proposed under the “combined” structure to establish, involving state participation, a Federal Guarantee Agency (on the basis of the reorganized State Corporation "Fund for Promotion of the Housing and Utility Sector Reform") with a network of branch offices in the subjects of RF (see Report 2, sections II.3.2 and II.3.3).

The purpose of establishing the Guarantee Agency is to develop a new popular loan product in the banking sector for making loanable funds by commercial banks available for capital repairs and improvement of energy performance of ABs.

The Guarantee Agency will have the following objectives at the stage of development of a new loan product:

- Definition CR (reconstruction) projects in ABs that are eligible for loan guarantees;
- Definition of requirements to a borrower for furnishing loan guarantees;
- Granting sureties to commercial banks on loans provided by such banks for CR (reconstruction) of ABs.

For the purpose of establishing the Federal Guarantee Agency involving state participation it is proposed to draft and to adopt a federal law on institution of a federal agency having the status of a state corporation to facilitate lending services for ABs which agency is supposed to define the goals and objectives and the procedure for establishment and operations of such a Guarantee Agency, including the procedure for lodging securities to lending institutions by way of guarantees for loans provided for CR (reconstruction) of ABs.

All issues relating to the activity of the Guarantee Agency will be analyzed in detail when the works envisaged for phase II of the project are implemented.
III. MEASURES OF STATE SUPPORT TO RESIDENTIAL PROPERTY OWNERS FOR EXECUTION OF CAPITAL REPAIRS (RECONSTRUCTION) OF APARTMENT BUILDINGS

It is presupposed in the proposed “combined” structure that budgetary funds provided as subsidies to HOAs and management organizations will be one of the sources for financing CR and improvement of energy performance of ABs. The subsidies should give an impetus to residential property owners in ABs to make decisions on carrying out CR in their ABs and to support the improvement of energy performance of ABs and to facilitate raising lending resources for these purposes.

It is suggested that subsidies will be more acceptable for purposes of co-financing projects on capital repairs or energy efficient upgrading of buildings when such projects imply loan mobilization. Moreover provision of budgetary funds is a temporary measure that is used to encourage owners to bring credits to the modernization of apartment buildings. The subsidies must be purpose-oriented and the amount of subsidies may be differentiated subject to urgency of a particular problem tackled in various periods of implementation of the long-term program for support of CR in ABs. Subsidies shall be provided on the most transparent terms with the criteria of selecting apartment buildings being clearly defined. The criteria specifying the comprehensiveness of building upgrading as well as indicators of energy efficiency enhancement after upgrading are recommended to be the key criteria for determination of the amount of budget support. In addition, it is expedient to provide state support to older buildings to a greater degree (see Report 2, sections II.1.3.1 and II.3.4).

Besides, for implementation of the “combined” structure it is proposed to introduce additional measures for support of low-income apartment owners to enable them to participate in CR financing along with other owners (see Report 2, sections II.1.3.2 and II.3.4). In addition, it is proposed, as an alternative approach to handling the problem of the disadvantaged owners, to legislatively extend the possibilities for deprivatization of apartments (municipalization of apartments) and the possibility for a "reverse mortgage" for owners who attained pensionable age. However, it ought to be noted that neither the possibility of a deprivatization nor the possibility of a "reverse mortgage" have a direct bearing on implementation of the proposed “combined” structure and that such possibilities should be considered separately.

III.1. PROCEDURE FOR GRANTING SUBSIDIES TO HOMEOWNERS’ ASSOCIATIONS AND MANAGEMENT ORGANIZATIONS FOR CAPITAL REPAIRS (RECONSTRUCTION) OF APARTMENT BUILDINGS

The applicable legislation offers a possibility for local authorities to allocate budgetary funds (grant subsidies) for CR of ABs to management organizations and HOAs (Clause 2, Part 1 of Article 165 of the Housing Code of RF). Also, no amendments to the current legislation are required to have the possibility of granting subsidies for CR and improvement of energy performance of ABs by subjects of RF using the funds from regional budgets as part of regional programs.

In order to improve the efficiency of municipal and regional programs for granting subsidies for
CR and reconstruction of ABs it is recommended to work out the Procedures for granting subsidies to Homeowners’ Associations and management organizations from regional and municipal budgets for capital repairs (reconstruction) of apartment buildings. This document can be adopted by competent federal executive authorities of the Russian Federation, e.g. the Ministry of Finance of the Russian Federation and the Ministry of Regional Development of the Russian Federation.

