

REAL ESTATE DEVELOPMENT IN LITHUANIA

Real estate development in Lithuania consists of several key stages: acquisition of a land plot, detailed planning of the land plot, construction process and its official completion when the building is recognised as suitable for usage. Each of these stages is regulated by a number of different laws and secondary legislation detailing them. The purpose of this overview is to introduce the investors with the most general features of real estate legislation. Therefore, each of the abovementioned stages is briefly discussed below.

The right of foreign entities to acquire land

In order to develop real estate, one has to gain the rights to a land plot on which the construction is planned. The possibilities for foreign entities to acquire land in Lithuania depend on their compliance with criteria of European and transatlantic integration as defined in Lithuanian legislation. Foreign subjects are deemed to be in compliance with these criteria if they are established in the member states of the European Union or in countries that are parties to the European Treaty (Association Agreement) with the European Communities and their member states, or member states of the Organisation for Economic Cooperation and Development or the North Atlantic Treaty Organisation, or countries that are parties to the European Economic Area Agreement or they are citizens and/or permanent residents of any of the abovementioned states. Foreign entities meeting the aforementioned criteria of European and transatlantic integration have the right to acquire land, inland waters and forests in the Republic of Lithuania according to the same procedure and under the same conditions as the citizens and legal entities of the Republic of Lithuania, except for agricultural and forest land that said foreign entities will be able to acquire unrestrictedly only after the expiry of transitional period, i.e. as of 1 May 2011. Foreign entities that fail to comply with Lithuania's European and transatlantic integration criteria are not allowed to acquire land, inland waters and forests, but have the right to manage and use them on the basis of long-term lease.

Nevertheless, the aforementioned restrictions apply only when land in Lithuania is acquired by foreigners or legal entities established abroad. However, if a foreigner or a legal entity registered abroad establishes a company in the Republic of Lithuania, such company (regardless of its capital or the origin of its shareholders) is allowed to acquire land, inland waters and forests according to the same procedure and under the same conditions as local entities. In conclusion, there are no obstacles for foreign investors to buy land for construction in Lithuania indirectly, i.e. through a subsidiary incorporated in Lithuania.

In order to be able to construct buildings on a land plot, one does not necessarily have to own such land plot. Buildings might be also constructed on land plots that are used on other bases (e. g. right of superficies, long-term lease). It is a common practice to construct buildings on state-owned land plots that are leased to the developers for a term of up to 99 years. The lease of state-owned land is quite an attractive alternative to private ownership because the rights of the lessee of the land plot, as the owner of the buildings located therein, are quite broadly protected. Therefore, it is usual in Lithuania for private investors to buy old buildings located on a state owned land plot just for the purpose of taking over the lease of such land plot which is later developed according to the investors' needs. Another advantage of such lease is that the owner of the buildings located on a state – owned land plot is entitled at any time to buy out the land plot leased without any auction being held. The purchase price may even be paid in instalments scheduled throughout as much as 15 years.

Legal due diligence of a land plot

After finding a land plot suitable for construction, it is advisable to carry out a legal due diligence of the land plot. Legal due diligence of the land plot consists of evaluation of current legal status of the land plot and identification of legal risks related with its development, as well as the review of publicly available data and information revealed by the sellers.

Legal due diligence allows to achieve the legitimacy of the future acquisition of the land plot. For example, a co-owner's share of a jointly-owned land plot can be sold only after the pre-emptive rights of other co-owners to buy the land plot have been waived. Otherwise, the aggrieved co-owner would be entitled to demand that all the buyer's rights and obligations under the sale and purchase agreement of such share of the land plot would be assigned to him. No buyer which has already paid the price would be happy with being replaced in the sale and purchase agreement by some third party and having to hand over to the latter the property which has been acquired. It would be even worse if, upon returning the property, the buyer could not recover money paid for it, because the seller had become insolvent and other creditors had claimed their rights to the property returned, etc. In order to avoid such a situation, it is highly recommended to carry out a legal due diligence in order to identify all actions that must be taken to ensure compliance of the transaction with legal requirements.

Another purpose of the legal due diligence is to make sure that the real estate being acquired meets the investor's expectations. For example, a buyer who intends to acquire a land plot for construction of industrial objects should firstly find out whether there is a detailed plan allowing construction of such objects in the land plot. If such construction is not allowed or there is no detailed plan, the buyer should evaluate what are the possibilities that he will achieve approval of the required detailed plan. It should be noted that if the seller does not warrant in the sale and purchase agreement that industrial construction is possible on the land plot being sold, the buyer will have no right to claim any losses from the seller in case it turns out that such construction is not possible because a detailed plan allowing such construction may not be approved since it would conflict with the general plan. In cases like this, the buyer would have no one else to blame but himself for not being diligent enough to ascertain such circumstances before closing the deal.

