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**December 2014**

## **New statutory regulations concerning development agreements and municipal land allocation agreements**

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On 1 January 2015, the Planning and Building Act will be amended and a completely new act, namely the Act on Guidelines for Municipal Land Allocation Agreements will enter into force. The purpose of the amendments is inter alia, to streamline and simplify the processes for preparing zoning and development plans, and the belief is that this will lead to an increase in the construction of primarily, new housing. The amendments will also contribute to increase the transparency and predictability for developers. The intention is that the regulations will make it easier for developers to negotiate with the municipalities and demanding a level of reasonableness in the measures required by the municipalities for the developer to undertake and fund in connection with the development.

### **Development Agreements Regulated by Law**

Previously, there were no explicit provisions regarding what a development agreement may and may not contain. In the Planning and Building Act, a development agreement is defined as a civil law contract on the implementation of a zoning and development plan between a municipality and a developer (a constructor or a property owner) regarding land not owned by the municipality. The development agreement contains agreements on guidelines for the development project. The amendments of the Planning and Building Act leads to an introduction of an obligation for the municipality to adopt guidelines that determine the starting points and objectives of the municipality when agreements are to be entered into concerning development, land allocation and the implementation of zoning and development plans. The guidelines exist in order to ensure that all developers may compete on a level playing field. The guidelines are not binding on either the municipality or the developer, but it is inherent that the intention is for the municipality to comply with them.

A development agreement may contain an undertaking for a developer or a property owner to construct and/or finance streets, roads and other public spaces and facilities for water supply and drainage. The measures must be necessary for the implementation of the zoning and development plan. Necessary measures do not

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have to refer to only such measures within a specific zoning and development plan area that is needed for the implementation of the zoning and development plan. The concept of necessary measures also includes measures occurring as a direct result of the zoning and development plan, e.g. measures necessary for providing communications to and from a residential area, or to manage the traffic in a secure and efficient manner or other investments within technical infrastructure. In certain circumstances, it is also necessary to rectify any ground pollution prior to the land within the zoning and development area is deemed suitable for construction. The measures that can be included in the obligations of the constructor or property owner, however, must be reasonable in relation to the benefit of the developer of the project in question. The development agreements may also cover matters that are not of a financial nature. Examples of such issues that may be specially regulated include architecture, urban design programs and the design of public areas. The development agreements, however, may *not* contain any obligations for the constructor or property owner to pay for facilities such as premises for healthcare, education and social care, which the municipality has a statutory obligation to provide.

Finally, it can be noted that previously the municipalities often had their own requirements for features relating to the construction and design of buildings, energy consumption etc. Under the amendment to the Planning and Building Act such special municipal requirements will be expressly prohibited and the development agreements must not contain any such special requirements. It is ultimately the Planning and Building Act which sets the requirements regarding which technical requirements that may be included in development agreement.

**New Legislation Regarding Guidelines for Municipal Land Allocations Agreements**

A new act with rules on guidelines for municipal land allocation agreements will be introduced at the beginning of next year. Land allocation agreements are agreements between a municipality and a developer that give the developer the exclusive right, for a limited period of time and within set conditions, to negotiate with the municipality on the purchase of a particular piece of land owned by the municipality, for construction. What is intended is therefore, an agreement on the possibility of a transfer of land that does not necessarily need to include provisions regarding the implementation of a zoning and development plan. The new act is intended to create transparency in the initial stage of the construction process. It will become clearer which rules apply to land allocation in a municipality which will benefit the competition between different construction companies and other developers.

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From the act follows that a municipality entering into land allocation agreements will be obliged to adopt guidelines, similar to those for development agreements. The municipalities may determine how detailed these guidelines will be. Naturally, the more detailed guidelines, the more predictability will there be for the developer. The act, however, stipulates that the guidelines must contain the starting points and objectives of the municipality for transfer or assignment of land for construction, processing routines and fundamental conditions for land allocation and the principles for pricing land. The starting points and objectives for the municipality are intended primarily to refer to the principles for allocation of costs and revenue for the implementation of zoning and development plans. The obligation for the municipality to adopt guidelines includes that the municipality must have prepared these prior to allocation of land. The guidelines must also be up-to-date on every occasion on which the municipality undertakes a land allocation. The guidelines are not legally binding and a land allocation made prior to the municipality has adopted the guidelines remains valid. As for the guidelines for development agreements, however, it is inherent that the intention is for the municipality to comply with these.



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