

NEW REGULATORY FRAMEWORK FOR CONSTRUCTION

Dear Reader,

After a number of postponements and amendments prior to coming into force, as of 1 October this year the new Construction Law and a number of Cabinet of Ministers regulations issued on the basis of the law have come into force. This newsletter prepared by the law office RAIDLA LEJINS & NORCOUS will provide information regarding the main changes of the new regulatory framework in comparison to the old Construction Law.

We will be happy to answer your specific questions or to assist in dealing with a particular construction law issue.

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With kind regards -



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Procedure for issuance and challenging of construction permit

One of the most significant problems of the old regulatory framework was related to the fact that protection of the public rights of third parties during the construction process was possible only after receipt of the construction permit even though the violation of the legal acts has occurred during the initial stages of the construction process (for example, issuance of a planning and design task which is incompliant with the territorial planning). Accordingly, a dispute regarding legal compliance of construction was initiated at the time when the customer (investor) has already invested significant amount of resources in elaboration of the design, has undertaken financing commitments, has entered into agreement with construction company and sometimes has already started construction. Thus the economic growth of the construction sector and attraction of foreign investors was jeopardized.

According to the new Construction Law, the construction permit is issued already at the very beginning of the construction process – within 1 month from submission of a construction application and the concept design to the Construction Board. The construction permit includes preconditions for design (virtually the same as the former planning and design task) and preconditions for commencement of construction works. After fulfilment of the preconditions it is allowed to start construction works. The following procedure for challenging the construction permit has been provided:

1. the municipality publishes an announcement in its homepage regarding issuance of construction permit, and the publication indicates the effective date of the construction permit;
2. customer is obliged to place a signboard on the land plot and inform the real estate owners whose properties are bordering the land plot to which the construction permit relates;
3. construction permit may be challenged within one month from the effective date;
4. the said term may be renewed by a higher institution if it is established that information of the society regarding the issued construction permit was apparently insufficient;
5. if all regulations on information of society have been observed, then the law does not provide a possibility for third parties to challenge the construction permit after the said one month deadline.

Accordingly, the customer may be assured that after expiry of the deadline for challenging of the construction permit and after fulfilment of all preconditions included in the construction permit it will be possible to start the construction works without concerns that, for example, some group for protection of environment or other social interests could delay or stop the project.

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Changes in the procedure of public discussion

So far, problems were caused also by the uncertainty concerning public discussion procedure of a building. Namely, individuals who expressed their views on the proposed construction often acted emotionally and did not justify their point of view with specific provisions of law. The municipality, in turn, could prohibit the construction on the basis of the results of the public discussion of the proposed construction. In addition, such decision was made by the votes of the municipality deputies, and the decision could contain no argumentation based on legal acts justifying the prohibition of the construction, and there was a possibility that the initiator of the construction had to argue against the subjective public opinion when challenging the prohibition decision.

Pursuant to the new regulatory framework public discussion will be allowed only in the following cases:

1. during the environmental impact evaluation;
2. during the territorial planning process (for example, during the development of a detailed plan);
3. in a specific case expressly provided in the Construction Law – if such construction is initiated next to a residential or public site which can create a substantial impact (i.e., smell, noise, vibrations and other types of pollution), but which is not subject to the environmental impact evaluation.

In the case referred to in sub-paragraph 3. above, the Construction Board ensures the public discussion of the proposed construction and only

then takes a decision on the construction of the proposed building. It should be noted that the municipality may define other cases in which public discussion of a proposed construction shall be held. Public discussion is not held if there is a valid detailed plan of the territory where the intended building is to be located.

The results of the public discussion may be used in order to include additional conditions relating to the environmental impact of the structure in the construction permit, but the law does not provide for the possibility to reject the issuance of a construction permit due to negative results of the public discussion.

