

Legislative playground

After prolonged discussions and changes regarding the length of the *vacatio legis*, tomorrow, the Regulation of the Minister of Development and Technology of 27 October 2023, amending the regulation of the Minister of Infrastructure of 12 April 2002 on the technical conditions that buildings and their location should meet, finally comes into force. This regulation has been causing significant stir and discussions in the industry for a long time.

The changes introduced by the regulation include:

- specifying the distance of buildings from plot boundaries,
- imposing the obligation to separate balconies of neighbouring residential units located on the same balcony slab,
- the obligation to provide stroller and bicycle storage rooms with a minimum area of 15m²,
- specifying the minimum area of commercial units,
- as well as the way public squares are managed.

The aim of the changes is, presumably, to combat the phenomenon whose recently popularised term in public discourse may, according to the latest case law, violate the personal rights of developers. The lack of detailed regulations allowed investors to maximise profits and usable floor space ("**PUM**"). This led, for example, to the creation of so-called "micro-apartments" and "micro-studios," widely commented on recently, formally offered as commercial units. Now, the minimum area of such units is to be 25m². It seems that the legislator wants to remind us that residential construction must consider not only the developer's profit but also the functionality and comfort of future residents.

The new regulations also introduce the necessity to construct playgrounds, even for individual residential buildings. This regulation seems to have caused the most controversy in the industry, as it significantly affects the so-called property absorption. Planning documents specify building coefficients, including intensity, height, and the share of biologically active areas. They determine the building size that can "fit" on a given property. The size of the building directly translates into the value of PUM and consequently affects the developer's final profit.

In professional real estate transactions, legal and technical due diligence and feasibility studies are crucial before purchase. Decisions to buy property are made based on the results of these analyses, also considering the possible PUM to be achieved. The business must pay off and the investor need to obtain data to confirm that this assumption before the acquisition. Such data will also be asked for by, among others, the institution financing the planned investment.

The necessity to include a playground in the project will be particularly problematic in the case of development on small plots in city centers. New regulations may force significant plan changes and, in extreme cases, even make the investment unfeasible. In any case, regarding already purchased properties for which a complete set of permits has yet to be obtained, they may significantly affect the investment's profitability. It can be expected that additional costs will be passed on, at least partially, to the potential buyer.

Such changes are also not a manifestation of legal certainty, which is so important for encouraging investors. The stability of regulations is crucial for both developers and potential buyers so that they can make informed and safe business decisions. These regulations will obviously also affect the absorption of other properties available on the market. As a free-market entrepreneur, the developer will decide to purchase property and implement investments only if they are sure that the business will generate "money, money, money...". Considering the low availability of land, it can be expected how this will affect, from the perspective of the "average Joe" the already very high prices of the apartments.

Do you want to know more? Contact us!

Karolina Pacholska, Associate
karolina.pacholska@ngllegal.com

Katarzyna Duda, Legal Analyst
katarzyna.duda@ngllegal.com