

Legal opinion

Amendment to Construction Law – part I

On 19 September 2020, revolutionary changes to Poland's construction regulations are coming into force. The amendment to the Construction Law that MPs passed on 13 February 2020 altered nearly 60 of its provisions. The aim is to expedite construction projects, and to make construction-related decisions more stable and predictable.

The most important changes concern the following:

- determining the impact zone of a structure
- new format of the building design
- what constitutes a major deviation from the building design
- 5-year limitation period for revocations of building permits and occupancy permits
- easier legalisation of unauthorised structures
- need to obtain a fire protection permit when seeking a change of use
- clearer definition of when a building permit is required, when a notice of construction, and when neither

In the present issue of PMR Construction Insight Poland, we take a look at the first three of these changes. A subsequent article will discuss the remaining ones.

Impact zone of a structure

The definition of the impact zone of a structure has been altered so it no longer talks vaguely about constraints on possible uses of an area. The previous wording has led the administrative courts to take an excessively broad view of the impact zone, covering impacts, such as e.g. noise levels, vibrations, pollution, restriction or disruption to utility services, or intensification of traffic, that have nothing to do with construction and clearly lie outside the proper scope of construction regulations. The amended definition clarifies things: in considering building-permit applications, the competent architecture and construction authority will take into account only technical-construction regulations and other regulations pertaining specifically to construction. In many cases, this will significantly reduce the number of parties to building-permit application proceedings.

New building design

One of the most important changes that the new law brings is the introduction of a new format of the building design. It will now consist of three elements: site plan, architecture and construction plan, and technical plan. A new executive regulation will have to be enacted in which the contents of each of these will be laid down in more detail.

The contents of the site plan will remain unchanged, except that it will have to include information about the impact zone of the structure. The architecture and construction plan will include the following: the spatial layout and architectural form of existing and planned structures, their intended use, key technical parameters, a geotechnical opinion and information on the way of founding, the materials and technologies to be used that may have an impact on the surroundings, including the natural environment, the ecological profile, information on the building's technical equipment, a description of accessibility to disabled persons, as defined by the Convention on the Rights of Persons with Disabilities

adopted on 13 December 2006 in New York, including the elderly in the case of certain structures, information on the minimal share of residential units in the case of multi-family residential buildings, as well as permission to deviate from technical-construction regulations (in case one was issued). The technical plan will include the design solutions along with statistical-mechanical calculations, (in the case of buildings) the energy profile, the materials and technologies, and, as needed, a geological-engineering dossier, geotechnical conditions for founding, and other plans.

Another change concerning the building design is that not all of it will have to be enclosed with the application for a building permit, and that fewer copies will be required to be submitted: instead of four copies of the entire building design, three copies of the site plan and three copies of the architecture and technical plan. When the plans are approved, the investor, the architecture and construction authority, and the technical supervision authority will keep one copy each.

The technical plan will not have to be enclosed at all, because it will no longer be subject to approval as part of building permit issuance. This is clearly a step in the right direction: technical solutions fall outside the scope of architecture and construction authorities' expertise, and technical plans often change in significant ways in the course of a project.

Instead, the technical plan will be submitted only when applying for an occupancy permit. But it should be drawn up before the start of construction works, and provided to the construction site manager. Construction works should follow the entirety of the building design, including the technical plan. The technical plan has to be consistent with the site plan and the architecture and construction plan as approved by competent authorities. No changes to the technical plan are allowed that deviate from what the site plan or the architecture and construction plan contains, unless the site plan or the architecture and construction plan is first altered accordingly. The construction site manager is obliged to make the current version of the technical plan available to the construction supervision authority at any time upon request.

Major deviation from building design

The new format of building design – with its division into three elements, only two of which, the site plan and the architecture and construction plan, are relevant to building permit issuance – prompted changes to provisions governing major deviations from the contents of the building design as approved by competent authorities.

The following are examples of what will be considered a major deviation from the building design: the impact zone of the structure is bigger than in the site plan; the structure's height, length, or width deviates by more than 2% from the plan; the number of storeys is different than in the plan; the sources that supply heating or hot water were changed from ones fired by a liquid fuel, gas, a renewable energy source, or the heating grid to ones fired by a fossil fuel. At the same time, and importantly, differences in cubic area (which is notoriously difficult to calculate) or built-up area will not matter anymore; it will be enough that the structure complies with what is required by the local zoning plan or zoning decision in this respect.

All this is positive, both from the point of view of investors and authorities. Investors gain more clarity as to what constitutes a major deviation. Before, they often applied for alterations to building permits just to be on the safe side and avoid constructions being classified as unauthorised structures. They will no longer have to do that. This will speed up projects. As for authorities, their caseloads should diminish.

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