

SPECIAL ISSUE on Real Estate

VISIT US 12-15 March 2019
Palais des Festivals, Cannes, Stand R7.E2

Right of superficies

The *right of superficies* is a re-established *right in rem* that has been reintroduced into Czech law by the new Civil Code. It is one of the ways in which a structure can be constructed on the surface or below the surface of land belonging to a third party. It constitutes an exception to the *superficies solo cedit* principle, i.e. where the structure is an integral part of the land and does not exist, with some exceptions, in its own right in the legal sense. The *right of superficies* prevents the structure from being considered part of the land from a legal perspective.

The purpose for establishing the *right of superficies* is therefore mainly economical in nature because investments in land are minor especially when compared to a classic purchase. The *right of superficies* is also used by municipalities as a way of co-financing their housing funds.

In most cases, the *right of superficies* is established by a contract concluded between a person who is entitled to construct a structure on third party land, i.e. the builder, and the owner of the plot of land. The legal relationship establishing the *right of superficies* must be registered in the cadastral register, which is a public register.

The structure is inextricably linked with the *right of superficies* and therefore cannot be sold, donated or encumbered separately. The builder can only dispose of a *right of superficies*, i.e. the *right of superficies* can be sold, donated or encumbered. Destruction of the structure does not have any legal effect on the *right of superficies*. Furthermore, the *right of superficies* passes to the heir or another general legal successor.

The *right of superficies* cannot be established for an indefinite period. The Civil Code sets a maximum period of up to 99 years. The period must also be registered in the cadastral register. It should therefore only be used in cases in which the time of establishment is known in advance and the establishment is to be permanent because premature deregistration from the cadastral register could be complicated. After expiry of the period recorded in the cadastral register, the structure becomes part of the land and the owner is obliged to provide the builder with compensation for the structure amounting to half the value of the structure at the time the *right of superficies* lapses. In addition, any pledge and other rights attached to the *right of superficies* also lapse at the time the *right of superficies* lapses and this affects the amount of compensation to be provided.



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It should be noted that one of the most important aspects is to define the structure to be constructed on the land. It is crucial for the builder to meet the requirements set out in the contract. Otherwise, the structure will not become part of the *right of superficies* and it will instead become part of the land. The owner of the land must then decide to either pay compensation for the structure or demand demolition of the structure at the builder's expanses.

The *right of superficies* offers parties considerable freedom when contracting with one another and therefore it can be

tailored to meet their specific requirements. As the *right of superficies* is a good means by which municipal housing developments can maintain control over the municipality's assets, we are expecting the *right of superficies* to grow in importance in the future.

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