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The Role and Place of Federal State Unitary Enterprises in the Sphere of State Property Management

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ABSTRACT

The article is devoted to the problem of the organization of professional management of objects of the treasury of the Russian Federation in the light of the goals and objectives defined by the State Program "Federal Property Management" approved by the Government of the Russian Federation, in terms of securing property on the right of economic management for federal state unitary enterprises (FSUE) under the jurisdiction of the Federal Agency for State Property Management (Rosimushchestvo), in order to maintain the objects in proper condition technical condition, commercial use, reduction of facilities, not involved in economic turnover, replenishment of the federal budget. The purpose of the work is to propose ways to organize a management mechanism at the federal level aimed at using extra-budgetary mechanisms for maintaining federally owned facilities or properties and involving them in economic turnover with the involvement of commercial organisations – FGUP. The proposed ways and methods of management may allow using a more flexible mechanism for the extra-budgetary maintenance of federally owned real estate objects, their commercial use, involvement in economic turnover, with the transfer of part of the income received to the federal budget or their use for the purchase of both real estate objects for state needs based on a decision of the Government of the Russian Federation and movable property with subsequent transfer to the Treasury of the Russian Federation.

Keywords: property of the state treasury of the Russian Federation; federal state unitary enterprises; real estate objects in federal ownership; involvement of real estate objects in economic turnover

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THE PLACE OF FEDERAL STATE UNITARY ENTERPRISES OF THE FEDERAL AGENCY FOR STATE PROPERTY MANAGEMENT (ROSIMUSHCHESTVO) IN THE MANAGEMENT OF FEDERAL PROPERTY

The Federal Agency for State Property Management (Rosimushchestvo), in accordance with the functions assigned to it, is the subject of management in relation to the object of management, which is the federally owned property of the State Treasury of the Russian Federation. The objects of management are the federal property of the Russian Federation, including immovable and movable property not assigned under the right of economic management to Federal State Unitary Enterprises (FSUE) and not assigned under the right of operational management to federal subordinate authorities and their treasury enterprises [1].

An important role in the management of federal property is performed by Federal State Unitary Enterprises [2–11] established under the authority of the Federal Property Management Agency on the ground determined by the Federal Law No. 161-FZ dated November 14, 2002.¹

Federal State Unitary Enterprises are assigned real estate objects under the right of economic management, which are leased and the proceeds of which are used to replenish the revenue part of the federal budget of the Russian Federation, which is used for repairs, restoration of the assigned real estate objects and other purposes determined by the owner.

BASIC LEGISLATIVE AND REGULATORY DOCUMENTS GOVERNING FSUE ACTIVITIES

In order to maintain the state property in good condition, the legislative and regulatory

framework establishes restrictions on the activities of unitary enterprises without the consent of the owner of the property, which are also aimed to ensure the efficient use of property for implementation of goals and objectives determined by the federal authority [12–14].

In accordance with Article 113 of the Civil Code² of the Russian Federation (hereinafter referred to as CC-RF), a unified enterprise is a commercial organisation that does not have the right of ownership of the property transferred to it by the owner. The Federal Law No. 161-FZ stipulates that the owner of the property sets up the charter fund of the enterprise, determines goals, main types of activity, main indicators of financial and economic activity and economic efficiency, controls the activity and safety of the property complex, as well as performs other activities of the founder of a unitary enterprise. Any activity with the property of the enterprise, which is not coordinated with the founder, any large transactions, or loans are banned by the law [4, 8, 15].

The Resolution of the Russian Federation dated 03.12.2004 No. 739³ establishes that the powers of the owner of the property of unitary enterprises are exercised by the federal executive authorities under whose jurisdiction they are subject. The powers of the owner are specified to establish a certified fund, appoint an auditor of the enterprise, or approve transactions with property, etc.

The Resolution No. 228⁴ of April, 10 2002 by the Government of the Russian Federation

² The Civil Code of the Russian Federation (part 1) of Nov. 30, 1999 No. 51-FZ (Edition of March 11, 2024), p. 113. URL: https://www.consultant.ru/document/cons_doc_LAW_5142/

³ Resolution of the Russian Federation dated 03.12.2004 No. 739 “On the Powers of Federal Executive Authorities to Exercise the Rights of the Owner of the Property of a Federal State Unitary Enterprise”. URL: <https://base.garant.ru/187622/>

⁴ Resolution No. 228 of April, 10 2002 by the Government of the Russian Federation “On the Measures to Improve the Efficiency of the Use of Federal Property Assigned in the Economic Management of Federal State Unitary Enterprises”. URL: <https://base.garant.ru/12126413/>

