

Changes to Construction Law

The construction industry made a contribution of 6.6% (PLN 104,978m or €23,085m) to Poland's GDP and had an employment base of 688,100 staff. Despite the fact that the construction market represents an important segment of the economy, the legal framework for investment activity is generally perceived to be a limiting factor in doing business in this segment of economy or performing public investments.

Poland is ranked 88th, out of the 189 surveyed countries, in the category of "Building permits", according to the Doing Business 2014 report. In view of the above, the legislator moved to prepare changes to the Construction Law so as to simplify and shorten the building process. Therefore, on 20 February 2015, the Sejm passed the final draft of the act amending the Construction Law and other selected acts ("The Amendment"), accepting most of the amendments proposed by the Senate. The Amendment introduces wide-ranging changes as it does away with numerous legal barriers to doing business in the construction market. This article presents a number of key changes to the Construction Law brought by the Amendment, though it should be borne in mind that a comprehensive and in-depth analysis of the changes is beyond the article's capacity.

Key changes introduced by the Amendment include the abolition of the obligation to obtain a building permit for projects involving the construction or redevelopment of single-family residential buildings whose impact area does not extend beyond the boundaries of the lot or lots for which the buildings have been designed. Single-family residential buildings constructed based on notification will need to be marked out on the site and an "as-built" survey of the project will need to be carried out. Furthermore, building permits will not be required to build other types of structures including free-standing single-storey utility buildings, such as garages, sheds or porches and conservatories attached to dwellings, with floor space of up to 35 m² (previously: 20 m²), free-standing (container) transformer substations with floor space of up to 35 m², small on-site wastewater treatment plants with capacity of up to 7.50 m³, exit from

public roads and car park bays on public roads (Section 3, Section 3a and Section 11). Building permits will not be required for repair or conversion of building structures (except for buildings entered in the register of historic monuments or ones located in areas entered in the register of historic monuments). Moreover, investors will be allowed to install thermal insulation on buildings taller than previously permitted – up to 25 metres in height.

Furthermore, the Amendment seeks to limit the number of mandatory components of the construction design by abolishing the requirement to attach to the design representations of the competent organisational units to the effect that electricity, water, heating and gas supplies and sewage collection services are available at the project's site, representations on conditions for connection of structures to water supply, sewage disposal, heating, gas supply, electricity, telecommunications grids and roads as well as representations issued by the competent road management authorities to the effect that the site can be accessed from a public road in accordance with the laws and regulations on public roads, excluding regional or national roads. Whether or not the building meets the conditions regarding connection to utilities will be verified at the stage of notifying the construction work commencement date.

The Amendment also stipulates that investors will also no longer be required to notify the construction work commencement date for projects performed based on notification. Another change concerns the regulation stipulating that the relevant administrative body will have up to 14 days of the application date to call upon the investor to correct formal defects in the submitted applica-

tion for building permit. Previously, it was not bound by any timeframe in this respect. This regulation is intended to accelerate actions of the administrative bodies and ensure a shorter time for investors to obtain building permits.

The Amendment allows for the transfer to another person of the rights and obligations arising from the notification with a construction design attached against which the competent administrative body did not lodge an objection. The rights and obligations can be transferred pursuant to an administrative decision, in the same manner as building permits can be assigned. In the case of notifications, it will be possible to make a significant deviation from the construction design, with a proviso that it will be acceptable only after the decision granting the building permit has been obtained.

The Amendment shortens the wait time for the so-called tacit consent to use the premises (no objection on the part of the competent administrative body) from 21 to 14 days in the case of structures delivered for use pursuant to notification. Concurrently, the lists of structures for which no decision allowing the use thereof is required has been expanded to include craft workshops, motor vehicle service stations and car washes with up to five bays, storage facilities, selected railway buildings, storage yards, parking yards and fishponds. Besides, investors will be permitted to apply for cancellation of the legalisation fee or for an arrangement for payment of the fee for unlawful buildings in instalments.

As a side note, it should be noted though that selected detailed provisions of the Amendment reduce the significance of the introduced modifications. As for now (i.e. 24 February 2015), the Amendment awaits signature from the President. It will enter into force after three months of its promulgation.

Marcin Żak

*Kancelaria Adwokatów i Radców Prawnych
Miller, Canfield, W.Babicki, A.Chelchowski
i Wspólnicy sp. k.*