



# INTRODUCTION TO THE “LAW” CHAPTER

According to an exclusive survey by ARTN among its members and other figures of the real estate market, it seems that since the “legal revolution” of 2012 in the form of the New Civil Code, professionals do not expect anything from the development of law in the next term. On the contrary, they require stability and focus more on the development of regulations on a local level. In Prague, progress with regard to the new Metropolitan plan that should allow the development of so far non-stabilised Prague areas is expected. In terms of the development of legislation in the last year, the respondents noticed (besides the amendment to the Building Act) the amendment to the act on money laundering operations and the need to keep records of the eventual owners of companies arising from this amendment.

Reality is unfortunately far from stability. Last year law makers prepared a few new and important changes with regard to legislation for all participants in the real estate market, and we describe them in more detail in this chapter. For example, it includes the regulation on the protection of personal data (GDPR), the change to the Building Act, and particularly the novelty of the possibility to join territorial and construction proceedings in one proceeding. The legal regulation with regard to the shared economy is also widely discussed. Particularly in the field of housing (e.g. Airbnb), it will significantly influence the construction and the way people live in the wider centre of Prague, but also in other bigger cities or cities attractive for tourists.

The real estate market players have agreed in our exclusive survey that they face problems with regard to the length and quality of the decision-making processes of courts. Any assessment of quality may be subjective to a certain level, but the length of the process is an objective factor. It significantly influences the opinion of all people about Czech law enforcement in general, and it also imposes requirements on the quality of alternative decisions about disputes, especially on the arbitration.

With regard to the problems local arbitration has been facing in the long-term (very diverse professional levels of decision makers, insufficient rules for the maintenance of the integrity of decision makers and for efficient dispute resolutions, and last but not least, problems with the integrity of some decision makers), the contracting parties are forced to approach foreign arbitrations (especially ICC or VIAC). This fact is what makes disputes excessively costly and not really enforceable for lower amounts of money in the final result.

However, the market has successfully dealt with the pitfalls of the New Civil Code, partly because of the fact that the new concepts are still not deep-rooted for many, so they basically ignore them, and also because of the fact that there is still very little case law that would move legal practices further. The significantly improved contractual freedom is definitely a simplification. In the field of development, the possibility to directly conclude lease contracts even before the construction is completed without the need to conclude contracts on future lease contracts is a very welcomed change. This simplification has already become standard in the real estate market.

In the field of investments in real estate, the trend of transactions with significant restrictions on the liabilities of the sellers after the accomplishment of the purchase continues. Sellers shall secure real estate title insurance for the buyers, a title to shares or stocks and warranty and indemnity insurance, and the agreement on the side of sellers. A common thing today is that the costs of such insurance are chargeable to the seller.

**EMIL HOLUB**  
Clifford Chance

# SUMMARY OF LEGISLATIVE CHANGES

Since January 1, Act No. 225/2017 Coll., which changes Act No. 183/2006 Coll. on Territorial Planning and Building Regulations (Building Act), as amended, and other related acts (the amendment to the Building Act), (hereinafter referred to as “the Amendment”), entered into force, and they should speed up the lengthy new construction permitting processes. Developers and the rest of the professional community expect this intention to be successfully fulfilled.

The changes are mostly related to the simplification of changes to territorial planning documentation, the shortening of time limits to challenge a territorial plan, lengthening of time limits to create new territorial plans, joining territorial and construction proceedings in one, changes to parties in proceedings, changes to the possibility of reviewing binding opinions of concerned authorities, and permitting building use. It can be assumed that the process of permitting constructions will become shorter.

Probably the most progressive change is coordinated proceeding, through which it will be possible to join currently separate territorial proceedings, construction proceedings and assess environmental impacts. The initial purpose of the Amendment was only to carry one proceeding, issue one decision with the possibility of one appeal, and possibly one legal action. However, this intention was not fully implemented, and although this Amendment is a right step forward, it also brings a whole new range of interpretation problems that need to be dealt with in practice in the future.

Many problems still persist in the construction of transport, water and energy infrastructures, mainly in relation to land acquisition. The situation has become unbearable, and the Ministry of Transport of the Czech Republic has responded with a proposal of legislative changes, the core of which is the provisional holding of land, which will allow the commencement of construction before the land is purchased or expropriated.

