

INTRODUCTION TO LAW CHAPTER

The exclusive ARTN survey among its members and other real estate market personalities suggests that ARTN members expect a lot from the amendment of the Building Act (as described in the following chapter by Jana Vydrová and Lucie Černá). The lengthy, non-transparent and inflexible nature of the approval process for all types of buildings is a matter that is very troubling for the real estate market (especially in Prague). Another important anticipated legislative action is the completely new Real Estate Brokerage Act. This act is now (at the time of the issuance of this Trend Report) in the Chamber of Deputies for its first reading. According to its explanatory memorandum, the government intends to define the basic legal framework of real estate brokerage with this act – to define real estate brokerage, specify the conditions for performing this activity in terms of professional qualifications, define a real estate brokerage contract and conditions for its conclusion, set up control and sanction mechanisms, and strengthen protection of clients (especially consumers), thus introducing mandatory insurance of the liability of real estate brokers and adjusting their

Efforts to change legislation on building permits will continue. This change should have a positive outcome.

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obligations towards the client (e.g. information duties). In general, the purpose of this law is to increase confidence in real estate services by setting new rules for performing them and increase public confidence in real estate brokers as such, therefore increasing the share of real estate brokerage transactions. The new rules should also contribute to reducing the number of non-professional and dishonest entities in the market. A key element of this new legislation is the parliamentary amendment, which seeks to prevent real estate brokers from providing custody in the brokered matter, or the provision of such

custody by someone other than a bank, foreign bank, notary or lawyer.

Another strong opinion that resonated among several respondents in the ARTN survey is a change in legislation on rental housing. This opinion is based on the latest trend of strengthening demand (as well as supply) for rental housing as an alternative to owner-occupied housing. The problem affecting real estate and apartment owners is the inability to terminate a lease relationship quickly and efficiently in the event of a breach of the tenant's basic obligations, in particular his payment obligations, and to subsequently quickly release the flat for another tenant, thus ensuring a stable and continuous rental income. Current legislation is not ready for these situations, which is also a problem for the owners' financing banks.

I only expect one legislative change, namely the adoption and application of the Real Estate Brokerage Act. However, its impact on the market will be very small as the approved amendment is very shallow and does not meet expectations.

Monika Kofroňová, bnt

In real estate investment we continue to see a strong amount of "share deals", i.e. the sale of project companies instead of the sale of the real estate itself, as well as the trend of limiting the seller's liability for the sale. A significant change from last year is the shift in the burden of the acquisition of title insurance to real estate, the title to the shares or stocks sold, and the insurance of guarantees and declarations entirely to the buyer, with the seller usually only bearing part of the costs of such insurance.

EMIL HOLUB
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OVERVIEW OF LEGISLATIVE CHANGES

INTRODUCTION OF THE PRE-EMPTION RIGHT FOR JOINT OWNED REAL ESTATE

The most significant legislative change last year was the entry into force of part of the first amendment to Act no. 89/2012 Coll., the Civil Code, as amended, (hereinafter referred to as the "Civil Code"), which returned the pre-emption right for jointly owned real estate property to the Czech legal system. The pre-emption right to everything jointly owned was part of our legislation at the time when the old Civil Code was in force. However, this legislation seemed inappropriate to legislators and was therefore not incorporated into the original Civil Code. The amendment reintroduces this pre-emption right. The Civil Code therefore once again grants the pre-emption right for other joint owners to this transferred joint ownership share in the case of the transfer of a joint ownership share in real estate property, both gratuitous and non-gratuitous. The only exception when other joint owners are not granted this right is when the joint ownership share is transferred to a related person.

The intention of this amendment is to prevent the breakdown of the right to real estate property and, if possible, to support its consolidation. However, very soon after its introduction, its shortcomings were demonstrated. This legal institute causes considerable delays, and in many cases it makes it impossible to sell housing units in large apartment buildings, as the owner of a housing unit is obliged, in accordance with the current version of the Civil Code, to preferentially offer his share of jointly owned immovable property (such as cellars and garage spaces) to other joint owners. Although sellers have the option of requesting consent to the sale from all joint owners, they rarely manage to receive this consent in a large apartment building.

MERGING OF SEPARATE PROCEEDINGS AND BINDING OPINION OF A LAND-USE PLANNING AUTHORITY

Another important legislative change is the amendment to Act no. 183/2006 Coll., on land-use planning and building regulations (the Building Act), as amended. The Building Act was amended twice in 2018, by Act no. 225/2017 Coll. and Act no. 169/2018 Coll. These amendments have brought many changes, the most important of which is the introduction of the possibility of merging hitherto independent proceedings into one joint proceeding, and the introduction of the binding opinion of a land-use planning authority.

JOINT PROCEEDING

Last year's first amendment to the Building Act introduced a joint proceeding, in which it is possible to merge various pro-

ceedings into one proceeding, which had to be conducted separately until then. The following three types of joint proceedings have been newly introduced:

1. Joint land-use proceeding with an environmental impact assessment (EIA)
2. Joint building and land-use proceeding
3. Joint land-use and building proceeding with an environmental impact assessment (EIA)

The principle of this institute is to conduct only one proceeding, in which both the placement of the building and its permission is decided, and potentially also its environmental impact. This joint proceeding can be conducted both for individual buildings and for a set of related buildings, so the project investor does not have to tediously acquire placement decisions and permits for individual buildings in separate proceedings.