¹ Federal Law No. 161-FZ dated November 14, 2002 “On State and Municipal Unitary Enterprises”. URL: https://www.consultant.ru/document/cons_doc_LAW_39768/

formally established the framework for the development and approval of Activity Programmes, as well as the allocation of profits to the federal budget. The resolution stipulates that Federal Executive Authorities (FEA) are responsible for approving the development of strategies for unitary enterprises in the framework of their jurisdiction, within a timeframe of 3 to 5 years. The share of profit is determined by the decision of the relevant federal executive authority to be transferred to the federal budget by no later than the 1st of May. The abovementioned amount is of no less than 50 per cent of the profit remaining at the disposal of the enterprise after taxes and other mandatory payments [3, 4, 12–15].

In the event of stable profitable work by the enterprise and the need to increase revenues to the federal budget, a share of profit exceeding 50 per cent may be transferred. In a similar way, it is possible to withdraw and transfer to the budget any additional profit derived from highly liquid property.

The joint order of the Ministry of Economic Development of the Russian Federation and the Ministry of Finance of the Russian Federation No. 96/30n⁵ dated March 10, 2011 was issued to approve the procedure for submission of documents by Federal State Unitary Enterprises, Federal State Enterprises and Federal State Institutions in regards of coordinated decisions on writing off a federal property transferred to them under the right of economic or operational management. This was another step to ban and guarantee unjustified sale of federal property.

⁵ Joint Order of the Ministry of Economic Development of Russia and the Ministry of Finance of Russia as of 10.03.2011 No. 96/30n. "On Approval of the Procedure for the Submission by Federal State Unitary Enterprises, Federal Treasury Enterprises and Federal State Institutions of Documents for the Approval of Decision to Write Off Federal Property Assigned to Them by the Right of Economic Management or Operational Management". URL: <https://base.garant.ru/12183798/>

In accordance with the Federal Law No. 223-FZ⁶ as of July 18, 2011, state unitary enterprises are allowed to make purchases and the federal executive authorities exercise control over the purchases.

Thus, legislative and regulatory acts to ensure the ability of controlling over the performance of only those activities that are determined by a federal body and are carried out strictly in the interest of the state.

According to Federal Law No. 161-FZ, the General Director is in charge of the entity and responsible for management of the unitary enterprise. The appointment is based on the results of a competition held in accordance with the Order on Conducting a Competition for the Position of Head of a Federal State Unitary Enterprise, approved by the Government of the Russian Federation dated 16.03.2000 No. 234,⁷ by the order of the head of relevant federal executive body. The General Director is subject to certification.⁸

General Director of a unitary enterprise reports on the enterprise's activities in accordance with the procedure approved by Resolution No. 1116⁹ of the Government of the Russian Federation as of October 10, 1999.

Thus, the regulatory documents establish the procedure by which the federal executive authority of a subordinate unitary enterprise appoints, certifies and controls the work of a General Director under the current situation.

⁶ Federal Law No. 223-FZ "On the Procurement of Goods, Work and Services by Certain Types of Legal Entities". URL: https://www.consultant.ru/document/cons_doc_LAW_116964/

⁷ Resolution of the Government of the Russian Federation No. 234 as of 16.03.2000 "On the Procedure for Concluding Labour Contracts and Certification of Managers of Federal State Unitary Enterprises". URL: <https://base.garant.ru/181844/>

⁸ Ibid.

⁹ Resolution of the Government of the Russian Federation of 4.10.1999 No. 1116 "On Approval of the Reporting Procedure for the Heads of Federal State Unitary Enterprises and Representatives of the Interests of the Russian Federation in the Management Bodies of Joint Stock Companies". URL: <https://base.garant.ru/181015/>

The Government of the Russian Federation has approved the Regulation on the conditions of remuneration for labour of enterprises' managers¹⁰ (Resolution of the Government of the Russian Federation No. 2 of January 2, 2015). This establishes the maximum level of the ratio between the average monthly salary of the heads, deputy heads, chief accountants of enterprises and the average monthly salary of rank-and-file employees of the enterprise. This ratio in proportion of 1:8 is determined by a regulatory act of a federal executive body.

The Resolution of the Government of the Russian Federation No. 234 dated April 3, 2008¹¹ establishes prohibitions for federal executive authorities to approve transactions related to the disposal of federally owned land plots, to hold auctions to attract investments in land plots and real estate objects located on them. The Resolution defined the exception list of plots and real estate objects to which these prohibitions do not apply. In other words, such transactions involving immovable property and land plots are prohibited.

