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Ready for New Construction Contract Law

On Tuesday, 14 November 2017 everything was about the new construction contract law in BEITEN BURKHARDT's Frankfurt office. Under the headline "Construction booms, Frankfurt booms" our experts Dr Daniel Fischer and Dr Jochen Reuter informed on the new construction contract law which will come into effect on 01 January 2018 and has a number of reforms to show for those operating in the construction industry.

At the beginning, Mr Fischer gave a short overview of the new construction contract law in the German Civil Code (*BGB*) in its entirety, before describing its applicability. He emphasized that also contracts which were concluded before 1 January 2018 may be subject to the new regulations, for example if those contracts provide for assignments in a phased manner and one or more of the phases are called in only in 2018. Daniel Fischer proceeded to explain different types of contracts. The event focused mainly on the type 'construction contract' so that the other types of contract which are also new and relevant to some of the participants could only be discussed marginally. More topics were the establishment of special "construction chambers" at Regional Courts and amendments to sales law where a refund right, irrespective of fault, for disassembly and assembly costs in case of defective construction products is being introduced.



The second part of the talk was headed by Dr Reuter who presented the "authority of the principal" which will be codified in the BGB for the first time as of 1 January 2018. The authority of the principal is one of the most significant amendments to the



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law and is likely going to cause numerous discussions until supreme courts will have issued their first judgements. The animated discussion on the wording of Section 650 b BGB is at least a hint in this direction. The possibility of interim legal protection under emergency procedures is also new. Here the high obstacle of having to present a reason for the injunction has been abolished. Injunctions in private construction law can be expected to grow significantly in number.

After a short break which was already used for many questions of all kinds, Daniel Fischer presented the changes in remuneration and partial payments. The new law stipulates that the contractor is entitled to demand partial payments of up to 80% of the own offer in case no agreement can be reached on a supplement. This will cause a stir in the industry. Our experts consider it not feasible to exclude such right completely through general terms and conditions. However, modifications appear possible, particularly when including securities. Yet, until supreme courts will have issued a decision, possibly in several years, there will remain a legal uncertainty.



Finally, Jochen Reuter illustrated consequences of the amendments for drawing up construction contracts. Here he mainly pointed out differences between the new statutory provisions and the provisions of the German General Terms and Conditions Applicable to Building Contracts, Part B, (VOB/B) on the authority of the principal. He showed that particularly Section 1 and 2 VOB/B probably no longer reflect the new legal concept, and he recommended making alternative contractual arrangements. The successful real estate event concluded with snacks in a relaxed atmosphere where there was a lot of room for networking and clarifying any remaining questions.

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The real estate practice group headed by Klaus Beine has 36 members in Frankfurt and provides advice on all stages of a real estate: starting with the construction itself, then for example advice to developers on construction costs or also construction delays, and the team also gladly assists clients with later renting out.

