

Client Update

Land Use and Development Rules Adopted in Moscow

MOSCOW

Alyona N. Kucher
ankucher@debevoise.com

Vadim Kolomnikov
vgkolomnikov@debevoise.com

Roman L. Sadovsky
rlsadovsky@debevoise.com

On 28 March 2017, the Moscow Government approved by its resolution, with immediate effect,¹ the Land Use and Development Rules of Moscow (the “LUDR”) that were officially published on 14 April 2017.² The LUDR will have an important impact on the real estate market, especially on developers and owners of properties, since the LUDR (along with the General Plan of Moscow)³ will have to be relied on when development projects are implemented. In particular, the LUDR establish such important conditions as types of permitted use of land plots and capital construction, maximum parameters of permitted construction (e.g., maximum number of floors and maximum height of buildings, maximum land use ratio), etc.

BACKGROUND

The Town Planning Code of the Russian Federation (the “TPC RF”) contains a provision introduced in 2014 stating that the land use and development rules of the federal cities are approved by the highest executive authorities of such cities.⁴

¹ Pursuant to Article 20(5) of Law of Moscow No. 25 dated 08 July 2009 on the Laws and Regulations of Moscow, resolutions of the Moscow Government take effect from the date of signing unless otherwise provided by a particular resolution of the Moscow Government.

² The official text of the LUDR and Resolution of the City of Moscow Government No. 120-III dated 28 March 2017 on the Approval of the Land Use and Development Rules of Moscow is available on the website of the Mayor of Moscow at <https://www.mos.ru/authority/documents/doc/36260220/>.

³ Law of Moscow No. 17 dated 05 May 2010 on the General Plan of Moscow.

⁴ Articles 32 and 63 of Town Planning Code of the Russian Federation No. 190-FZ dated 29 December 2004.

The provisions of the Town Planning Code of Moscow⁵ have been brought in compliance with this rule; therefore, the land use and development rules of Moscow are now approved or amended by the Moscow Government.

In other constituent entities of the Russian Federation apart from the federal cities, the municipal legislative branch, rather than the executive one, has such powers. Such difference in the procedure for approval of the land use and development rules in the constituent entities of the Russian Federation has recently been reviewed by the Constitutional Court of the Russian Federation which has upheld the constitutionality of the above provisions of the federal law giving the highest executive authorities of the federal cities the powers to approve the land use and development rules.⁶

The development of the LUDR in Moscow has been underway since 2009. At the end of 2016, the draft LUDR were posted on the Official Internet Portal of Moskomarkhitektura and public hearings were announced and held in administrative districts of Moscow during the period of December 2016 to March 2017. Pursuant to the Law on the Entry into Force of TPC RF, the LUDR must be adopted in Moscow by 01 July 2017; however, the LUDR were approved earlier than envisaged by the law.⁷

SCOPE, STRUCTURE AND AREA COVERED BY THE LUDR

The LUDR include a general conditions section and a territorial section containing the following information:

- the general conditions section contains text materials (general provisions, procedures for applying and amending the LUDR); and
- the territorial section contains text materials and graphics (development regulations and land use maps).

⁵ Article 34 of Law of Moscow No. 28 on the Town Planning Code of Moscow dated 25 June 2008.

⁶ Ruling No. 10-II of the Constitutional Court of the Russian Federation dated 28 March 2017 in Case for the Review of the Constitutionality of Article 63(4.1) of the TPC RF and Article 23 of Federal Law on Amendments to the CAO RF and Amendment of Certain Legal Acts of the Russian Federation and on Deeming Certain Provisions of Legislative Acts of the Russian Federation Inoperative Due to Adjustment of Powers of Governmental Authorities and Municipal Bodies Pertaining to State Control/Oversight and Municipal Control in connection with a request of the Saint Petersburg Legislature.

⁷ Article 4(1) of Federal Law No. 191-FZ on the Entry into Force of the Town Planning Code of the Russian Federation dated 29 December 2004.

One of the most important components of the LUDR is development regulations for respective territorial zones applicable to land plots and capital construction. The development regulations include, inter alia:

- types of permitted use of land plots and capital construction;
- maximum parameters of permitted construction and redevelopment of capital construction, in particular, density of development; maximum number of floors and maximum height of buildings, structures and installations; and maximum land use ratio within the land plot boundaries; and
- restrictions on the use of land plots and capital construction.

The LUDR apply to the entire territory of Moscow, with the exception of the Troitsk and Scherbinka Town Districts and Skolkovo Innovation Centre for which separate documents will be adopted.

RELATIONSHIP BETWEEN THE LUDR AND THE LAND PLOT DEVELOPMENT PLAN

Prior to the adoption of the LUDR, real estate properties in Moscow were developed in accordance with a land plot development plan (the “LPDP”) issued by Moskomarkhitektura, which constituted a land development plan document and defined, inter alia, types of permitted use of land plots and capital construction and permitted parameters of construction on land plots.

Effective 01 July 2017, the LPDP ceases to be a land development plan document and becomes a development information document, i.e., in fact, an extract from the LUDR.⁸ Therefore, the LPDP issued in respect of a specific land plot will include information from the respective development regulations contained in the LUDR. A special article of the TPC RF (Article 57.3) describes requirements for the LPDP and, in particular, defines the details to be included in the LPDP. The LPDP is valid for three years. However, an LPDP issued no earlier than three years prior to applying for a construction permit will be required to obtain such construction permit (Article 51(7)(2) of the TPC RF).

⁸ Federal Law No. 373-FZ on Amendments to the TPC RF, Certain Legislative Acts of the Russian Federation Regarding Improvements in the Legal Regulation of Preparation and Approval of the Site Design Documentation and Promotion of Integrated and Sustainable Development of Territories, and Repeal of Certain Provisions of the Legislative Acts of the Russian Federation, dated 3 July 2016.

PROCEDURE FOR AMENDING THE LUDR

Amendments may be made to various provisions of the LUDR. Such amendments to the LUDR may be initiated by:

- federal executive bodies;
- Moscow City Duma, deputies of the Moscow City Duma, executive bodies of Moscow;
- local municipal authorities; and
- individuals and legal entities in the established manner.

As a general rule, individuals and legal entities should submit their proposed amendments to various provisions of the LUDR to the City Commission on Town Planning, Land Use and Development of the Moscow Government. Public hearings will be held in respect of the proposed amendments, unless no public hearing is required pursuant to the LUDR and/or laws and regulations. Upon the public hearings, the Moscow Government may approve the proposed amendments to the LUDR.

Therefore, the LUDR approved in Moscow have become one of the principal documents for the implementation of development projects. The LUDR lay down the current development parameters in Moscow, and, in particular, include the previously approved and effective LPDP and site design plans.

The General Plan of Moscow will be adjusted based on the LUDR.

If the LUDR do not meet the requirements of developers for the implementation of construction projects, developers may seek to amend various provisions of the LUDR and set forth any necessary development parameters.

* * *

Please do not hesitate to contact us with any questions.