As can be seen from the above, an entire regulatory framework has been created, which is designed to ensure the effective management by unitary enterprises of federal property and the safety of property [16–20].

MAIN FUNCTIONS OF THE FEDERAL STATE UNITARY ENTERPRISE FOR STATE PROPERTY MANAGEMENT

One of the unitary enterprises of Rosimushchestvo is the Federal State Unitary Enterprise "Directorate for Investment Activities". In accordance with the Charter, the unitary

enterprise is in charge of the following functions:

- conducting the inventory of property to be recorded in the Register of Federal Property [21];
- the operation and maintenance of buildings, structures, premises and other facilities assigned to the enterprise under the right of economic management;
- investment activities, capital investments, repair and construction works, acting as a contractor, or customer and developer in construction and reconstruction, major and current repairs;
- restoration and involvement in economic turnover of unused, used inefficiently or not for the intended purpose federal objects [22];
- leasing of real estate objects;
- preparation of justifications and proposals for the sale of objects assigned to the enterprise by the right of economic management in accordance with the established procedure;
- provision of administrative, consulting, organisational and economic services aimed at improving the efficiency of real estate use;
- implementation of all types of transactions in the real estate market, execution of transactions with real estate objects which require a green-light from Roscomimushchestvo etc.;

The following section will examine its main functions in more detail.

Conducting inventory of property listed in the Register of Federal Property. A Federal State Unitary Enterprise has more flexibility, including in terms of entering into agreements and payment for services in searching for objects that belong to federal property in order to put them on cadastral registration and entry in the Register of Federal Property. The reason for this is that the

¹⁰ Resolution of the Government of the Russian Federation No. 2 dated 02.01.2015 "On the Conditions of Remuneration of Labour of the Heads of Federal State Unitary Enterprises" (as amended and supplemented). URL: <https://base.garant.ru/70836142/>

¹¹ Resolution of the Government of the Russian Federation No. 234 of April 3, 2008 "On Ensuring Housing and Other Construction on Federally Owned Land Plots" (as amended).

receipt of funds from the federal budget for these purposes deals with their availability and with significant time-frame terms of their possible receipt. In the absence of a guaranteed positive result from it, the expenditure of federal budget funds is not possible [21].

Operation and maintenance of buildings, structures and other facilities assigned to the enterprise under the right of economic management. The Federal Agency for State Property Management assigns real estate objects to Federal State Unitary Enterprises under the right of economic management. The land plots under these objects are leased out.

The following categories of immovable property are assigned: firstly, objects that were part of the property complex of corporatised enterprises but were not subject to privatisation (as a rule, social, cultural and those of defence and mobilization purpose, or those of especially dangerous character). Secondly, immovable property that is not leased out by the territorial bodies of the Federal Property Management Agency and not included in the Forecast Plan or programme of privatisation and in the list of immovable property subject to privatisation approved by the Ministry of Finance of Russia. Thirdly, objects which require repair or to be written off, and this subsequently leads to high costs and expenses [23].

The State Programme of the Russian Federation “State Property Management”¹² calls for an annual increase in the ratio of treasury objects involved in economic turnover to their total number as a target indicator, which is possible, among other things, through the assignment of federal unitary enterprises under the rights of economic management.

¹² Resolution of the Government of the Russian Federation of 15.04.2014 No. 327 “On Approval of the State Programme of the Russian Federation “State Property Management” (as amended on 10.02.2017). URL: <https://www.law.ru/npd/doc/docid/420396566/modid/99>

At this point, the following question arises: why not entrust to Federal State Unitary Enterprises the responsibility to implement the State Programme allocation of all real estate property in the Treasury that is not claimed by federal bodies and organisations? This would lead Federal State Unitary Enterprises to carry out work on ownership with leasing, repair and renovation, write-off, privatisation, transfer to another larger scale, for example, to the regions of the Russian Federation etc.

In fact, the Treasury holds a great number of low-liquidity or illiquid property, which is not needed by federal bodies and organisations, as well as by regions, territorial bodies and private entities. Unitary enterprises, being commercial organisations, bear financial costs not only for maintenance and renovation (including utility payments and fees for capital repairs), but also pay annual real estate tax and a fee for the lease of the land plot under the real estate objects. This is why a company, which owns a significant amount of illiquid properties, could potentially end up with decline in financial and economic activity, which could eventually result in the enterprise becoming insolvent. This, in turn, would only aggravate the issue of illiquid real estate for the Treasury of the Russian Federation [1,7,23,24].

