

BIRCH LEGAL

Legal alert

Latest amendments to the regulations on the activity of operators for comprehensive development of the territory

Rules governing concluding agreements with federal operators for CDT

On 22 July 2024, [Decree of the Government of the RF No. 846](#) established the rules for operators for comprehensive development of the territory (“CDT”) on how to conclude agreements with competent federal executive authorities, the highest executive body of a constituent entity of the Russian Federation, the head of local administration, in order to implement decisions on CDT adopted by the Government of the Russian Federation (the “Rules”) in accordance with parts 5 – 6 of Art. 71 of the Urban Planning Code of the Russian Federation (the “UPC RF”)^[1].

According to the Rules, such agreements include:

- information and conditions to be included in the agreement on the CDT in accordance with parts 4 and 6 (in case of CDT of the residential development) of Art. 68 of the UPC RF and
- information on whether the CDT can be developed independently by the operator and (or) through an agreement on the CDT concluded by the operator in accordance with Art. 69 of the UPC RF and (or) via the operator engaging its subsidiaries which purchase goods, works, and services in accordance with procurement legislation for the purpose of implementing the decision on the CDT,

which could also include other information and conditions (if applicable), e.g., conditions subject to inclusion in agreements on CDT in accordance with parts 5 and 7 of Art. 68 of the UPC RF.




If the authority to fulfill one or more terms of the agreement is vested in state bodies of a constituent entity of the RF and (or) local government bodies, the agreement is concluded, inter alia, with the highest relevant executive body of the constituent entity of the Russian Federation and (or) the head of the local administration of a municipal entity (municipal entities) in the territories where the implementation of the CDT is provided for in accordance with the decision of the Government of the RF.

The Rules approved by the Government of the RF came into force on **30 June 2024**. [According to the deputy chairman of the Government of the RF, Marat Khusnullin](#), they provide for the regulation and standardization of interactions with CDT operators and state authorities when performing complex construction projects which in turn reduce the timelines for completing both residential construction and the construction of the necessary infrastructure.

[1] The circumstances, content, and procedure for concluding and implementing an agreement concluded for the purpose of implementing a decision on an CDT adopted by the highest executive body of a constituent entity of the RF, the head of a local administration, are established by the highest executive body of a constituent entity of the Russian Federation (Part 7 of Art. 71 of the UPC RF)

We draw your attention to the fact that the term “operator for comprehensive development of the territory” was introduced into the UPC RF and defined by Federal Law of 25 December 2023 No. 627-FZ (which came into force on 1 January 2024) (hereinafter referred to as “**Law No. 627-FZ**”) as a legal entity determined by the Russian Federation or a constituent entity of the Russian Federation that ensures the implementation of the decision on the CDT (clause 34.1 of Art. 1 of the UPC RF).

An CDT operator can be a legal entity^[2] that:

-  was established by the RF (if the implementation of the decision on the CDT was adopted by the Government of the RF) or by a constituent entity of the RF (if the implementation of the decision on the CDT was adopted by the constituent entity of the RF or by the head of the local administration); or
-  has more than 50% of its authorized (share) capital owned by the RF or a constituent entity of the RF; or
-  has a subsidiary in whose authorized (share) capital more than 50% of the shares are owned by a legal entity specified in the items above (parts 1 and 2 of Art. 71 of the UPC RF)

The main aim of the amendments according to the [clarifications](#) to the bill was the equalization of the rights of legal entities that implement CDT on the basis of an agreement and CDT operators with whom, by virtue of paragraph 6 of part 7 of Art. 66 of the UPC RF, agreements on CDT are not concluded. Thus, the norms of Law No. 627-FZ eliminated a number of legislative gaps associated with the lack of CDT operators, for example, the right to independently make decisions on the preparation of documentation on territory planning (paragraph 1, part 1.1, Art. 45 of the UPC RF), to apply for the conclusion of contracts on utility connection (technological connection) (paragraph 3, part 5, Art. 52.1 of the UPC RF), and apply for the seizure of land plots for state or municipal needs (paragraph 1, Art. 56.4 of the UPC RF).

