AMENDMENT TO THE BUILDING LAW CRUCIAL CHANGES

The amendment to the Building law adopted by the Parliament by the act of 13 February 2020 was signed by the President of the Republic of Poland on 3 March 2020 and came into force on 19 September 2020 after a six-month *vacatio legis* period. The most important modifications introduced by the amendment are described below.

Facilities that require neither a building permit nor notification

The amendment clarifies and extends the list of facilities the erection of which requires neither a building permit nor a notification of construction.

> **The list of facilities that do not require a building permit**, but merely a notification under Article 30 of the Building law, now includes (among other things): **detached single family buildings** in respect of which the impact zone is confined within the plot or plots for which they have been designed, all types of **networks** including district heating, water supply and sewer systems, as well as **detached one-storey outbuildings, garages, shelters, porches** and **sunrooms** if the development area of each such building object does not exceed 35 m^2, **pitches, courts** and **running tracks** designated for recreation, fencing more than 2.2 m tall, jetties no more than 25 m in length and 2.5 m in height, and sewage treatment plants with a processing capacity of up to 7.5 m^3 a day

> On the other hand, the list of facilities the erection of which does not require either a building permit or a notification now includes (among other things): **allotment houses, bus stop and platform shelters** and **backyard swimming pools and ponds** if the area of each of these building objects does not exceed 50 m^2, **fencing** up to 2.2 m tall, **cash machines, ticket machines, cash deposit machines, vending machines, machines** that store packages and machines designated for other services all up to 3 m tall, and above ground fuel tanks classified as facilities storing class III liquid fuels for the owner's own needs with capacity up to 5 m^3.

> The new wording of the Building law now provides a **list of construction works that do require a notification** (e.g. redesign/conversion of external and structural elements of single family buildings provided that this does not lead to the extension of the building's spatial impact beyond the confines of the plot where the building is located). Also, the amendment specifies a list of construction works **that do not require either a building permit or a notification** (e.g. redesign/conversion of a sewage treatment plant with a processing capacity of up to 7.5 m^3 a day).

> The amendment excludes the need to obtain a permit to demolish buildings and facilities located within **enclosed areas** specified in a decision of the Ministry of National Defence, provided that these buildings and facilities have not been classified as historic monuments and are not protected by law under heritage protection.

The above-mentioned lists of facilities and construction works are included in Article 29 sections 1-4 and Article 31 section 1 point 3 of the Building law.

Certification of unauthorised facilities

The amendment introduces new chapter 5a implementing a procedure **with respect to the commencement and carrying out construction works in violation of the provisions of the Building Law** (so-called unauthorised construction).

The new chapter provides for, among other things, an easier legalization procedure for unauthorised construction cases within the framework of a so-called simplified legalization

procedure. It will be possible to initiate such a procedure if at least 20 years have passed since the date of completion. As to unauthorised construction cases with the date of completion being before the entry into force of the Building Law Act of 7 July 1994, initiation of the simplified legalization procedure will be possible exclusively at the owner's or facility manager's request not ex officio by the construction supervisory authority as in other cases.

In the course of the simplified legalization procedure, the relevant body will examine not only the content of the legalization documents, but it will also assess the technical condition of the existing structure e.g. whether it is safe to use the facility without putting people's health or lives in jeopardy. To this end, it will be necessary to provide an expert opinion on the condition of the facility in question. The procedure may result in issuing either a decision to legalize the facility or an order to demolish it if, in the course of the procedure, the applicant did not submit necessary documents or if an expert opinion rules that further use of the facility as specified in its design is not possible due to structural damage, or if it poses a threat to people's health or lives.

Modified form of design documentation

The amendment changes the form of the planning permission attached to the application for a building permit**.** Now it must comprise **three parts:**

1. **a plan for the development of a plot of land or an area** (location, transportation system, and information on the impact zone of the facility);
2. **building-architectural and construction design** (spatial layout, and designed technical and material solutions); and
3. **technical design** (description of the structure, installation, and energy performance).

Pursuant to the new regulations, investors will be obliged to attach three copies of the plot or land development plan and the architectural and construction design to the application for a building permit. The investor will not submit the technical design. The obligation to submit the technical design in its latest form will arise only after the construction is complete, as an attachment to the application for a use permit or along with the notification of completion of the construction works.

This means that a technical design will not be assessed by a relevant administrative body prior to issuing a building permit, and it will be possible to modify it on an ongoing basis, with a reservation that the site manager will be obliged to present it on every request of the construction supervisory body. It is also worth noting that implementing new modifications to the technical design within the scope that has already been agreed with the relevant administrative body will require further approvals.

Deviation from the wording of an approved design

The new regulations change the approach towards **considerable deviation from the building design**. The legislator has allowed a **considerable modification to the building design not only after the building permit has been granted, but also on the basis of a re-notification**. Submitting a re-notification will be possible in respect of a modification resulting from a considerable deviation pursuant to the general rules of notification of construction or notification of construction works.

