Amendment to the Polish Building Act: Simplification and Expedition of Procedures

On September 19, 2020, most provisions of an extensive amendment to the Construction Law took effect. The amendment introduces very important changes from the investors’ point of view, both those considering and already pursuing their investments, and those whose projects have long been completed. The new regulations were introduced via the Act of February 2020 amending the Construction Law Act.

Primarily, the amendment is meant to simplify and expedite the investment and construction process, as well as to ensure greater stability of the law and administrative authorities’ decisions. The most significant changes are discussed below.

Changes With Regard to Derogating Technical and Building Provisions

The amendment extends the possibilities of allowing for the technical and building provisions derogation. Seeking such derogation is possible not only prior to obtaining a building permit, but also upon changing the building permit. However, the derogation cannot be obtained in the case of lawless building legalization.

Longer List of Works Not Requiring a Building Permit

The amendment clarifies the types of construction objects and categories of construction works that require a building permit or notifying the authorities of intended construction works. Consequently, the catalogue of construction works that do not require any formalities has been simplified, extended and adapted to satisfy practical needs.

As of September 19, 2020, there is no requirement to obtain a building permit or notify the authorities of the redevelopment of a building if such redevelopment does not affect the building’s external partitions or structural elements.

In addition, the catalogue of structures not requiring a building permit prior to proceeding with them has been extended. By way of example, it will no longer be necessary to register or seek a permit to build, among others, ATMs, ticket machines, deposit machines, vending machines, parcel machines or other services machines of up to a height of 3 meters.
Building Design Elements

As of September 19, 2020, the building design comprises three elements: (1) land and land outline planning design, (2) architectural and building design, and (3) technical design.

The technical design must include, among others, the construction and installation solutions. Upon applying for an occupancy permit, an investor must submit the technical design to the building supervision authority. The design must comply with the land or land plot outline planning design and the architectural and building design approved by the architectural and building administration authorities.

Furthermore, if the investor wishes to change the technical design so that it does not comply with the land or land plot outline planning design and the architectural and building design, the latter must be changed first.

Significant Deviation From Construction Design

The amendment introduces more lenient regulations on significant deviations from construction design. As of September 19, 2020, significant deviations requiring a building permit amendment are limited to:

- Changes to the development design resulting in an extension of the impact zone beyond the boundary of the plot on which the building is to be built
- Changes of the development area exceeding 5%
- Changes of length, width or height exceeding 2%
- Changes requiring an amendment to permits or approvals except for deviations from fire regulations, preservation maintenance, or health and sanitary conditions (provided that such conditions have been approved by competent authorities)

Changes to the technical design will not require an amendment to the building permit.

Easier Building Permit Transfer

Before the amendment came into force, the authority that issued the building permit was obliged, upon the current investor’s consent, to transfer the permit to a different entity if such entity had accepted all the terms and conditions of the decision, and had made a statement on the right to dispose of the real property for building purposes.

Following the amendment, the current investor’s consent to transferring the building permit will not be necessary if the ownership title or the perpetual usufruct right to the real property will be transferred from the current investor to a new investor seeking the building permit transfer.

Easier Lawless Building Legalization

Before the amendment, whether lawless building legalization was allowed depended on its compliance with the local development plan or outline planning decision. The new regulations waive that requirement with regard to investments completed more than 20 years prior. Now, the owner of a lawless building may undergo the so-called “simplified legalization” procedure.
The simplified legalization procedure entails submitting (1) a statement on disposing of the real property for building purposes; (2) a land surveyor’s as-built stock of the structure; and (3) an expert’s opinion as to the structure’s technical condition.

During the procedure, the authority will verify whether the above-mentioned documents are complete and whether the expert’s opinion shows that the technical condition of the legalized structure does not pose a threat to life and limb and allows the building to be used as it currently is or is intended to be used. Upon successful verification, the authority will issue the legalization decision, based on which the structure may be used.

In addition, owners of buildings completed at least 20 years prior to initiating the procedure and qualifying as lawless buildings will not be obliged to pay a legalization fee. However, the exemption will not apply to structures to which a legalization procedure is already underway. The so-called simplified legalization procedure may not be used if a decision to halt the building works was issued less than 20 years ago.

**Fewer Possibilities of Invalidating Building and Occupancy Permits**

The amendment has shortened the time for invalidating building and occupancy permits, and is intended to result in greater confidence in the decision issued and smaller risk for real property owners and buyers.

As of September 19, 2020, a building permit may not be invalidated if it was served or issued more than five years prior and an occupancy permit may not be invalidated if it was finalized more than five years prior. However, these prescription periods will not apply to invalidation proceedings issued before September 19, 2020.

In practice, after the five-year period, authorities will only be able to declare that an administrative decision was issued in violation of law, which may enable the investor to claim damages from the authorities that issued the decision.

**Modification of Rules on Penalties for the Illegal Use of a Construction Object**

Before September 19, 2020, proceeding to use a structure in violation of the construction law entailed a potential one-time fine for the investor. However, under the amendment, a fine may be imposed multiple times.

The amendment introduces provisions that (1) explicitly state that a building may not be used without obtaining an occupancy permit or notifying the authorities of the completion of construction works; and (2) allow the authorities to impose multiple penalties on an investor or owner for as long as the violation continues, i.e. if illegal use does not cease despite the public authority’s decision and provided that at least 30 days have passed since the last penalty was imposed.