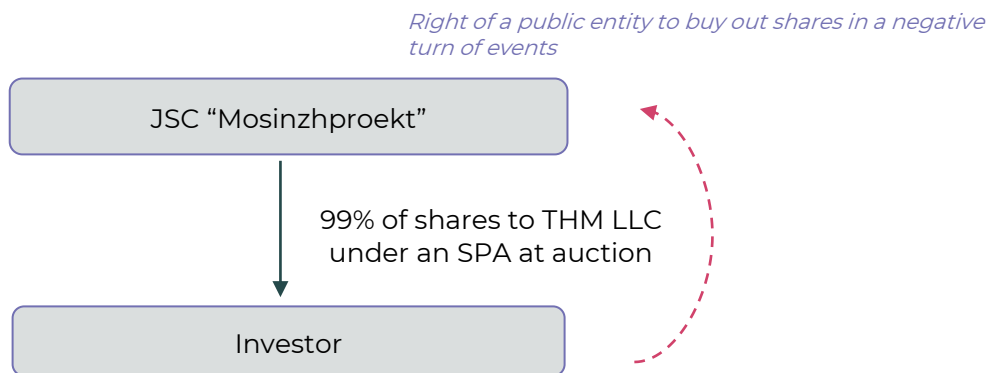
In addition, CDT operators were partially vested with public authorities. They were given the opportunity to make decisions on holding tenders for the right to conclude an agreement on an CDT (part 3.1, Art. 69 of the UPC RF), determine the organizer of the tender and conclude an agreement on the CDT based on the results of the tender. Also, if the CDT operator was leased a land plot that is part of state or municipal property for the purposes of implementing the CDT, he has the right to sublease it to the winning bidder without the consent of the lessor for a period not exceeding the term of his lease (part 3 Art. 71 UPC RF).

[2] Such business entities are classified as customers who, when carrying out activities, are required to comply with the requirements of the Federal Law of 18 July 2011 No. 223-FZ “On the procurement of goods, works, and services by certain types of legal entities.” It provides for both competitive methods of concluding agreements (bidding, auction, request for quotations, request for proposals and other methods specified in the procurement regulations) (para. 1 part 3.1 Art. 3) as well as noncompetitive methods (purchase from a single supplier (contractor) and other methods specified in the procurement regulations) (para. 2 part 3.1 Art. 3). However, the requirements of said law do not apply to such business entities in a number of instances, and the conclusion of agreements can be reached in accordance with the provisions of the Civil Code of the RF (part 4 Art. 1)

Features of regulations on the status of operators for CDT in Moscow

In addition, Law No. 627-FZ provides for the possibility in Moscow of independently establishing the specifics of project implementation carried out by CDT operators to be determined by the highest executive state authority in Moscow^[3]. Such specifics include, for example, the fact that the CDT operator, being a “joint venture” in accordance with the requirements of Part 2 of Art. 71 of the UPC RF, may at some point cease to comply with such requirements in terms of the public party’s participation while retaining the status of an CDT operator with all its rights and obligations (para. 4.7 (1) Procedure outlining the Moscow executive authorities’ interactions when carrying out the CDT of the non-residential development (approved by Resolution of the Moscow Government of 23 March 2021 No. 331-PP (the “**Procedure**”))).

Such an option is attractive to potential investors and resembles the THM model^[4]. It involves the city of Moscow’s creation of a limited liability company for the purposes of implementing the project (the names of such companies usually include the abbreviation “THM”, for example, THM Kuntsevskaya LLC, THM Kaluzhskaya LLC) and the alienation of 99% of the shares (owned by JSC “Mosinzhproekt”^[5]) in it at auction to private investors who will implement the commercial part of the project^[6] with the possibility of repurchase of the specified share in the event of the materialization of a negative scenario agreed upon by the company’s participants.



