

RGW Rocławski Graczyk i Wspólnicy Adwokacka Spółka komandytowa

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1. Issues concerning the recording of civil trials

- The regulations governing the recording of proceedings at court sittings were amended by the act of 29 April 2010 on a revision of the act The Code of Civil Procedure (further the “CCP”) (Journal of Laws 2010 No. 108, item 684) which took effect as of 1 July 2010
- Pursuant to art 157 § 1 of the CCP, it is a clerk who takes the minutes of proceedings in open court. The minutes are taken by way of recording the proceedings with the use of a device registering sound or visual images and sound as well as in writing, under the direction of the chairman pursuant to art 158 § 1 of the CCP.
- A so called electronic record consists of two sections, i.e. an audio or audio-visual record and a section in writing prepared by a clerk under the direction of a judge who chairs a trial. The section in writing is limited to the most essential information about the case and action taken by participants in the proceedings. In this state of affairs, the task of the clerk is to make sure that the electronic record is properly prepared and this will be made possible by special software installed put on the clerk’s computer.
- The record to be prepared with the use of a device registering sound, or visual images and sound, will be provided with an electronic signature. The electronic record will make a part of the court files. Considering the need to protect the image of persons taking part in the proceedings, the parties to and participants in these proceedings will not be able to receive the record of visual images. This means that they can only be given the record of sound. It will be possible to become acquainted with the record of visual images at the office of the court (in the reading room), however without the possibility of copying the record.
- Provisions of the Code of Civil Procedure do not contain a regulation prohibiting a party or the public from recording a trial or making the exercise of such right conditional on prior consent of the court which is the case under the penal procedure (art 358 of the Code of Penal Proceedings).

- The Ministry of Justice is planning to complete the introduction of the electronic record in 2013.

2. **The act on protection of the rights of a purchaser of living premises or a family house (so called “development act”)**

- On 11 October 2011, the President signed the final wording of the act on protection of the rights of a purchaser of living premises or a family house (Journal of Law of 2011 No. 232, item 1377), the so called development act. The act takes effect after 6 months of the publication. The act contains detailed regulations aimed at protecting customers of development companies in transactions involving the purchase of real estate by providing statutory means of protection of cash payments made by purchasers and establishment of the rights and obligations of parties to a development contract.
- The act stipulates that a developer will have to provide a purchaser of an apartment or a house with at least one of four so called “means of protection”.
- In order to protect payments made by a purchaser of an apartment or a family house before the final transfer of the title to real estate, the act places a developer under an obligation to open a trust account to which moneys from purchasers will be transferred. The account may be operated as a closed trust account (withdrawal of the moneys accumulated in the account is made on a one-off basis, after the right of property ownership has been transferred to the purchaser) or an open trust account (withdrawal of the moneys accumulated in the account is made according to the schedule of the development project defined in the contract). The open trust account may take three different forms: individual (i.e. without additional security) or with security on the part of the developer in the form of bank guarantee or insurance guarantee (provided by insurance companies).
- In the light of provisions of the new act, each development contract, in order to be valid, must be concluded in the form of a notarial deed. The cost of notary’s remuneration, copies of the deed and court fees shall be borne equally by the purchaser and the developer. In addition, purchasers’ claims for the erection of a house, marking off premises and transfer of ownership thereof must be revealed in the land and mortgage register, thus becoming more effective in relation to third parties.
- Under the act, every developer will be obligated to prepare a prospectus containing not only data concerning construction work in progress but also data on legal and financial situation of the developer, planning permission, financial statements, architectural and building projects as well as examples of projects completed.
- The act also defines the rules applicable to bankruptcy proceedings in relation to a developer.