Investment activities, capital investments, repair and construction works, fulfilment of functions of the customer-developer in construction and reconstruction, capital and current repairs; restoration and involvement in economic turnover of federal property unused, used inefficiently or not for their intended purpose [22, 25, 26].

Federal State Unitary Enterprises have much more capacity and efficiency for carrying out repair and construction works at assigned facilities when compared to budgetary bodies and organisations, because the latter

need to go through several stages to obtain funds for such activities.

At the first stage, it is necessary to justify the need to spend budget funds for the development of the project and then receive these funds. After creating the project and its feasibility study, it is necessary to pass an expert examination in the Main State Expert Department (Glavgosexpertiza), where its experts professionally evaluate the project, the technologies, materials and the final cost of the works. If any comments, or necessary changes arise for the prepared project, all this needs to do over again. Then Glavgosexpertiza finally gives a greenlight, the Ministry of Finance of Russia should be contacted again to obtain the necessary budgetary funding for the project. The whole process of obtaining budget funds may take several months or even years, and there's no guarantee, that the required funds will be allocated [22,27].

The income received as a result of commercial activities may also be used for the construction of real estate for own needs, for subsequent transfer to the treasury of the Russian Federation and for assignment to federal executive bodies or their organisations that require additional space to accommodate their employees. In addition, funding for the accommodation of federal bodies and organisations may be provided by the Government of the Russian Federation, which at its discretion, allocate funds from its own extra-budgetary reserves for the purpose of purchasing real estate objects.

Leasing of real estate. Real estate under the economic management of unitary enterprises is leased out for commercial purposes in accordance with the procedure established by law. An independent assessment of the rental value of each real estate object is carried out [27]. On the basis of results of electronic tenders, estate objects are leased usually to the bidder who offered the highest price for

rent, which is reviewed annually and adjusted either on the basis of a new valuation report prepared by an independent expert, or on the basis of the annual inflation rate.

Preparing justifications and proposals for the sale of federal property transferred to the company under the right of economic management in accordance with the established procedure. Like any commercial enterprise, real estate objects transferred to the right of economic management should be profitable. Objects that are not in commercial demand, and not rented out, therefore generate losses for the enterprise in the form of property taxes, rental payoff for the land under them, or generate income below the cost of their maintenance. If so, they should be subject to privatisation.

At the same time, as mentioned above, Resolution of the Government of the Russian Federation dated April 3, 2008 No. 234¹³ prohibits the Federal State Unitary Enterprise from approving transactions on alienation of real estate objects.

In these conditions, the following options are available for privatisation of real estate transferred under the right of economic management: sending a waiver of the right of economic management of the generating-losses real estate objects to the Federal Property Management Agency and transferring this property to the Treasury of the Russian Federation.

Subsequently, privatisation of the objects is carried out in accordance with the mechanism provided for by the legislation in force: either by including them in the forecast privatisation plan (programme) approved by the Government of the Russian Federation, or by including them in the object's lists subject to privatisation and

¹³ Resolution of the Government of the Russian Federation as of 03.04.2008 No. 234 "On Ensuring Housing and Other Construction on Federally Owned Land Plots" (as amended and supplemented). URL: <https://base.garant.ru/12159666/>

approved by the Ministry of Finance of the Russian Federation.

It is also provided that a Federal State Unitary Enterprise in coordination with The Federal Agency for State Property Management Rosimushchestvo, submits these objects in the application list for consideration by the Government Commission for the Development of Housing Construction. On the basis of its decision, the objects are sold by the joint stock company DOM.RF. The Federal State Unitary Enterprise receives the bulk of the proceeds.

In accordance with the Order of Rosimushchestvo, movable property is allocated to federal state enterprises, including physically dilapidated vehicles (previously allocated to federal executive bodies and their organisations that have reached the end of their normal service life, for the purpose of further sale or disposal. After allocation, the objects run through an independent evaluation procedure and are sold by auction. Movable property that has no prospects of being sold for further use is subject to scrapping.

DEVELOPMENT OF ACTIVITIES OF FEDERAL STATE ENTERPRISES

Involvement of real estate objects in economic turnover. Analysing the properties proposed as collateral leads to the conclusion that, probably, they are not fit for the economic turnover through rental, as they are mostly unattractive from a commercial point of view.