## SIMPLIFICATION OF CHANGING TERRITORIAL PLANNING DOCUMENTATION

The Amendment regulates the simplified procedure for the change of territorial planning documentation (shortened procedures for creating updates or changes to territorial planning documentation), which will save time.

## TERRITORIAL AND CONSTRUCTION PROCEEDINGS

The Amendment also extends the simplified procedures for certain types of construction and introduces the possibility of joining the formerly separated permitting processes into one proceeding (integrated procedures). The Amendment regulates three new types of integrated processes, namely:

- Territorial proceeding joined with the environmental impact assessment (EIA)

- Joint territorial and construction proceeding
- Joint territorial and construction proceeding along with EIA

On account of the integrated procedures, the duplication in proceedings has been removed. The Amendment also preserves carrying out separate territorial proceedings and separate construction proceedings as a possible option, i.e. separate procedures that are not integrated. Investors will be able (particularly in relation to the complexity of the construction) to choose whether they want to proceed with separate proceedings or ask for an issuance of an integrated permit. A joint proceeding can be carried out for both an individual building construction and for the construction of a complex of buildings.

It can be assumed that for complicated constructions, investors will rather proceed with a separate territorial and construction proceeding after having done an environment impact assessment, mainly due to cost savings in the event of an unsuccessful joint proceeding. In such a case, it would be necessary to rewrite a substantial part of the documentation for which the costs have already been incurred.

*“The main issue of real estate law is not in the deficiencies of legal regulations but in the deficiencies of their interpretation. Therefore, primarily the approach of public authorities should change, i.e. the approach of the clerks at building and cadastral offices and the approach of judges during the reviews of administrative authorities’ decisions.”*

**Ondřej Hampl, BADOKH**

## CHANGE TO PARTIES IN PROCEEDINGS

There has been a change related to parties in territorial and construction proceedings on the basis of the Amendment. The issue of parties has been criticised for a long time, especially Section 70 of Act No. 114/1992 Coll., the Act of the Czech National Council on Nature and Landscape Protection as amended. On the basis of this, the associations that have the protection of nature and landscape registered as their activity were allowed to register as parties in territorial and construction proceedings. With the exception of projects that require an environmental impact assessment EIA, the associations can now only take part in proceedings pursuant to the Act on Environment and Landscape protection and not in the proceedings pursuant to the Building Act.

## BINDING OPINIONS OF CONCERNED AUTHORITIES

The Amendment changes the possibility of reviewing the binding opinions of concerned authorities as documents on the basis of which an administrative decision is issued. If a concerned authority according to earlier legislation issued a dissenting binding opinion, the building authority was not allowed to authorise the application of a building entity and issue a building permit or a permit for the desired building sitting. Before the Amendment, it was possible to change or possibly

annul an illegal opinion through a review proceeding (this took place independently of the proceedings for the issuance of an administrative decision), or through an appeal proceeding brought against the final decision when such an appeal challenged the content of the supporting documents of a binding opinion.

The Amendment regulates a new procedure in which it will no longer be possible to review binding opinions through the review proceedings, and it will be possible to annul or change an illegal binding opinion only in an appeal proceeding brought against an issued final decision. If a negative (dissenting) opinion of a concerned authority in relation to the building entity's project was issued, or if a concerned authority imposes inappropriate or unlawful conditions on a building entity, a building entity cannot defend itself against the opinion of the concerned entity according to the Amendment. Firstly, the building authority must dismiss an application of the building authority for a permit, and then the applicant must bring an appeal against this decision. This procedure is ultimately inefficient, complicated and lengthy.

The Amendment also extends the scope of cases for which it is only possible to issue a binding opinion and not an administrative decision itself.

#### **BINDING OPINION OF A TERRITORIAL PLANNING AUTHORITY**

The Amendment introduces the institute of the binding opinion of a territorial planning authority for the compliance of a building entity's building project with the territorial planning documentation and the objectives of territorial planning. Before the Amendment was issued, the compliance of a project with the territorial plan was directly assessed by the building authority in the course of territorial proceedings.

According to the Amendment, the compliance of a building project with the territorial plan will not be directly assessed by the building authority (which carries out the proceedings), but by the territorial planning authority (as a concerned authority). The territorial planning authority will issue an opinion that will be binding for the building authority. This opinion will be valid for two years, after which it must be extended.