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Construction State Control Office

The new Construction Law establishes the Construction State Control Office (hereinafter – the Office), which will be in charge of the construction state control (starting from 1 July 2015), as well as the supervision of the operation of public buildings (starting from 1 January 2015). Construction control will be carried out in respect of the following structures:

1. public buildings, which are intended for at least 100 persons;
2. buildings, which are subject to the environmental impact evaluation procedure;
3. buildings commissioned by the municipality, whose contract price exceeds 1.5 million euros.

The Office will also have such duties as the organisation of the expertise of construction projects and buildings in particular cases provided by the law, review of applications and complaints regarding substantial breaches of legal acts during construction process or in cases when the building has caused or may cause danger or substantial harm to human life, health, property or environment.

It will not be possible to challenge administrative acts issued by the state and municipalities in the Office. On the other hand, the decisions made by the Office itself may be challenged in the respective court according to the provisions of the Administrative Procedure Law.

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Supervision of the Structures Put into Operation

The law provides for the general principle that a building, which is put into operation, shall be used only in accordance with the designed type of use. It is also provided that the owner of the building shall ensure the maintenance of the building and its elements during its operation in order to comply with the essential statutory requirements (mechanical resistance and stability, fire safety, hygiene, safety and environmental protection, safety of use and environmental availability, acoustics, energy efficiency, sustainable management of natural resources).

Unlike the previous regulatory framework, the new Construction Law and Construction Regulations for Buildings clearly specify the procedure for the supervision of buildings, which are put into operation. The Construction Law provides that the building inspector is entitled to visit buildings or premises owned or used by natural and legal persons in order to control the compliance of the operation with the legal acts, including the existence of illegal construction and safety of the building. If access to the building or premises is not granted to the inspector, the access can be obtained with physical force in accordance with the decision of a district or city court judge. Based on the opinion of the building inspector, the Construction Board is entitled to take the following decisions:

1. to request the technical examination of the building, its part or the construction materials used in the building;
2. to request the removal of the detected hazard and to inform the respective municipality;
3. if the building is determined as dangerous – to prohibit its operation until the removal of the detected hazard;
4. if the building or separate premises are not used in accordance with the designed type of use – to prohibit the operation of the building or separate premises and to request the restoration of their previous condition.

The Construction Regulations for Buildings, adopted on the basis of the new Construction Law, provide that the owner of a public building is required to carry out the technical inspection of the building at least once every 10 years. If any visible damage to the building, which may reduce the strength or resistance thereof, is found during technical inspection, the owner shall take all necessary measures in order to remove such damage.

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Liability in construction process

The Construction Law clearly defines the liability of the participants of the construction process:

1. if a building under construction is owned by the landowner, the landowner is liable for the commencement of the construction works without a construction permit or before the conditions provided in the construction permit are met, as well as for the choice of a construction project designer, construction expert, contractor and construction supervisor in accordance with the legal acts (if the building, which is being constructed on a given land plot, is owned by another person, the latter shall be liable as described above);
2. the construction project designer is liable for the compliance of the scope and content of the construction project with the requirements set forth by the customer, the Construction Law and other legal acts, as well as for the author supervision;
3. the contractor is liable for the compliance of the construction site with the requirements set forth by the legal acts and for the compliance of the building or its part with the construction project and the requirements set forth by the customer, the Construction Law and other legal acts, as well as for the choice of the construction materials and their installation technology in accordance with the legal acts;
4. the construction supervisor is liable for the supervision of the whole construction process and the control of every phase on the construction site determined by the construction supervision plan within the terms provided therein, as well as for the compliance of the building or its part with the construction project and the requirements set forth by the customer, the Construction Law and other legal acts;
5. the construction expert is liable for the content of the expert opinion and the justification of the conclusions contained therein.

The new regulatory framework also changes the current practice according to which the designers themselves ordered the examination of their projects. The Law clearly specifies that the customer is not allowed to authorise other participants of the construction process to choose the construction expert or the construction supervisor and to sign agreements on the provision of services by the construction expert or the construction supervisor.

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