Finally, legal due diligence can help identifying potential legal disputes that could affect the status of a real estate object or the possibility to construct and use certain objects on it. For example, a company specialising in the development of office buildings decides to buy a land plot which has a valid detailed plan allowing construction of such buildings. After the land plot is purchased and the construction starts, the owners of neighbouring land plots who have not been properly informed about the detailed planning of the land plot file a request for cancellation of the detailed plan, which is eventually satisfied and the construction is stopped. Legal due diligence could have helped to identify such an imminent dispute. It is not difficult to check whether the detailed plan has been properly discussed with the society. Also, it is possible to evaluate whether the detailed plan has been coordinated with the respective authorities, etc. Being aware of potential disputes, the buyer can decide whether or not s/he should assume such legal risks and, if so, prepare for them.

Territorial planning

In order to be able to construct buildings on a land plot it is not sufficient to own or lease such a land plot. Any land plot may be developed only in accordance with its territorial planning (zoning) documents. Therefore, territorial planning, in particular detailed planning, is an inseparable part of real estate development in Lithuania. Detailed plan is a document which specifies the regulations for use of a specific land plot, i.e. the main purpose, type and subtype of a land plot's use, the permitted height of the buildings, building density and intensity, areas

in the land plot where construction is allowed, type and place of engineering networks, servitudes and etc.

Under Lithuanian legislation, a detailed plan must be prepared in any of the following cases:

- for territories in which general or special plans of municipal territories and parts thereof (cities, towns) envisage construction of residential buildings, public, recreational and common-use, industrial and storage facilities, commercial, trade, utility, communication facilities, and other objects;
- when forming the land plots for construction of new buildings or other non-agricultural and non-forestry activities;
- when changing the main purpose of land plot's use for building purposes or for other activities;
- when changing at least one of the following regulations for use of the land plot: type or subtype of land plot's use, the permitted height of the buildings, building density or intensity;
- when a land plot is divided or merged with other land plots;
- when changing the boundaries and area of the land plots;
- in other cases specified in laws or other legislation.

Thus, only in very rare cases a new detailed plan is not required when developing real estate in Lithuania. Aimed at creating more favourable conditions for developers, in 2006 Lithuanian Parliament changed the Law on Territorial Planning to stipulate that all regulations for use of the land plot, except for the principal ones (i.e. the main purpose, type and subtype of land plot's use, permitted height of the buildings, building density and intensity), may be changed by a technical design of a building if they comply with the legislation and the institution that has established them grants written approval. Therefore, if the main purpose, type and subtype of land plot's use, the permitted height of the buildings, building density and intensity as specified in the effective detailed plan are acceptable to the developer and he only needs to change the construction area, boundaries or lines, engineering networks and communication corridors, organisation of communication systems or the limits of servitude, there is no need to prepare a new detailed plan. Namely, the abovementioned regulations may be changed during preparation of a technical design upon receipt of written permission from the institution that has established such regulations.

Detailed planning can be divided into the following stages:

- 1) in accordance with Lithuanian legislation, only the director of municipality's administration or a state-owned land administrator (county governor's office) are entitled to organise the detailed planning. Therefore, a developer who wants to start detailed planning of a specific land plot has to enter into a contract with the municipality in whose territory the developer's land plot is situated under which the rights and obligations of the organiser of the detail planning would be assigned to the developer;
- 2) before initiating the preparation of a detailed plan, the developer must, in accordance with the established procedure, apply for digest of planning conditions. The planning conditions are the requirements that must be followed when preparing the detailed plan. Those include special conditions for use of the land plot and territorial planning norms applicable to the territory being planned, regulations already established in effective territorial planning documents, as well as the requirements which are set by the institutions issuing the planning conditions. After the planning conditions are received, detailed planning is considered to have started;
- 3) for the purposes of having the detailed plan prepared, the developer compiles a planning task. In addition to other information, the planning task indicates the organiser of detailed planning (only a person meeting special requirements), the address of the planned territory, the purpose of planning, stages of planning, coordination and approval (according to the general or simplified procedure), and the timeline for planning. The planning task must be coordinated with the chief architect of the municipality;

