

# Legal Alert

Civil Code amendments

August 2008

**Amendments to the Polish Civil Code went into effect on 3 August 2008, governing the status of "transmission equipment" and adding two important new institutions to the Civil Code: utility easements and monetary damages for members of the immediate family in a wrongful death action (Act of 30 May 2008 Amending the Civil Code and Certain Other Acts, *Journal of Laws No. 116 item 731*).**

## Transmission equipment

The amendment resolves a controversy that arose in the jurisprudence concerning the concept of transmission equipment (for utility networks), by providing that **equipment for supplying or removing liquids, steam, gas or electricity, or other equipment of a similar nature, is not an integral element of real estate if the equipment is an element of a utility enterprise.**

## Utility easement

The amendment introduces a new set of rules concerning utility easements. These are of great importance both for utility companies and for owners of real estate through which utility lines are installed. Under the new regulations, real estate may be encumbered for the benefit of a utility company that owns or intends to build equipment for supplying or removing liquids, steam, gas or electricity, or other equipment of a similar nature, with a right for the utility company to make use of the encumbered real estate in accordance with the intended purpose of the equipment.

### Features of a utility easement:

- it is established for the benefit of a utility company,
- pursuant to an agreement between the owner of real estate and the utility company,
- may be applied to existing transmission equipment as well as future plans for building such equipment,
- is assumed by an acquirer of the utility or the equipment,
- expires upon completion of the liquidation of the utility, at the latest, and
- is governed where relevant by regulations concerning land easements.

**If no agreement is reached on establishing a utility easement** (and the easement is necessary for proper use of transmission equipment):

- **because the owner refuses to consent to the utility's terms**, then the utility company may seek to have the easement established by judicial means, for an appropriate fee;
- **because the utility company refuses to consent to the owner's terms**, then the owner of the real estate may seek an appropriate fee by judicial means in exchange for establishment of the utility easement.

The amendment also includes related changes to:

- the Civil Procedure Code (procedures for actions seeking an easement by necessity will also be applied where relevant in actions seeking establishment of a utility easement, in a non-adversarial proceeding),
- the Act on Land Registers and Mortgages, and
- the Bankruptcy and Reorganization Law.

## Damages in wrongful death actions

**The amendment extends Civil Code Art. 446 by adding a new sec. 4, providing that the court may award the decedent's immediate family members an appropriate amount as monetary damages for the loss suffered.**

It may be anticipated that this change would allow, for example, survivors of a patient who has died in the hospital due to errors in medical treatment, infection or contamination, or survivors of victims in fatal traffic accidents, to receive appropriate financial compensation.



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