

RENEWED CONSTRUCTION LEGISLATION

On 1 June 2018 the new Building Act entered into force (Official Gazette of the RS, No. 61/2017, 72/2017 – corrected) completely replacing the Slovenian Construction Act that was in force up to this point. As the integral part of the package of Acts that represent the renewal of legislation in the field of construction and spatial management, the new Building Act was adopted at the end of 2017, together with Spatial Management Act and Architectural and civil Engineering activities Act (Official Gazette of the RS, No. 61/2017).

For investors, the most desirable change is introduced by **reducing administrative barriers in procedures to obtain building permits**. Less extensive documentation is required under the new Act to obtain a building permit, and if the investor provides all necessary documentation, including evidence and opinions, the permit can be obtained through expedited procedure. The deadline for issuing the building permit is 60 days and expiry date is set to 5 year which means that the investor has to start building within a 5-year deadline, however, it is not necessary to complete the construction within this period. In accordance with the new Act, building permit is not required for construction of simple and temporary facilities, for the maintenance of the buildings and for their demolition. Furthermore, proceeding to obtain an operating permit is also simplified and normally specific determination procedure and technical review will not be required. Building Act also envisages e-commerce within the procedure to obtain a building permit, but this part will only be applicable from 1 January 2021, due to the need to establish a spatial information system.

In case of objects with environmental impact, the investor can obtain a building permit and environmental approval simultaneously in so called »**integral process**«. The latter starts on the basis of an application from the investor, including also, in addition to the documentation for issuing the building permit, a report on the effects on the environment. The period for issuing the building permit in integral process is 5 months after submission of a complete application.

The Building Act further increases legal security of investors with newly introduced option of **pre-decision regarding compliance of building** as well as with mandatory counselling of administrative units to investors on administrative procedures. The investor may request issuing of the pre-decision on individual issues, if it is possible to deliver separate decision, or request a complete verification in relation to the fulfilment of all the conditions relevant for issuing a building permit. If the investor obtains a pre-decision from competent authorities, the decisions and conditions contained within the final pre-decision, shall be binding for the authority also in the procedure of issuing a building permit.

New regulation also includes provisions on legalisation procedures, which differ, depending on the fact whether the **buildings are discrepant within the margin of tolerance or beyond the margin of tolerance**. For the former the Act foresees issuing of the operating permit either in accordance with the rules binding at time of construction or alternatively at time of issuing operating permit, whatever is more favorable for the investor. For the buildings being discrepant from the building permit beyond the margin of tolerance it provides the possibility of filing a request for legalisation. In accordance with the above, the Act partly solves the problem

of legalisation also for before it was adopted which was, besides elimination of reasons for the occurrence of unauthorized constructions, also one of the key objective of the legislator in the preparation of the Act in question.

While the law has largely diminished administrative barriers for investors, additional requirements and administrative steps arise in practice for the owners of existing buildings, due to new provisions on unauthorized buildings and incompatible construction. As an example we can highlight the provision of Article 93, on the basis of which the notary public is now obliged, prior to the authentication of the signature on the Sales Agreement or another contract with which the right of ownership is transferred, **to check whether a building permit has been issued for the building**. Engineers and other competent authorities also have the same duty, prior to carrying out communal installations to economic public infrastructure, prior to carrying out entries and changes of the entries in the Land Register, prior to using and carrying out economic and other activities, prior to assigning a house number etc. If the building owner does not have a copy of the building permit available, proof of its existence can be quite time consuming in practice, particularly in relation with older buildings.

In addition to Building Act, the Spatial Management Act (ZUreP-2) has also brought some novelties that change the practice of transferring the right of ownership of the real estate. One example is the change of provisions regulating **(non) exercising of the pre-emptive right of a state or a municipality**. While ZUreP-1 predicted a two-stage procedure of exercising the pre-emptive right (the seller of real estate first obtained a certificate from the municipality or exercised a pre-emptive right, and after that he placed his offer, to which municipality responded either with acceptance or rejection), ZUreP-2 cancels certificate obtaining stage and refers the seller to directly provide municipality with his offer, which must then be decided on within 15 days. In this regard the procedure has become shorter on the one hand, but on the other hand the seller must, according to the new legislation, now immediately determine the price of the real estate. The price can therefore not be subsequently changed, even if the seller later on engages in further negotiations with the buyer (in case of change of the price, the seller must obtain a new declaration from the municipality). Despite this disadvantage, administrative fee for a declaration on (non)exercising of pre-emptive right from the municipality is no longer necessary under the new legislation. Due to the fact that this it is now a declaration of will in terms of legislation governing contractual obligations and not a certificate, there is no administrative action or writing for which administrative fees could be charged.

Access to the full texts of the Acts in Slovene is available at the links below:

- Building Act

<https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2017-01-2914?sop=2017-01-2914>

- Spatial Management Act

<https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2017-01-2915?sop=2017-01-2915>



- Architectural and Civil Engineering Activities Act

<https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2017-01-2913?sop=2017-01-2913>

Prepared by:

Jan Gorjup, junior partner

Ajda Okršlar, legal associate