It is recommended to define the objectives, the procedure and conditions for granting subsidies to HOAs and management organizations for CR (reconstruction) of ABs using funds from regional and municipal budgets in the above Procedures (see Report 2, sections II.1.3.1 and II.3.4). For example:

The purpose of granting subsidies may be to support:

- energy auditing of an AB and issuing project documentation for comprehensive capital repairs (reconstruction) of an AB;
- execution of comprehensive CR (reconstruction) of ABs;
- execution of CR works in ABs which have been in operation for a long time (in order to restore safe conditions in ABs which FBR did not yet reach the amount required for financing of all works and/or raising a loan);

The conditions for granting subsidies may include:

- compliance with legislatively established standards of safety and/or energy efficiency of ABs achieved as a result of repairs;
- financing of repairs by residential property owners using own and borrowed funds within the established limits;
- selection of contractors for CR (reconstruction) of an AB by HOAs or management organizations on the basis of not less than three bids.

The recommended procedure for provision of budgetary funds may be as follows:

- A decision on granting budgetary subsidies for CR of a particular AB shall be made prior to the commencement of repairs (prior to the conclusion of a loan agreement);
- The funds under a subsidy shall be transferred to the recipient upon completion and acceptance of works for making the final payment to the contractor with due consideration of the actual amount of CR costs rather than the amount established in the decision on granting a subsidy.

III.2. MEASURES TO SUPPORT LOW-INCOME HOUSEHOLDS

III.2.1. Required amendments to the Housing Code of the Russian Federation

A. In order to enable the low-income apartment owners to participate in financing of CR (reconstruction) of an AB it is proposed to extend the existing housing subsidies program to finance rental and utility payments by including mandatory CR payments into subsidized...
expenditures of residential property owners. In order to put this proposal into practice it is necessary to make amendments to the Housing Code of RF (new Article 159) stipulating that:

- mandatory payments for capital repairs of an apartment building are included into subsidized rental and utility payments by residential property owners;
- the regulations for granting subsidies to the disadvantaged families (single persons) for financing CR of an AB and/or for making payments to accumulate funds in a FBR shall be established by the Government of the Russian Federation.

B. Pursuant to the current legislation, a municipality is authorized to take ownership of residential units only from former tenants of municipal (state-owned) apartments and not from all owners (individuals) who are unable to bear the burden of maintenance of their residential real estate. In addition, the possibility of deprivatization of residential property is limited by the validity period of the law on housing stock privatization. Consequently, the problem of "poor owners" also requires a change in legislation for its solution. In order to enable low-income individuals who have no possibility to bear the burden of costs associated with CR (reconstruction) of an AB to transfer the ownership of their residential units to municipalities it is recommended to make an amendment to the Housing Code of RF (new Article 32) establishing that:

- an individual, i.e. a residential property owner, is entitled - voluntarily and on non-repayable terms - to transfer the ownership of his/her residential unit (owned by the right of private property) to the respective municipality in which territory such a residential unit is located, regardless of the time and method (title) of acquiring the ownership of such a residential unit by reserving the right to use this residential unit on social rent terms.

III.2.2. Other required amendments to legislation

Establishing the mechanism of "reverse mortgage" (life rent) for senior individuals requires drafting and adoption of a special federal law.

The lack of such a law is not a barrier to implementation of the proposed “combined” structure of financing capital repairs (reconstruction) of apartment buildings.
CONCLUSION

1. The analysis of required amendments to the current legislation for successful implementation of the proposed “combined” structure of financing CR (reconstruction) of ABs described in this report has revealed that most of the amendments have to be made to the Housing Code of RF. Other required amendments to various federal laws are supplementary. Due to this, it is advisable to prepare most of the required legislative changes as a draft Federal Law "Concerning Amendments to the Housing Code of the Russian Federation and to certain legislative acts of the Russian Federation with regard to securing financing of CR in ABs".

2. For the purpose of establishing the Federal Guarantee Agency involving state participation intended to facilitate lending services for capital repairs (reconstruction) of apartment buildings it is proposed to draft and to adopt a federal law on institution of such a Federal Agency having the status of a state corporation to facilitate lending services for ABs which law is supposed to define the goals and objectives and the procedure for establishment and operations of such a guarantee agency.