- 4) the preparation of a detailed plan starts upon due publication of the decision to start preparation of territorial planning documents and the purposes of planning. The process of preparation can be divided into several stages:
 - the stage of analysis of the current state: evaluation of building density in the current territory (land plots), engineering networks, streets, greenery, natural and cultural heritage objects, territorial development trends, problematic situations;
 - the stage of concept formulation: determination of the main aspects of use and protection of the territory and maintenance priorities, as well as, in cases specified by the law, strategic environmental impact assessment of the solutions of the territorial planning document;
 - the stage of specification of solutions: establishment of specific regulations for use of the land plot.
- 5) upon preparation of the detailed plan, an evaluation of the effects of its regulations has to be carried out. If an environmental impact assessment of planned economic activities is required under Lithuanian legislation, the assessment of the effects of detailed plan may be continued only after a competent institution states that the planned economic activities are permissible;
- 6) the detailed plan and a report on the evaluation of its effects must be publicly discussed. This stage of detailed planning is very important because failure to comply with relevant procedures entitles the owners and users of neighbouring land plots to challenge the validity of detailed plans;
- 7) after the detailed plan has been discussed with the public, it must be coordinated with Permanent Commission on Construction of a respective municipality. The Permanent Commission on Construction must check whether the submitted detailed plan meets the requirements of the effective territorial planning documents (general and special plans), the planning conditions and the laws. The detailed plan is considered to have been coordinated only if all members of the Commission, obliged to attend the Commission's meetings, approve it;
- 8) after its coordination with the Permanent Commission on Construction the detailed plan has to be verified by the institution supervising the territorial planning, i.e. the County Governor's Administration. Purpose of such verification is to assess whether the detailed plan complies with the planning conditions and the laws, and whether all procedures applicable to preparation, discussion and coordination of the detailed plan have been carried out properly. The detailed plan can be submitted for approval only if the County Governor's Administration issues a favourable opinion;
- 9) detailed plans are approved by the Council or Director of Administration of a respective municipality. The detailed plan must be either approved or reasonably rejected within 20 business days from the day of submission of request for its approval. Once approved the detailed plan comes into effect the next day after it is published in the local press or the next day after approval of the detailed plan is notified in the local press and the detailed plan itself is placed on the website of a relevant municipality.

Although the overall period of detailed planning should not exceed 6 months, in practice this period is much longer. For example, in Vilnius city it takes approximately 17 months to have the detailed plan approved. It should be noted that this period is usually shorter in smaller municipalities. Furthermore, if a municipality is interested in attracting certain investments into its territory, its support might help in having the detailed plan approved even faster.

Nevertheless, the investor should also realise that detailed planning is not just a mere formality that has to be followed. In other words, not all detailed plans that are needed for an investor to implement the development ideas will be approved. If the regulations of the detailed plan contradict the provisions of the legal acts, the former cannot be approved. For example, under Lithuanian legislation the detailed plan may not conflict with the general and special plans. If the general plan bans some activities that an investor would like to pursue in a land plot, the investor should not expect easily to change the general plan and thus eliminate the obstacles hindering

approval of the detailed plan that he needs. Decision to change the general plan is more of a political nature than of legal, i.e. there are no legal means to make the municipality change such a plan. Furthermore, under Lithuanian legislation the general plan may be changed not more than once per year. Therefore, before buying a land plot, it is advisable to carefully evaluate the likelihood of approval of a detailed plan needed for an investor.

The right to commence the construction works

If there is a detailed plan that allows construction of certain structures, this does not mean that the developer can start construction works right away. Construction permit is usually required to commence them. Only construction of simple buildings (buildings with a total area of no more than 80 sq. m. and simple engineering structures) and minor repair works may be performed without any construction permit. In order to receive the permit, one has to submit to the administration of a respective municipality a duly prepared design of a building coordinated with the competent institutions and companies exploiting engineering networks. If a developer wants to build a complex and large object, from the day his request for the digest of design conditions has been filed it might take a year or even more until the construction permit is actually issued. In an effort to shorten this period, the designs are often prepared in parallel with the detailed plan (of course, only to the extent that is possible without having the digest of design conditions).

The whole process relating to the design of a building and issuance of construction permit can be divided into the following stages:

- 1) Design of a building must be prepared following design conditions that are issued by a respective municipality in the form of a digest. The digest of design conditions is a compilation of requirements that must be fulfilled when preparing the design of a building. Design conditions are usually comprised of (i) requirements related to the construction of public and local engineering networks, connection thereto of the building's or land plot's engineering networks; (ii) requirements related to the construction of transport networks and connection thereto of the transport networks of the land plot wherein the construction is intended to take place; (iii) requirements for the building's architecture; (iv) regulations applicable for an immovable cultural heritage object; (v) regulations applicable in a protected area; (vi) other requirements specified in laws. It is very important to remain in compliance with the design conditions because:
 - the construction permit will not be issued if the Permanent Commission on Construction identifies that the design contravenes the requirements of the design conditions;
 - the building will not be recognised as suitable for usage if the design conditions have not been complied with during its construction.

