

REAL ESTATE

Zoning-Construction Code

On April 16, 2014, the Construction Law Codification Commission (the "**Commission**") presented a first draft of the Zoning-Construction Code (the "**Code**"). The Commission has been created within the Ministry of Infrastructure and Development for the sole purpose of assembling and codifying the provisions of the zoning law and construction law which are currently dispersed among numerous legal acts.

Based on the assumption that the investment process is overregulated and the relevant provisions of law instead of encouraging development of the residential and commercial investments, severely hamper their progress, the Ministry of Infrastructure and Development has suggested that all such matters can be regulated within one code. The Code is meant to significantly facilitate administrative procedures surrounding the investment process. One of its goals is to confine several administrative rulings that are made in separate proceedings in one comprehensive procedure leading directly to issuance of the building permit. The Code abandons also the broadly criticized practice of issuing zoning decisions for investments located in areas for which relevant municipality has not introduced a zoning plan. Further amendment of the Code focuses on the expanding duty to notify authorities about initiated construction instead of applying for the building permit. As a consequence, construction projects such as single family houses will no longer be subject to the time-consuming building permit proceedings. Plans for creation of the National Construction Register which will store electronic information on legal, zoning and development status of every plot, thus making data relevant for developers and investors easily accessible, are also worth mentioning. On the other hand, several provisions of the Code, however, tend to raise some concerns among construction market professionals. Especially, new regulation on the real estate tax will create an economic pressure on the owners of the undeveloped plots located within the areas designated for development purposes by increasing the tax rate for such real properties. The introduction of the Code is awaited by the market and perceived as a significant effort aimed at setting in order unorganized and often inconclusive provisions of the Polish zoning and construction law. The Code is expected to come into force around 2018 - 2019.

CORPORATE LAW

Protecting the minority shareholders in the Polish LLC

Not every business partnership is formed between equal partners. Every now and then a joint venture may be established to accommodate overlapping interests of business entities that occupy different steps of the market ladder.

In order to protect the interests of the weaker parties of such ventures, the Polish corporate law allows the shareholders to introduce in the articles of association of the limited liability company a number of contractual provisions furnishing such parties with rights significantly improving their position. The future partners can, for instance, either chose to establish in the share capital preference shares or directly grant a particular shareholder with specific rights.

The privileged shares can be generally transferred should the shareholder chose to dispose of such shares, whereas the personally granted rights are attached to the specific entity as indicated in the articles of association.

In the latter case, the frequently used solution is to entitle the specific shareholder to appoint one or more members of the management board. For example, it is conceivable to empower such shareholder to appoint the vice-president of the board along with other board members. In any case, however, a single entity cannot be put in a position where it elects the whole board without other shareholders taking part in the appointments. Similarly, the shareholder can be allowed only to indicate the candidates for the positions in the corporate bodies of the company. On the other hand, the articles of association may provide the minority shareholder with the right to revoke a member of the board irrespective of the limits applying to other shareholders.

Other advantages for such shareholders can aim at expanding their participation in the venture over the course of the business. Especially, such purpose is served by introducing the right to take up new shares in the increased share capital or granting the particular shareholder with a pre-emptive right toward the shares other shareholders are about to sell. The means of protecting the minority shareholders are numerous and their character is limited normally by the mutual agreements between business partners. When drafting the articles of association of such companies one should, however, be aware that in each case such contractual provisions while authoritatively empowering the specific entity, at the same time have to respect the rights of other shareholders and future (or existing) creditors of the company.

LITIGATION LAW

Judicial decisions from the EU Member States will be enforceable in Poland without necessity to obtain a court enforcement clause

Following the EU regulation no 650/2012, judicial decisions, court settlements and official documents issued and enforceable in one of the EU Member States will not require any court enforcement clauses to be obtained before courts in Poland. The above-mentioned documents will be considered as executive titles and will authorize to initiate in Poland enforcement proceedings against debtors. This is also the purpose of the amendment to the Code of Civil Procedure prepared by the Ministry of Justice.

Amendments to the Code of Civil Procedure are indispensable, as a consequence of a regulation adopted by the European Parliament and the European Council in 2012, concerning the recognition of a judicial decisions in a civil suits. The regulations will come into force as of January, 2015.

The above-mentioned EU regulations should be applied directly and do not require an implementation into a national legal system. Despite the above, the Polish Ministry of Justice recognizes, that "there is a need to adopt additional procedural solutions in the Polish legal system enabling effective application of the EU regulations in Poland".

TAX LAW

The Polish Ministry of Finance undertakes further efforts to increase the effectiveness of transfer pricing controls

The Polish Ministry of Finance has undertaken further steps aimed at increasing the effectiveness of transfer pricing audits – within the ministerial structures there will be a specifically devoted team, the actions of which will focus on controlling related entities - the efforts of the team will concentrate on ensuring the efficient coordination of the different authorities within the transfer pricing controls. The Ministry is planning further actions in order to increase efficiency of the transfer of information within the tax administration.

The creation of the specialized team means inevitably that transfer pricing issues are an increasingly significant point of interest to the tax administration. It should be anticipated that the authorities will be in possession of even more proficient tools to verify those matters. In particular, the assumed result of the current actions is the identification, collection and analysis of the data and information on the relations among different entities (also at the international level) as well as gradual progress in efficient verification of the correctness of transfer pricing methodologies applied by related parties.

PUBLIC PROCUREMENT

New directives – significant changes in public procurement law

On March 28, three new directives on public procurement law were published in the Official Journal of the European Union, which Poland must implement through April 18, 2016, i.e.:

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC;
- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC
- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

The purpose of the directives is to simplify and facilitate the public procurement proceedings. The most important changes, including significant provisions on subcontracting in public procurements, are introduced by the Directive 2014/24/EU.

The actual wording of the Public Procurement Law dated January 29, 2004 (the “**Public Procurement Law**”) provides for an specific dualism regarding the third parties the contractor intends to use to carry out the procurement. In this respect, the Public Procurement Law allows to differentiate between third parties whose skills and competences the contractor plans to use to prove that it fulfills the conditions of the given proceedings and third parties which are in fact the sub-contractors. The difference is that the former ones will not participate in the actual performance of the public procurement contract, while the latter will be involved in the actual fulfillment of at least part of the order. The difference is of significant meaning, as only from the second category of the third parties, the ordering party is allowed to demand the documentation as listed in the Article 3 section 4 of the Regulation of the President of the Council of Ministers on *the documents which the*

ordering party can demand from the contractor and the forms in which such documents may be submitted, dated February 2013, including all documents presenting that there are no basis for exclusion of the given subcontractor.

Despite the above and according to the Directive 2014/24/EU, when the contractor will use the skills and competences of a third party (both in a situation where they will act as a subcontractor or not), it will be necessary to prove that, as regards these entities, there are no basis for exclusion from the public procurement.

What is more, if the contractor relies on the capacities of a third party in relation to the criteria regarding economic and financial situation, the contracting party may require the contractor and those entities to be jointly liable for the execution of the contract.

As it follows from the above, the scope of the amendments is very wide and certainly will lead to substantial changes in The Public Procurement Law and, according to some opinions, even to the adoption of a new public procurement law.

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