#### **PERMITTING BUILDING USE**

There have also been significant changes in permitting the use of completed buildings. Only the buildings for which it was required to issue a use permit according to earlier legislation will now be subject to final inspections, and it will be possible to use all other buildings after their completion without the approval of building authorities. According to earlier legislation, a building entity could start using a building after its completion on the basis of a simple notification to the building authority in most cases. The so-called use permit was needed for certain types of buildings.

After the Amendment was issued, the use of the building will no longer be subject to a notification to the building authority, and the

buildings that could be used (according to the legislation before the Amendment was issued) after a prior notification to the building authority can be used by a building entity without any notifications to the building authority after the Amendment was issued. For buildings for the use of which a use permit was necessary before the Amendment was issued, a final inspection will still be required.

The Amendment introduces terms such as use permit or use decision. For a use permit, no separate administrative proceeding is carried out, but a use decision is issued in the course of an administrative proceeding for which the parties are set out.

#### **CURRENT TERRITORIAL PLANS ARE VALID UNTIL 2022**

The time limits for creating new territorial plans are lengthened. The limit is now extended until the end of 2022. The Building Act established the obligation of municipalities to publish new territorial plans, and if they aren't published by 2020, old territorial plans would become invalid.

The original deadline has proven to be unrealistic, and the Amendment only responds to the reality. This change was welcomed by cities and municipalities, and it allows the creation of new territorial plans within a realistic period of time.

#### **SHORTENING OF TIME LIMITS TO CHALLENGE A TERRITORIAL PLAN**

The Amendment shortens the time limits for the possibility of challenging of measures of general application at court (review or an application for annulment). The measures of general application are used to publish territorial development principles, territorial plans and regulatory plans, and the time limit to challenge them is now one year instead of three years.

#### **BILL FOR SPEEDING UP THE CONSTRUCTION OF TRANSPORT, WATER AND ENERGY INFRASTRUCTURE**

The Ministry of Transport of the Czech Republic has prepared the Amendment to Act No. 416/2009 Coll. on Speeding up the Construction of Transport, Water and Energy Infrastructure, as amended. The aim of this Amendment is to shorten the period of the preparation of constructions related to transportation. The main tool for speeding up the construction is the institute of provisional holding, which will allow the commencement of construction even before all land for the future line construction is purchased or expropriated.

Territorial proceedings for the listed constructions will always be carried out by one specialized building authority in the region to speed up the process. The annex to the amendment that is being prepared is a list of motorway constructions, which contains the backbone motorway network, main rail corridors and high-speed tracks.

**GABRIEL ACHOUR, VOJTĚCH FIALA**  
Achour & partner

# LEGAL ASPECTS OF EMPLOYING FOREIGNERS IN CONSTRUCTION

The building industry is a sector where the current growth of the state's economy is reflected: the more funds there are in society, the higher the demand in the real estate market, and the more the investments in construction increase. While Czech citizens are not very interested in working in the building industry as blue-collar workers, this gap in the Czech employment market is very often filled by foreigners in the long term. In some cases illegal work occurs, which is criticized in the building industry in the long term and public authorities focus on it.

Since no system is perfect and absolute control from the government is not possible, illegal work remain a part of this field in the future. However, the government tries to at least partially improve the current state using certain sub-measures – one of the recent projects is "Ukraine regime". The aim of this project is to enable Czech companies to employ medium and low-skilled Ukrainian workers in a faster regime to save time, particularly during admissions and the processing of applications for employee cards.

On January 31, 2018, the Czech government approved the updating of annual quota in the Ukraine regime and doubled it for this largest group of foreign workers from outside the European Union in the Czech Republic. The limit is now a total of 20,000. We can generally identify 3 types of foreigners in the Czech Republic:

1) **Citizens of member states of the European Union and their family members.** A group that has the best conditions to enter the labour market, because these people have the same position related to employment as citizens of the Czech Republic. Also, citizens from the states of the European Economic Area (EEA), i.e. from Iceland, Norway, Liechtenstein and citizens of Switzerland, which is not a member of the EU or the EEA, have the same position.

2) **People with permanent residence on the basis of a residence permit, which allows them to live in the Czech Republic.** People older than 15 who have a valid residence permit issued by the Police of the Czech Republic. In contrary to EU citizens, these people have to get a residence permit; they then have the same rights related to employment as citizens of the Czech Republic. These people are only limited in relation to jobs for which Czech citizenship is necessary (e.g. civil service).