The digest of the design conditions must be prepared, coordinated, approved and issued to the developer within 20 business days from the receipt of the developer's request, or the developer must be notified, within 15 business days, of reasons for not issuing the digest of the design conditions. Unfortunately, in practise these deadlines are not always complied with. The digest of the design conditions remains effective as long as the construction permit is valid. If the said permit is not issued within 3 years from the moment of receipt of the digest of the design conditions, the latter must be re-approved again.

- 2) A design of a building is prepared upon receipt of the digest of the design conditions. A developer intending to hire an architect for preparation of the design should remember that only persons meeting requirements specified in Lithuanian legislation are entitled to prepare designs of the buildings.
- 3) Expertise of the building's design is necessary in certain cases. The purpose of such

expertise is to evaluate whether the design meets the key requirements for the buildings specified in the Law on Construction as well as the requirements of other laws, technical construction norms and binding documents on the preparation of the design. Under Lithuanian legislation expertise is mandatory:

- for a design of a complex building (i.e. a building in which hazardous materials will be used or stored, or a building in which potentially hazardous equipment will be kept or potentially hazardous works will be performed, or a structurally and technologically complex building, or a building used for public needs which will host more than 100 people at the same time or a cultural heritage building);
- for a design of a building included in a state investment programme;
- for a design of a cultural heritage building under which construction works will be performed either in the cultural heritage building itself or in its territory .

In other cases, expertise of the design may be carried out at the initiative of the developer (client). It should be noted that the comments made by the expert who analyses the design are binding in any case, i.e. both when the expertise is mandatory under the legislation and when it is carried out at the developer's request. If conclusions of the expertise state that the design does not meet the key requirements of the building and (or) those of binding documents on design preparation and (or) requirements of other legal acts on construction, the design must be corrected in accordance with the comments of an expert and then submitted for expertise once again.

- 4) Next stage is design coordination. The phrase "design coordination" is not used in Lithuanian legislation. It has been inherited from the legal acts that are no longer in force. In practice, design coordination is understood as a review performed by competent institutions which is aimed at evaluating whether the design of a building meets the requirements of territorial planning documents and digest of design conditions. Theoretically such review must be performed by the Permanent Commission on Construction of a respective municipality. The Commission should hand over the design of a building to its members who should check whether it meets all the applicable requirements and then at a Commission's meeting pronounce whether they approve the construction design. However, the aforementioned mechanism does not always work in practise. Usually the developer has himself to coordinate the design of a building with the institutions and entities having representatives in the Permanent Commission on Construction, i.e. with institutions (entities) that have prepared or established the design conditions, the Fire and Rescue Department, Public Health Service, an organisation of the disabled, etc. A design is considered to have been coordinated after the said institutions and entities confirm that they approve the design.
- 5) After the design has been successfully coordinated, the developer must apply to a respective municipality for the construction permit. In addition to the application (request), the developer must submit documents certifying the ownership or another right to control and use the land plot on which the construction works will be performed, the design of a building, conclusions of the expertise (if it was mandatory), and other documents indicated in the laws. After the developer's request has been registered, all documents are handed over to the Permanent Commission on Construction which verifies whether the design complies with the territorial planning documents, the digest of the design conditions and other applicable legal acts. After having review the design, the Permanent Commission on Construction instructs the municipality's administration either to issue or refuse to issue the construction permit. The construction permit must be issued within 10 days (construction permit for a complex building – within 15 days) after all the required documents have been submitted to a respective municipality. Unfortunately, these terms are not always followed in practice.

The construction permit remains valid for 10 years (and may be extended for additional 3 years). However, its validity might end earlier in the following cases:

- a land plot (or part thereof) is expropriated (taken for public needs) in accordance with the procedure established by the laws;
- the construction of a building has not commenced within 3 years after the permit has been issued or the building has not been recognised as suitable for usage within 10 years from the same date;
- the construction permit is annulled by a court decision;
- the construction permit is revoked by the municipality in accordance with the procedure established by the laws.

It must be noted that after the construction permit becomes invalid, construction is considered to be illegal, just like construction conducted without any construction permit.

