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AMENDMENTS TO ROMANIAN LEGISLATION ON BUILDING PERMITS, URBAN PLANNING AND REAL ESTATE REGISTERS

The Romanian Law no. 50 of July 29, 1991 on building permits (“**Building Permits Law**”) as well as Law no. 350 of July 6, 2001 on regional planning (“**Planning Law**”) have been amended by Law no. 197 of October 31, 2016 (“**Law 197/2016**”). Some of the most important amendments regulated by Law 197/2016 are considered below.

1. Shorter permit issuance period in urgency cases

In “*duly justified*” urgency cases, permits may now be issued in 15 days from the submission date, as opposed to the 30-day deadline that was previously applicable in all cases. However, the Building Permits Law does not further define what may be deemed as an urgency. Thus, companies may face difficulty and uncertainty when seeking to benefit from the new legal provisions.

2. Permits for energy and natural resources projects

Companies carrying out activities in energy and natural resources sectors (such as exploitation of oil and gas as well as execution of construction works related to the construction, development, modernisation, refurbishment, rehabilitation or overhaul of national systems for the transmission of electricity, natural gas and crude oil, gasoline, ethane or condensate) will from now on be able to obtain building permits not only based on a lease agreement, as it was previously the case, but also based on licenses, concession agreements or exploitation agreements.

3. Improvement of hand-over rules

Until the latest amendments, the Building Permits Law allowed a final hand-over involving participation of relevant authorities to ascertain compliance of construction works with the building permit (*“recepție la terminarea lucrărilor”* in Romanian) only if all works contemplated by the building permit were completed.

This system proved to be a major constraint in case of complex projects consisting of several stages or buildings, as it impeded amongst others on the obtaining of operational permits for completed parts of the projects. The new amendments seek to solve this issue, albeit still in an incomplete and somewhat improper manner.

Thus, parts of complex building projects may now be officially completed and handed over separately, when the construction thereof is governed by separate agreements, irrespective whether all relevant parts are subject to a single building permit or not.

Accordingly, developers should enter separate construction agreements if final hand-overs are required for various stages of the projects. This, however, may prove more expensive and time – consuming.

In addition, Law 197/2016 provides that *“until the completion of the works, partial hand-over minutes can be drafted to ascertain the status of works performance, at the investor’s request and with the mandatory participation of the representatives of the State Inspectorate for Constructions in case of State financed projects”*.

It is therefore now possible to have partial hand-overs with the input of the State Inspectorate for Constructions ascertaining works compliance. However, given the rather ambiguous construction of the wording, it remains to be seen whether the relevant authorities (and relevant courts, eventually) are to construe same as applicable only to state financed projects. In the latter case, discrimination and therefore unconstitutionality issues will likely arise.

4. Change of building destinations made easier

Per the new provisions, if the building destination is changed (e.g. from dwelling to commercial premises) a building permit shall be required only where construction works that require such permit are made. Until the recent amendments, changing the destination of a building required such permit, regardless whether any actual construction works were carried out or not.

5. Increased fines

Performance of construction works in breach of the relevant building permit is subject to fine from RON 50,000 (roughly EUR 11,110 at the current exchange rate) to RON 100,000

(roughly EUR 22,220), as opposed to former fines from RON 3,000 (roughly EUR 665) to RON 10,000 (roughly EUR 2,220).

Building permit holders failing to restore to their original state the lands making the object of lease agreements following the annulment of the building permits shall from now on be punished with the same fine.

6. Real estate publicity records related amendments

The following novel rules deal with real estate publicity registrations:

- (i) in most cases, a completion certificate (confirming that buildings were erected in accordance with the building permit and that final hand-over minutes were concluded) will be required for registration of the buildings ownership in the real estate publicity registers; and
- (ii) until present, it was difficult for persons acquiring constructions built on concession lands to have the concession right registered in the real estate publicity records; with respect to such cases, Law 197/2016 now expressly allows land concession rights to be registered in the real estate publicity records based on the building transfer document.

7. Urban plans

To ensure that urbanism rules may be opposed to third parties, the local council decisions approving general and local urban plans are to be submitted by the city hall to the real estate publicity registers, along with the relevant documentation.

In addition, town planning certificates issued for the sales of buildings are to contain information regarding the “urbanistic consequences” of said sales. In such cases, either party to the transaction will be entitled to apply for the relevant town planning certificate.

8. Conclusions

Overall, the amendments are aimed at improving and streamlining the framework, whilst at the same time requiring professionals to be ever more thorough in complying with the relevant legal provisions.

In order to enhance the concrete practical gains provided and avoid inconsistent practice at the level of the relevant public authorities, clarification of some of the new provisions is however required. Until such point, businesses should apply extra caution when deciding project development strategies.

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