Real estate objects that are not leased out due to lack of demand can be brought into economic turnover by selling them by means stipulated by the current legislation. They require maintenance costs and generate losses for the enterprise. If it is utterly impossible to lease them out after using all additional opportunities of the unitary enterprise, one may get them involved in economic turnover by means of renunciation of the right of economic management. Subsequently, the objects are transferred to the Treasury of

the Russian Federation for further inclusion in the Forecast Plan (programme) of privatisation and sale with involvement of all sales options provided for by the current legislation, namely: auction, public offer, and, in case of no demand, just sale without announcement of price, or, via some other above mentioned ways [2].

Expansion of sale and scrapping of movable property. At present, the Federal State Unitary Enterprise is working on the auto sales of movable property assigned under the right of economic management. These are mainly motor vehicles that have reached the end of their normal service life (for which the rights of operational management were terminated at the request of the former owners — ministries, administrative departments, State institutions) and assigned to the Federal State Unitary Enterprise under the right of economic management.

Sales of movable property objects may generate income manifold, if a large number of assigned movable property will be available for sale. For this purpose, it is required to inform federal executive bodies more widely about plans to scrapping dilapidated movable property. Thus, it will expand the flow of movable property that has outlived its normative term and is subject for scrapping.

Leasing property, the alienation of which from federal property is inexpedient, to small and medium-size businesses. In accordance with Federal Law No. 159-FZ¹⁴ of July 22, 2008, small and medium-sized businesses that lease an immovable property owned by the federal government may apply for its privatisation as a matter of priority. Such standard norm does not apply to immovable property fixed under the right of economic management.

Objects that have been transferred, or planned to be transferred to small and medium-sized enterprises, but alienation from federal

¹⁴ Federal Law No. 159-FZ dated 22.07.2008 "Regarding Specifics of Alienation of Immovable Property". URL: <http://www.kremlin.ru/acts/bank/27817>

property is not feasible, may be assigned under the right of economic management to a unitary enterprise or leased for a certain period of time until the need arises to use them for federal needs.

Disposal of written-off “frozen” construction objects. Pursuant to the Instruction of the Government of the Russian Federation No. MX-P13–4983 dated May 15, 2020, work is being carried out to reduce the number of “frozen” or construction-in-progress objects that are in federal ownership and accounted for in the register of federal property [1, 22, 28, 29, 30, 31, 32].

In vast majority, such objects are just metal frames. Their utilisation may be of commercial interest if the cost of the work is less than the cost of metal frames and other materials sold.

Such work not only will help the State to solve problem of cleaning up the territory formerly occupied by “frozen” or construction-in-progress objects, but also to generate income from the sale of construction materials

Streamlining organisation and strengthening control over existing business activities.

The increase in the number of leased properties requires the introduction and development of digital technologies that enable prompt monitoring of overdue payments for federal property by tenants and timely reassessment of lease payments. This would significantly improve the discipline of payment and, consequently, lead to an increase in payments collected. In case of delayed payments for the deadline exceeding the period stipulated in the lease agreement, it is necessary to send a pre-action letter immediately to demand repay debts, accumulated fines and penalties within a month. Next, upon expiry of this deadline and failure to pay, a statement of claim to the court should be sent. Such pre-trial measures at the preliminary stage would become already an effective method to improve

payment discipline.

Transfer of functions for the sale of real estate included in the Forecast Privatisation Plan (Programme) and commercial real estate. At present, the Federal Agency for State Property Management Rosimushchestvo as a federal body that, among other things, carries out commercial activities, such as leasing state property. Besides, starting from 2008, upon liquidation of Russian Federal Property Fund, a specialised State institution, Rosimushchestvo has been running auctions of property included in the Forecast Privatisation Plan (Programme) or included in the list of property for sale approved by the Ministry of Finance of the Russian Federation [2].

In our opinion, the functions of federal property management should be performed by the federal executive authority, and commercial functions may be delegated to a federal commercial organisation, in this case — to a Federal State Unitary Enterprise (FSUE). This is quite possible in current situation, since there is a decent system of control over the financial and economic activities of the FSUE.

Also, in our opinion, the Unitary State Enterprise under the Rosimushchestvo can manage the functions of leasing all commercial real estate owned by the Federal Government, provided that a Federal State Unitary Enterprise is entrusted to implement the plan for revenues to the federal budget from real estate leasing and privatisation.

In general, Federal State Unitary Enterprises, involved in the process of managing federal immovable and movable property, perform an integral part of this management and play a significant role in improving its efficiency, ensuring, among other things, increasing revenues in the federal budget.

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