



PENTERIS

Key Recent Changes To Polish Construction Law

On **19 September 2020**, an important amendment to the Polish Building Act came into force introducing some interesting changes to the construction process, as briefly described below.

1. Prescription Periods for Invalidation of Building and Occupancy Permits

The amendment introduces prescription periods for the invalidation of building permits (5 years from the date of their issue or announcement) and occupancy permits (5 years from the date when the decision became final and non-appealable). These prescription periods will not apply to invalidation proceedings issued before 19 September 2020.

From now on, after the lapse of a 5-year prescription period, authorities will only be able to declare that a particular decision was issued in violation of law (as opposed to actually invalidating the decision), thus enabling the permit-holder to claim damages from authorities which had issued the decision.

This much-awaited amendment will have a major impact on real estate transactions. In the past, sellers were usually forced to take out R&W insurance to mitigate invalidation risk. This, in turn, increased the costs of such transactions and created legal uncertainty. The introduction of 5-year prescription periods should go a long way towards assuaging buyers' concerns.

2. Legalisation of Buildings and Construction

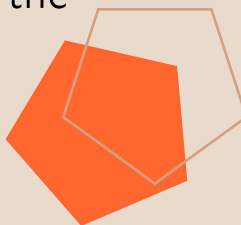
Works Completed without a Permit

Another change is that legalisation proceedings will now be subject to specific time limits: the investor will have 30 days to issue legalisation proceedings and 60 days to deliver necessary documentation. It is worth noting that in the case of finished buildings, authorities will use the date of completion rather than the date of legalisation as a reference point for legal compliance verification. The legalisation process is subject to a fee and ends with the issue of a decision on legalisation.

For buildings completed at least 20 years ago, the amendment introduces simplified legalisation proceedings. The documentation needed for such legalisation is limited to a statement on having the right to administer the real property for construction purposes, an as-built survey of the building, and a technical opinion confirming that the building can be used and occupied safely.

In such legalisation proceedings, authorities will not verify compliance with local zoning plans, zoning decisions, or technical conditions, and no legalisation fee will be charged. The simplified procedure will not apply to buildings ear-marked for demolition.

Although this amendment was made with single-family houses in mind, the possibility of applying the new procedure to the legalisation of other buildings cannot be excluded.



3. Departures from Technical Regulations

Although authorities will still be able to allow departures from technical regulations upon authorisation of a competent minister, more stringent conditions will apply (in particular with respect to fire and sanitary regulations). In addition, the amendment explicitly states that no departure from technical conditions is possible in the case of legalisation proceedings (including proceedings remedying legal defects in the construction process), thus dispelling previous doubts in this regard.

Departures can also be granted before the issue of a decision amending a building permit. Another practical change refers to the adaptation of fire regulations in the case of an outward or upward extension, building reconstruction, or a change of use. In such cases, applying for a departure from fire regulations will not be necessary, and consent of the Regional Fire Brigade Chief will suffice.

4. Introduction of a Technical Design

According to the amendment, a construction design will now comprise the following elements:

- (i) site development plan;
- (ii) architectural and construction design; and
- (iii) technical design (specifying construction solutions and calculations, as well as energy characteristics).

The technical design should be submitted with an application for an occupancy permit (rather than upon seeking a building permit). To ease the transition, investors will be able to apply for building permits based on previous regulations for another 12 months after the amendment comes into force.

5. Significant Deviation from Construction Design

The amendment introduces more lenient regulations on significant deviations from construction design. From now on, 'significant deviations' requiring a building permit amendment will be limited to:

- (i) 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;
- (ii) changes of the development area exceeding 5%;
- (iii) changes of length, width, or height exceeding 2%;
- (iv) 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).

It is worth noting that changes to the technical design will not require a building permit amendment.

6. New Definition of Impact Zone

The amendment introduces a new definition of 'impact zone', which is now narrowed to the neighbouring area whose development is limited by the building. This new definition will significantly

limit the possibility of becoming a party to building permit proceedings, which used to be possible on account of issues such as noise, pollution, vibrations, electromagnetic interference, limitation in access to or use of utilities, or increased traffic.

7. Occupation of a Building without a Permit

The amendment introduces a more advantageous procedure for investors occupying buildings without occupancy permits. Previously, in such cases, authorities would impose a fine, whereas now they must first instruct investors to obtain the missing permits within 60 days, and only after that time may they impose a fine for illegal occupancy.

8. Easier Transfer of Building Permits

The amendment simplifies the transfer of building permits. Now, the new owner of a real property for which the building permit was issued can apply for transfer of that building permit to him- or herself without the previous owner's consent.



For specific practicalities and information on how these changes might affect your business, please contact:



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