3) **Citizens of Third World countries.** This group of foreigners has the toughest conditions of all the three groups, and these foreigners need a work permit that is issued by the respective labour office to properly conclude an employment contract, as well as for the whole duration of his/her employment in the Czech Republic. On the grounds of this permit, a foreigner can apply for a residence permit issued by the Police of the Czech Republic. Both permits are necessary for a foreigner to be legally employed here.

The employment of people from the first two groups has almost no limitations, but in the building industry these people are a minority. The most important part of foreigners for employment in the building industry in the Czech Republic is the last group – citizens of Third World countries. Therefore, we focus on the possibilities of employing these people in the Czech Republic legally:

## 1. Work permit

Until recently, the only legal way to employ citizens of Third World countries was to obtain a work permit granted by the respective regional labour office, for which it is necessary to submit the consent of the employer with the employment of an applicant or an already concluded contract. The administration fee for the permit is 500 CZK, and the fee for its prolongation is 250 CZK. The respective labour office is a labour office in the administration of which the work should be performed.

An applicant can apply for this permit through the Czech embassy in the home country of the applicant, and it is also necessary to prove professional qualifications if it is necessary for the given job. The applicant can then apply for a residence permit, which is issued by the Police of the Czech Republic on the grounds of his/her work permit. Especially for the building industry, but also for other sectors that may offer seasonal jobs, the described two-level system is too complicated and bureaucratic, so it is very often circumvented.

## 2. Employee card

Since June 1, 2014, there is an easier way to legally employ foreigners, and it is thanks to the institute of an employee card. In many aspects, employee cards are a simpler, faster and more beneficial solution for all parties than the above-mentioned process of obtaining a work permit.

The card is primarily aimed at the so-called dual mode. This means that one card includes both a residence and work permit. A foreigner who intends to stay in the Czech Republic for a longer period of time to be employed in a particular position can apply to get this card at the Czech embassy in the home country of this foreigner, or at the Ministry of the Interior of the Czech Republic if the foreigner is already in the Czech Republic on the basis of a residence visa for 90 days or a long-term residence permit for another purpose. The administration fee is 1,000 CZK.

The card is issued to a specific person for a specific job that this person can work at for a maximum of 2 years with the possibility of prolonging the validity of the card. This permit, as well as the work permit, is issued on the basis of a properly concluded employment contract or agreement to perform work, or an agreement for a future contract.

An employee card cannot be issued on the basis of an agreement to perform a job as it is limited to a maximum of 300 working hours a year by law and this cannot be seen as a long-term employment, which is necessary for the issuance of the card. The next requirement is the potential professional/expert qualification a foreigner can prove using a document of the required education, e.g. its equivalent that is recognized in the Czech Republic.

### 3. Agency employment

The third option of employing foreigners is employment intermediation through agency employment. These agencies employ individual foreigners as their own employees, and on the basis of a contract they temporarily assign them to ordering parties, which assign them their work and control it. In the last ten years employment agencies have been booming, and they are using their position in the full labour market to "import" workers to the Czech Republic.

This option is very often used because of the fact that employment agencies also take care of the administrative and bureaucratic issues related to the employment of foreigners. Of course, the agencies charge their fees for these services, which are deducted from the money they get for the work performed for ordering parties, and only then do they pay the employees who really performed the work.

This method has recently been misused in some cases when certain unreliable agencies deliver unqualified workers, or they even falsify their qualification documents.

### 4. Blue card

The last option for employing a foreigner (in the building industry, among others) is with a blue card. However, this work permit is only for leading and highly qualified workers, which is only a minority of applicants from Third World countries, because most of the highly qualified positions in the Czech Republic are filled by Czech citizens or EU citizens, for which it is easier to have their professional qualifications recognized and they don't have any or only have minimal administrative limitations in the choice and in the performance of their job.

Foreigners interested in staying in the Czech Republic temporarily for a period longer than 3 months, and whose job requires high qualification, apply for a blue card. A diploma that proves university education or vocational education was completed is needed to prove their qualification. The application can be submitted at a Czech embassy in the home country of the applicant or in the country that issued the travel documents. The applicant must submit his employment contract under the condition that the employment lasts at least one year with a certain number of weekly working hours. A blue card can be issued for a maximum period of 2 years.

**ADAM ŽÁČEK, JAROMÍR BEČIČKA**

**Invicta**