Organisation and performance of construction works

Every developer has the right to choose the most suitable method of organisation of the construction works:

- a) Construction by means of contracting is a method when construction works are performed by a contractor who has been contracted by the developer (client) and who assumes all or most of responsibility and risks associated with the organisation of construction;
- b) Construction using own resources is a method when the developer does not hire any contractor and performs the construction works using its own labour force, construction material and equipment;
- c) Mixed method of construction organisation is a method when part of works are performed by means of contracting while the rest of them are carried out using own resources;
- d) Construction management is a method when construction and other associated works are organised by a construction manager on the basis of an agency agreement.

In practice constructions works are usually organised by means of contracting or construction management, or a combination of these two. Lithuanian legislation does not stipulate any extraordinary requirements that would be applicable to construction contracts or agreements on construction management. Furthermore, the principle of freedom of contracts enables the parties to enter into contracts using various standard contract conditions or guides prepared and approved by international and foreign organisations (e.g. FIDIC, EIC, YSE, UNICTRAL, etc.).

Legal acts establish numerous requirements which must be adhered to when carrying out construction works, therefore, they will not be discussed separately in this overview. However, it should be separately noted that technical supervision is usually mandatory while performing the construction works (it is not obligatory only for the construction of simple structures (group I) and minor repair works). Technical supervision is a supervision of the construction process (from the very start to the recognition of the building as suitable for usage) organised by the developer (client), which is aimed at monitoring whether the building is being built in accordance with its design, construction contract (in case it has been concluded), applicable legislation, technical construction documents, normative documents on the safety and designation of use of the building. Only a specialist having a university degree in the field of construction, architecture or other technical disciplines and certified in accordance with the procedure established by an institution authorised by the Government of the Republic of Lithuania is entitled to act as the technical supervisor of construction works.

Recognition of a building as suitable for usage

Under Lithuanian legislation the building may not be used until it has not been recognised as

suitable for usage in accordance with the procedure established in the legal acts. This rule is not applicable only in case of construction of simple buildings (group I) and minor repairs works.

The procedure of recognition of a building as suitable for usage is carried out to ascertain the following:

- whether the building has been built in accordance with the requirements of binding documents on the preparation of the design;
- whether the building has been built in accordance with the design;
- whether the building meets the key requirements for buildings specified in the Law on Construction and requirements for activities specified in the legal acts.

Buildings are recognised as suitable for usage by a commission comprised of representatives of state institutions. In addition to the representatives of state institutions, the commission must also include representatives of the contractor and subcontractors as well as the technical supervisor of construction works.

The act (deed) of recognition of a building as suitable for usage is a basis for registering the building in the Real Estate Register of the Republic of Lithuania.

Registration of ownership rights

In order for the result of construction works, i.e. a combination of connected construction products firmly fixed to the land, to turn into an immovable object, cadastral measurements and legal registration of the building must be performed.

Cadastral measurements of an immovable object can only be carried out by surveyors and expert surveyors, i.e. natural persons holding certificate of surveyor qualification, issued by an institution authorised by the Government, and employees of a legal entity licensed to perform cadastral measurements of immovable objects, who work under an employment or another civil contract, as well as the owners of individual enterprises or partners of joint ventures having the abovementioned licence.

An immovable object is considered to have been formed and registered in the Real Estate Register of the Republic of Lithuania after the cadastral data obtained upon carrying out cadastral measurements of the object are entered into the Real Estate Cadastre of the Republic of Lithuania. Ownership rights to such an object must be separately registered in the Real Estate Register of the Republic of Lithuania.

The registration of the object and the developer's ownership rights to it in the Real Estate Register of the Republic of Lithuania is important for several reasons:

- a) registration of real estate and rights to it is a prerequisite for its recognition as an object of civil rights and its use for civil purposes (e.g. the owner can use, sell or mortgage only an immovable object that is registered in the Real Estate Register of the Republic of Lithuania);
- b) all the data contained in the Real Estate Register of the Republic of Lithuania is considered correct and exhaustive from the moment of being entered into the register, unless successfully challenged in accordance with the procedure established by laws. This legal presumption ensures protection of the interests and rights *in rem* of the developer whose real estate and rights *in rem* have been registered in the Real Estate Register of the Republic.

Upon recognition of the building as suitable for usage and registration of the developer's ownership rights to it in the Real Estate Register of the Republic of Lithuania, the real estate development project is considered to have been completed.

This overview contains only general information which is correct to the best of our knowledge as of 1 June 2008 and should not be relied upon as legal advice or opinion. Should you need a professional advice on any question, please contact:

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