



Special Information: Update Building Law

1. Federation

On 23 March 2020, the Federal Ministry of the Interior for Building and Homeland, published a decree with the working title "Building contract issues in relation to the corona pandemic"; see

https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2020/erlass-bauwesen-corona-20200323.pdf?__blob=publicationFile&v=1

In the meantime, the Federal Government has followed suit and on 27 March 2020 published the supplement to the Building Procurement Law mentioned in the aforementioned decree under IV. at the end; see here

www.bi-medien.de/upload/2020_03_27_BWI7_70406_21_1_Bauvergaberecht_Corona_28911.pdf

Under point III "Reference to dealing with disruptions in the construction process", what follows is explained there:

For new contracts to be concluded, the attached information sheet on dealing with construction disruptions in connection with the CO-VID 19 pandemic shall be attached to the tender documents. ... This clarifies that the consequences of the COVID-19 pandemic for the individual construction contract are still unforeseeable, i.e. the force majeure event can also be triggered in new contracts. In this respect, new contracts to be concluded are to be treated in the same way as existing contracts.

These requirements are to be welcomed because they are fundamentally suitable for creating legal certainty.

2. Free State of Bavaria

In the meantime, the Free State of Bavaria has also reacted and informed the motorway directorates, state building authorities as well as the state building directorate of Bavaria in extracts with regard to the decree of the Federal Government of 23 March 2020 as follows:

The contents and recommendations of the BMI decree, to which the Federal Ministry of Transport and Digital Infrastructure has also subscribed, will be adopted for the entire construction sector of the Bavarian State Building Administration - also in the interest of uniform handling.



See for details:

www.bayika.de/bayika-wAssets/docs/aktuelles/2020/2020-03-24_StMB-Z5_RS_zum_Erlass_BMI_und_BMVI-RS_Corona-Pandemie.pdf

As far as can be seen, the Free State of Bavaria has not yet taken any action with regard to the public procurement law issues involved. Due to this legal uncertainty, we have recommended several of our clients to contact their associations in order to persuade the Bavarian State Government to act without delay.

The legal situation in Bavaria is therefore still completely unclear with regard to invitations to tender issued by the state authorities.

3. Local authorities

The question of how local authorities, i.e. cities and municipalities, will (will) behave with regard to the public procurement law issues related to Corona is currently not foreseeable.

4. Private procurement procedures

With regard to private procurement procedures, which probably concern the majority of tenders in building matters, the information provided in our special information dated 26 March 2020 remains valid.

5. Summary and recommendations for action

The federal government has contributed to legal certainty with its decree; it would be desirable for the federal states and municipalities to follow this example. There is still considerable legal uncertainty in private construction projects and awarding of contracts.

You should also be aware of one thing. Even if in your specific case there is objectively an obstacle in the form of force majeure, this does not mean that you have solved all problems. Depending on the individual case, you have to take into account a variety of circumstances and fulfil obligations in order to protect your rights (generalizations are not permitted, as already announced on 26.03.2020). If you make mistakes here, it can literally cost you dearly.



The above statements are only a non-binding compilation according to the current status. No liability is assumed for the correctness and completeness. We would be pleased to support you in checking and, if necessary, implementing the above measures in your company.

Your familiar contact persons remain at your disposal regarding this matter.

In addition, you will find the contact persons who have been particularly involved in the above-mentioned topics.

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Our law firm profile is rounded off by family office services, asset management and IT consulting.

Concluding remarks

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