The act specifies that modifications to the building design will fall within **the scope of a considerable deviation** from the building design if: (i) the spatial impact of the facility is extended beyond the confines of the plot on which it is located, or (ii) the parameters regarding the following aspects are changed i.e. development area (change of over 5%), height, length or width (change of over 2%), or change of number of storeys, or (iii) there is a change of the heating source or change of preparation of domestic hot water for a source running on solid fuel.

Like before, the decision whether a modification is to be regarded as a considerable deviation from the building design or not is made by the designer. The designer will still be obliged to make appropriate modifications to the land development plan or to the building-architectural design.

Exclusions regarding recognition of invalidity of permits

After the lapse of 5 years from the date of granting a building permit or a use permit, it will not be possible to consider it null and void. In the course of procedures related to such cases, a relevant administrative body will only be able to recognize that the decision was issued in violation of the law but it will not be annulled.

Modification of the definition of the impact zone of a facility

From now on, while determining the impact zone of a facility, special provisions will apply restrictions only regarding development, unlike before, where there were restrictions regarding a broader concept of land use around the facility, including development.

The modification will be of great importance primarily with respect to determination of the parties to an administrative procedure initiated to grant a building permit for a specific facility. The parties to an administrative procedure are the investor, owners, perpetual usufructuraries or facility managers located within the impact zone of the facility in question.

The method of determining the impact zone of a facility may be important for the preparation of a building design itself. The designer, while working on the design, is obliged to take into consideration the interests of third parties in the impact zone of the facility. Information on the facility's impact zone will be included in the building design.

Fire risk assessment vs change to the facility operations

Investors will be obliged to submit **a relevant fire risk assessment issued by a fire protection expert** if the facility operations change entirely or partially by way of taking up or foregoing operations that change fire protection conditions.

Transfer of a building permit

From the date of entry into force of the provisions of the amending act, transferring a decision in respect of a building permit is possible if the investor to whom the decision is transferred submits a declaration of taking over its conditions and such person's right to use the property for construction purposes. The transferee is also obliged to present a consent to transfer the decision issued by its former addressee.

The above-mentioned **consent of the decision's former addressee to transfer the building permit is not required** if the ownership or perpetual usufruct right with respect to a facility has been transferred from the former addressee of the building permit to the new investor. Time will tell whether the above modification will positively contribute to increasing *asset deals* instead of *share deals* in property transactions related to real estate investments.

Penalties for unlawful use of a facility

The amendment will also change certain rules for imposing penalties for unlawful use of a facility. If a relevant administrative body recognizes unlawful use of a facility, it will be first of all obliged to instruct the investor or owner that it is necessary to obtain a decision on a use permit or to effectively notify of completion of construction works.

If, despite the instructions, after the lapse of 60 days the facility is still used unlawfully, the relevant body will impose on the investor or owner a penalty calculated analogously to the legalization fee (on the basis of Article 59f of the Building law), but it should be noted that the fee rate will be PLN 5,000 i.e. ten times higher than the rate specified in Article 59f. The new regulations **enable the administrative body to impose multiple penalties** in the event that

the infringement is not ceased, but a subsequent penalty cannot be imposed before the lapse of 30 days from the delivery of the previous order regarding the case.

Transitional provisions

Specific rules for application of the changes are mainly governed by the transitional provisions of Articles 25-39 of the amendment act. With regard to the provisions of the Building Law, the legislator adopted, pursuant to Article 25 of the amending act, the **principle that the provisions of the Building Law as previously worded shall apply to cases initiated and not completed before the new regulations enter into force**.

Moreover, analysis of the provisions of the amendment and the wording of the explanatory memorandum to the government draft act shows that the legislator's intention was to construct the provisions in such a way as to ensure **a transitional period for cases in which design works are already in progress**. Therefore, pursuant to Article 26 of the amendment, it will be possible to attach a building design developed on the basis of the rules prior to the amendment to the application for a building permit, application for approval of a building design or notification of construction if the procedure is initiated within **12 months from the date on which the provisions of the amendment entered into force (i.e. 19 September 2020)**.

In addition, the wording of Article 27 of the amendment indicates that, in the case of **implementation of construction plans on the basis of a final decision on a building permit or an effective notification issued before the amendment comes into force, the previous provisions shall apply**. Similar to all construction plans carried out on the basis of a building design prepared on the basis of the previous regulations in the cases referred to in Article 25 and Article 26 of the amendment, the previous provisions shall apply.

The above means that, in practice, the entry into force of some new provisions of the Building Law may be significantly delayed, in particular, if investors decide to take advantage of the 12-month transition period.

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If you have any queries regarding the issues described above, please contact us:

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