

Reform Highlights, Trends and Developments in Real Estate and Construction in Russia

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The international law firm Debevoise & Plimpton LLP presents a brief overview of the key recent changes and trends in the development of legislation and court practice in the real estate and construction sectors in Russia.¹

Amendments in the Real Estate and Construction Sectors

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The key amendments in the real estate and construction sectors include the following:

- Starting from September 1, 2017, the procedure for obtaining permissive documentation has been significantly simplified; in particular, documents required for obtaining a construction permit and a commissioning permit are now filed by developers with the competent authorities only in electronic form if the design documentation and/or engineering survey reports were submitted for state expert review in electronic form as well;
- From January 1, 2018, the procedure for non-state expert review of design documentation has been optimized—the design documentation and engineering survey reports are submitted for expert review only in electronic form via the website of the relevant expert organisation or via the user account in the Integrated Portal for State and Municipal Services, and the expert report is also issued in electronic form;
- In 2017, the Russian Government adopted Regulations abolishing more than 30 procedures related to connection of capital construction facilities to various utility networks. In particular, the procedure for connection to power, heat, water and gas supply networks and other utility networks has been significantly simplified; and

¹ The majority of matters described in this Client Update were discussed at a round table on optimization of construction procedures held by the Department of Town Planning Policy of Moscow on March 5, 2018 (the “Round Table”).

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- In March 2018, the Russian Government approved the Action Plan (“Roadmap”) for the Development of a Toolkit of Public-Private Partnership (“infrastructure mortgage”). The Roadmap provides for: the adoption of various regulations of the Russian Government and amendments to the legislation with a view of improving opportunities for the financing of construction and reconstruction of infrastructure; establishment of the Governmental Commission for the Infrastructure Development; creation of a register of completed, ongoing and proposed PPP projects and concessions and a register of projects for infrastructure construction and reconstruction; and preparation of a list of “pilot” PPP projects and concessions for the purposes of providing state support.

Trends in the Development of Legislation in the Real Estate and Construction Sectors

At present, there is a continuing trend toward optimizing and simplifying various administrative procedures relating to the regulation of construction. The initiatives that are in our view particularly significant include the following:

- Pursuant to Article 19 of Federal Law No. 218-FZ on State Registration of Immovable Property dated July 13, 2015, the authority that issued the commissioning permit shall provide relevant documents in electronic form to Rosreestr for filing a cadastral record in respect of the relevant real estate property within five business days. Introduction of a similar provision in respect of filing an application for state registration of title to immovable property is being currently discussed;² that should make significantly easier and faster the procedure for registration of title to newly constructed/reconstructed real estate property;
- It is intended to provide for the inclusion of engineering and geological survey records in the land plot development plan.³ Such amendment will permit developers to assess the properties of a land plot at the initial stage prior to conducting their own engineering survey;
- In 2017, Russian courts considered an important case affecting the PPP market on whether all concession holders’ costs for the construction and operation of a facility can be fully compensated by the treasury (the “Bashkir Case”) which jeopardized the implementation of many PPP projects, raising the issue of the relation between concessions and state procurement. To address this issue, the Ministry of Economic

² This information was discussed at the Round Table.

³ This information was also discussed at the Round Table.

Development drafted a bill that defines, *inter alia*, the concepts of capital grant and the concession provider's payment and activities related to the operation of the object of the concession agreement; it regulates choice of creditors to determine competitive terms of project financing; and it permits entering into PPP agreements in respect of movable property without reference to any immovable property.; and

- The procedure for the connection of capital construction facilities to power, gas, heat and water supply and water disposal networks is being reformed in Moscow, the Moscow Region and Saint Petersburg; such procedure will be arranged entirely in electronic form.

Trends in Court Practice

In late 2017 and early 2018, the Supreme Court of the Russian Federation (the “Supreme Court”) heard several important disputes for the real estate and construction markets. Below is a summary of decisions of the Supreme Court in these cases:

- The Supreme Court considered an interesting case related to the *superficies solo credit* principle (the building shall belong to the titleholder of the land) within the sale of certain premises in a building. According to the Court, if part of a building can be allotted together with a portion of the land plot and such portion of the land plot becomes a separate object of rights, such properties must be sold as one. If upon the sale of premises in a building it is not possible to allot a land plot to create a new object of rights, then the seller and the purchaser become joint owners of the land plot. The purchaser of the premises acquires a share in the ownership of the land plot by law upon registration of the transfer of title to the premises in the building;
- The Supreme Court considered a case on reclamation by a municipality of immovable property from a legal entity (ultimate purchaser) due to the invalidity of the chain of transactions for the acquisition of such property. The Court held that the property had left public ownership with the municipality's consent according to a sale and purchase agreement. The company, when acquiring real estate for consideration from a person whose title was confirmed by an entry in the register of immovable property, had no reason to doubt the seller's right to alienate the property or to know of any defects in the primary purchase agreement; and
- A judge of the Supreme Court, in her determination that there were no grounds to refer a case on recognition of the lack of title to parts of reclamation systems for hearing by the Judicial Chamber of the Supreme Court on Economic Disputes, upheld the findings of lower courts that such facilities (combination of pipes, open

trenches, etc.) did not have separate functionality, were created with a view of improving the quality of lands only, and serviced only land plots where they were located and thus constituted integral parts of the land plots rather than separate immovable properties. Therefore, even an entry in the register may not be a final confirmation that a particular property meets the criteria of immovable property established by the law.

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Please do not hesitate to contact us with any questions.

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