The objective of the introduction of these joint proceedings is to eliminate repeated appeals against decisions that have been issued in a single proceeding as well as separate proceedings, and to reduce the overall length of permit proceedings. The need to shorten the length of the permit process is also demonstrated by the analysis of the business environment¹ published annually by the World Bank. According to this analysis, the Czech Republic ranked 156th out of the 190 countries compared in association with the duration of building permit proceedings.

BINDING OPINION OF LAND-USE PLANNING AUTHORITY

Another new introduction of 2018 is the "binding opinion of a land-use planning authority", on the basis of which the authority to assess the compliance of a building project or building reconstruction with land-use planning documentation and spatial development policy is transferred from the building authority to land-use authorities. The purpose of this institute was explained in the explanatory memorandum to last year's first amendment to the Building Act in the sense that before the amendment came into effect, only the general building authority could place buildings; now buildings can be placed both by general building authorities (at different levels) and by all building authorities, i.e. by special and other building authorities. It is for this reason that the binding opinion of the land-use planning authority needs to coordinate land use and fulfill other objectives and tasks of land-use planning.

¹ Doing Business in Czech Republic [online]. [cit. 2019-02-13]. Source: http://www.doingbusiness.org/en/data/exploreeconomies/czech-republic#DB_sb

In practice, the introduction of this institute resulted in the collapse of a number of land-use planning authorities, as many spatial planning authorities did not have the capacity to handle such a number of requests for binding opinions in relation to this amendment.

AMENDMENT TO THE ACT ON THE TRANSFER OF OWNERSHIP RIGHTS TO UNITS AND RESIDENTIAL GROUP FAMILY HOUSES OF CERTAIN HOUSING COOPERATIVES

It is also necessary to mention the amendment to Act no. 311/2013 Coll., on the transfer of ownership rights to units and group family houses of certain housing cooperatives and on amendments to certain acts (hereinafter referred to as the “amendment on housing cooperatives”). The amendment on housing cooperatives entered into force on September 1, 2018, and it governs the deferred establishment and formation of unit owners associations in the case of housing cooperatives to which this act applies. The original regulation imposed the obligation to establish a unit owners association when the cooperative’s share in the common parts of the house falls under one quarter, unless this drop occurred after the effective date of this law, i.e. after January 1, 2014. According to the amendment on housing cooperatives, an owners association is formed by law as soon as the cooperative’s share in the common parts falls under one half, regardless of when this drop occurred. This legislation can therefore also be applied to housing cooperatives, where the joint ownership share in the common parts of the house was reduced to less than half before the Civil Code and the act on the transfer of ownership rights to units and group residential family houses of certain housing cooperatives came into effect. This removed the shortcoming of the hitherto wording of the act, when this act did not apply to housing cooperatives whose share in common parts dropped to more than one quarter but less than one half before January 1, 2014.

In conclusion, we would like to draw attention to several forthcoming legislative changes:

The upcoming amendment to the statutory measure on the tax on the acquisition of immovable property

The first upcoming legislative change concerns the tax on the acquisition of immovable property.

An act was proposed to the Chamber of Deputies to amend the statutory measure of the Senate no. 340/2013 Coll., on the tax on the acquisition of immovable property, as amended.

This amendment should expand the existing list of buildings whose first acquisition is exempt from the tax on acquisition of immovable property. The current list only includes family houses and units in apartment buildings. First-time acquisitions of ownership rights to units in family houses should also be newly exempt.

Upcoming amendment to the Civil Code

The draft of the amendment to the Civil Code, which the government submitted to the Chamber of Deputies at the beginning of this year, should also be highlighted. This amendment should particularly affect joint ownership of housing, which is insufficient according to the explanatory memorandum to the proposed act. Amendments should also be made to the forced sale of a unit if its owner violates his obligations and prevents the exercise of the rights of other owners of the units, as well as the transfer of debts in the transfer of ownership rights to a unit when the transferor is indebted to the person responsible for managing the house. However, the most significant change that this amendment is to bring is the introduction of exemption from the pre-emption right of joint owners of immovable property, where the joint ownership share in immovable property that is an accessory of a transferred unit, typically a garage or cellar, is not covered by the pre-emption right of other joint owners. This should eliminate difficulties that currently occur in the sale of housing units.

Upcoming amendment to the Building Act

The final upcoming legislative amendment that we would like to mention is the upcoming amendment to the Building Act. This amendment aims to eliminate the problems that arise when issuing binding opinions, and which have worsened with the introduction of the institute of a binding opinion of a land-use planning authority. Delays and failure to comply with deadlines when issuing binding opinions, which currently occur regularly, are to be eliminated by the introduction of a legal fiction of the issuance of an approving binding opinion. Such a legal fiction is to occur if the authority concerned fails to comply with its statutory obligation to issue a binding opinion within the statutory period. This institute is intended to enable the authorities concerned not to consider projects that are not significant in terms of land-use planning and to focus on building projects that require expert assessment.

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