

# VAS Presidium clarifies position regarding validity of mortgage over buildings

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In mid-November 2010 the Presidium of the Supreme Arbitrazh Court reversed the judgments of the lower courts and upheld a ruling of the Supreme Arbitrazh Court (the "VAS"). The VAS Presidium has confirmed that the invalidity of the land lease rights mortgaged under one agreement together with a building located on such land plot should not result in invalidity of the mortgage over such building. While in such cases the mortgage over the land lease rights is considered invalid by virtue of the invalidity of the land lease agreement, the mortgage over the building survives.

In its ruling the VAS came to the following conclusions:

1. The Russian law rule providing that a mortgage over a building is permitted only with a simultaneous mortgage, under the same agreement, over the rights (ownership or leasehold) to a land plot beneath such building (the "Rule") should apply only if at the moment when the mortgage over the building is created the owner of the building has registered ownership or leasehold rights to the land plot;
2. In the absence of the registered rights (ownership or leasehold) to the land plot, a mortgage over the building without simultaneous mortgage over the land rights should not be considered to contradict the Rule, and thus should not be considered invalid.
3. The invalidity of a mortgage agreement with respect to the mortgage over the land rights should not per se result in the invalidity of the mortgage over the building.

Thus the VAS Presidium has confirmed the position of many legal practitioners that where the owner of a building has no registered rights to the land plot on which such building is located, the owner can mortgage the building without any rights to the land plot.

The text of the VAS Presidium ruling under this case is not publicly available at the moment. More information and the texts of the judgments taken under this case can be found at [link](#).

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If you would like to know more about the subjects covered in this publication or our services, please contact:



[Victoria Bortkevicha](#) +7 495 725 6406



[Torsten Syrbe](#) +7 495 725 6400

To email one of the above, please use [firstname.lastname@cliffordchance.com](mailto:firstname.lastname@cliffordchance.com)

Clifford Chance CIS Limited,  
Ul. Gashka 6, 125047 Moscow, Russia  
[www.cliffordchance.com](http://www.cliffordchance.com)

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