In the development of said norm of clause 4.7 (1) of the Procedure, Section 7 was added to the Regulations “On the procedure for the participation of the city of Moscow in business entities” (approved by Resolution of the Moscow Government of 5 September 2014 No. 511-PP): “The procedure for making decisions on participation in business entities for the purpose of implementing decisions on comprehensive development of territories in the city of Moscow”. In relation to the norms of this section, subsidiaries of the city of Moscow jointly with private investors create a project company for the purpose of implementing the CDT in which the share of the subsidiary of the city of Moscow (“main business entity”) may not be less than 51% and can be bought out by the investor on basis of an option agreement within three years from the moment of its conclusion.

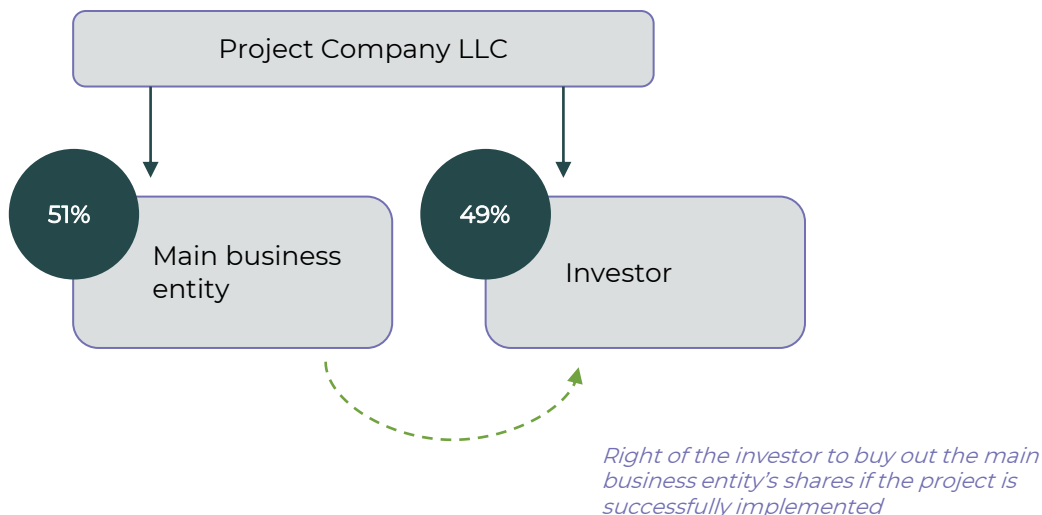
[3] Art. 4 of the Law of the Russian Federation of 15 April 1993 No. 4802-1 “On the status of the capital of the Russian Federation”

[4] Transport hub project model

[5] 100% of shares are owned by the Moscow City Construction Department

[6] The technological part of the THM is usually implemented by the city of Moscow

Particularities of regulations on the status of operators for CDT in Moscow



According to the process outlined in the Procedure:

the Department of Municipal Property of the city of Moscow, in relation to the decision taken at the meeting with the Mayor of Moscow's participation, makes the decision on:

- the creation of the **main business entity** (100% of shares are owned by the city of Moscow) as well as
- the creation of the **project company** (51% of shares are owned by the main business entity) on the basis of the main business entity's application (particularly, but not exclusively)^[7],

and then on the expediency of participants of the project company concluding a **corporate agreement** on the exercise of the project company's participants corporate rights and the **agreement on providing an option to conclude a purchase and sale agreement for the share of the main business entity** in the authorized capital of the project company^[8].

It is worth mentioning that there is no practice on the application of the abovementioned provisions as of today. At the same time, we believe that the regulations in Moscow concerning operators will continue to actively develop in the near future, and we will closely monitor all amendments to them.

[7] para. 7.1-7.2 of Section 7 of the Procedure

[8] para. 7.8, 7.18 of Section 7 of the Procedure

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