

# Development of land in the vicinity of railway lines

The provisions of the Railway Transport Law of 28 March 2003 (hereinafter referred to as the "Law") defines specific exemptions from the building law provisions with regard to the location of structures, buildings, trees and shrubs and the performance of earthworks in the vicinity of railway lines.

Art. 53 of the Law introduces a general rule governing development of land in the vicinity of railway lines: "Structures, buildings, trees and shrubs and earthworks in the vicinity of railway lines, railway sidings and railway crossings can be located or performed in a distance which does not disrupt their operation or the operation of devices for rail operation or a distance which does not jeopardise rail safety." Disruption of the operation of railway structures and devices should be examined on a case-by-case basis; therefore, the distance of other structures from railway lines can differ depending on the nature of the planned development. However, the legislator has specified minimum distance requirements which are aimed to ensure safe operation of railway transport equipment. Accordingly, buildings and structures may be located within a distance of not less than 10 metres from the border of the railway area with a proviso that the distance from the axis of the outer railway tracks may not be less than 20 metres. The minimum distance requirement does not apply to buildings and structures intended for rail operation and railway line maintenance and for handling of transport of people and goods.

In the case of residential buildings, hospitals, nursing homes, recreation and sports facilities, buildings for several hours' stay of children and youths, the distances referred to above should be increased, depending on the purpose of the building, so as to ensure compliance with the permissible sound lev-

el, as specified in the applicable regulations. It should be reiterated that the Law only defines minimum distance requirements, which can be increased in specific cases (based on the actual conditions) in order to keep the safety of both rail traffic and of the structures existing in the vicinity of railway lines.

Distances applying to the performance of earthworks were specified in the Regulation of the Ministry of Infrastructure of 7 August 2008 concerning the requirements applicable to distance limits and permissible conditions for the location of trees and shrubs, sound insulation elements and performance of earthworks in the vicinity of railway lines and the manner of execution and maintenance of snow protection shields and firebreaks. Pursuant to the Regulation, earthworks can be performed in a distance of not less than 4 metres from the border of the railway area. As in the case of the Law, the distance requirements do not apply to earthworks related to the construction, maintenance, repair or modernisation of railway lines. Moreover, the performance of earthworks in a distance of 4-20 metres from the border of the railway area should be each time consulted with the railway infrastructure management authority.

There can be exemptions from the rules laid down by the Law and the Regulation. Pursuant to Art. 57 of the Law, there can be some exemptions from the conditions for the location of buildings and structures and the performance of earthworks in well-justified

cases. An exemption may not result in a risk to human life or safety of property and safety and proper operation of rail traffic and it may not disrupt the operation of rail traffic maintenance equipment. The competent architectural and construction administration authority, within the meaning of the provisions of the Building Law, grants or refuses to grant an exemption having previously secured an opinion from the competent management authority.

These provisions impose additional obligations and restrictions on investors, which can significantly impede the entire construction process. Therefore, every investor planning to build anything or carry out earthworks in the vicinity of railway lines should examine their plans in terms of restrictions resulting from the Railway Transport Law.

*Bartosz Kopik*

*Lawyer*

*Miller, Canfield, W. Babicki, A. Chelchowski i Wspólnicy Sp.k.*