

The New Building Act – A short leap forward

On March 14 the Chamber of Deputies accepted amendments proposed by the Senate and finally approved the new Building Act which will become effective on January 1, 2007. The government promised that the whole approval process conducted by the Building Authorities will be sped up and simplified, but investors and developers remain rather sceptical that life will become easier for them next year.

In our opinion the new law addresses many problems with the application of the current Building Act but does not place the services provided to the public by the Building Authorities onto a new qualitative level, as was expected by the public. Some views have already been expressed that work on a totally new Building Act will have to start very soon.

The underlying idea of the new law, which is without any doubt a good idea, is that more complex buildings ought to be examined by the authorities more thoroughly than simple ones. To apply this principle in practise has, however, made the new Building Act more complicated than ever before. This, alas, has become the rule as regards all new legislation. In our experience, the Building Authorities sometimes have a hard time construing and applying the current law, which has been effective for 30 years. We therefore presume that they will often be reluctant to accept the quickest and easiest solution proposed by an investor and will prefer to use the traditional methods in order to stay on the safe side.

No one-stop-shop

We regret that attempts to put more power into the hands of the Building Authorities have failed. The Building Authorities are now, and will remain so in the future, dependant on the expert opinions of many other authorities and agencies such as Sanitary Officers, Transport Authorities, Environmentalists, Fire Departments, etc. The powers of the Building Authorities themselves are, in contrast to this, quite narrow. If an investor succeeds in collecting the approval of all these authorities the procedure with the Building Authorities is already simple.

The hopes of investors for a one-stop-shop have not been fulfilled, as this would require a profound reorganisation of local authorities and staffing of the Building Authorities with experts from all the relevant areas. No one was courageous enough to implement such a reform. Even moderate proposals that an investor could file an application with the Building Authorities and the Building Authorities would then collect on their own all relevant statements and consents from the other authorities did not win the necessary support.

Following this general evaluation of the new law we would like to mention several topics that will be, we hope, particularly interesting for investors.

Two permits at once

First of all we would like to highlight the possibility to apply simultaneously for both a planning permit and a building permit on condition that the master plan for the respective area was approved.

Currently it is necessary to apply first for the planning permit that sets basic conditions for the placement of a particular building on a plot of land. Only after the planning permit becomes effective can an investor apply for a building permit that deals more with the technical details of the building. For each of these permits a project is necessary and an investor needs to obtain new approvals from all the authorities involved. Moreover other participants such as neighbors or associations for the protection of the environment could file appeals against each of the permits.

Therefore the possibility to obtain both permits at once will be a big plus for investors.

New house upon notification

The slogan used by the Ministry for Regional Development to promote the bill to the wider public was that for a family house with up to 150 sq. m. of built-up area no permission would be necessary and merely a notification submitted to the Building Authorities would suffice. The new Building Act, however, sets out new rules for notifications that will be more complicated than in the past. In particular detailed design plans are to be prepared which will need to be approved by all the authorities involved and notified to all neighbors. This makes mere notification almost as burdensome for the investor as a traditional building permit.

The new law also introduces a new independent profession – authorized inspectors – who are entitled to review projects for many types of buildings and if they find them to be in order the investor does not need to apply for a building permit and can start work merely upon notification to the Building Authorities. This could, in the future, free the Building Authorities of a lot of work and speed up the approval procedures.

Pre-emptive right

The Building Act not only regulates the approval process of construction works but also many related issues. One of the most controversial provisions in the new law gives the state, municipalities and the regions a pre-emptive right to acquire land designated by a zoning plan for the development of roads, utilities, public parks and other facilities in the public interest at a price set by an authorized court surveyor. This provision poses a significant limitation on ownership rights and it will be a must in all real-estate transactions to put this issue onto the checklist for due diligence. If a public facility is intended to be built on just a part of the land to be transferred, then the entitled municipality, region or state has the right to decide whether to exercise the pre-emptive right within 6 months.

There are definitely many more features of the new Building Act that will be of significant importance for investors and could not be mentioned in this limited space. It seems to be too early to make a final conclusion on how much beneficial the new Building Act will be as this depends also on ordinances that will be issued shortly by the Ministry for Regional Development. It is, however, almost certain that at least individuals and developers who plan to build or refurbish small family houses shall have at the end of the day their lives easier.

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