

Regulatory changes impacting the renovation of historical buildings

STARTING SEPTEMBER 2017, THE MINISTER OF CULTURE CAN REVOKE OR AMEND FINAL PERMITS FOR CONSTRUCTION ON HISTORICAL BUILDINGS



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Investing in the renovation of historical structures and buildings has become very popular in Poland in the last couple of years, transforming parts of Polish cities with new office, residential or retail spaces. As of September 9, 2017, the fervour may decline due to the entry into force of the controversial Amendment to the Act of July 23, 2003 on the Protection and Care of Monuments (Journal of Laws of 2017, item 1595).

According to new Article 47a, the Minister of Culture and National Heritage (on whose behalf the General Conservator of Monuments acts) has the right to revoke or amend, ex officio, final permits issued by the Voivodship Conservator of Monuments for, among other things, carrying out conservation, restoration and construction works at a monument, dividing monuments, or changing the intended use of a monument or the way of using it.

The Minister is entitled to exercise this right if carrying out the works under a permit would cause “a decline in the monument’s value,” “damage or destruction of the monument” or “improper use of the monument.” These expressions are broad and imprecise, and raise the possibility that almost every investment could fall within the scope of the Minister’s power. Moreover, the Minister is able to suspend the enforceability of a permit even if there is only a probability of the occurrence of these circumstances. However, a decision to suspend a permit will expire after three months, unless the Minister issues a decision to revoke or amend the permit within that time.

The Minister is also entitled to initiate revocation or amendment proceedings within two years of the date on which a permit becomes final. As such, Article 47a introduces a way to challenge final decisions, which is unknown in administrative procedure (and this was acknowledged in the legislator’s statement of reasons with respect to the draft Amendment).

Importantly, if a permit is revoked or amended, it could also open the door to challenging the other decisions issued to the investor in the course of the property development process, including the building permit. Under the Polish Administrative Procedure Code, administrative proceedings may be recommenced in respect of a decision if it was issued on the basis of another decision that has been revoked or amended.

The changes should only apply to permits issued after the entry into force of the Amendment to the Act on the Protection and Care of Monuments i.e. permits issued on or after September 9, 2017. However, only time will tell whether the Minister will also use the new rights with respect to permits that were issued before that date, but are to become final after it. ●

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