

Construction Process

BACKGROUND INFORMATION

Below, please find select information about the **construction process** in Poland that is **most important from an investor's perspective**. The matters in question are mainly regulated in the Master Planning Law of 27 March 2003 (Journal of Laws no 80 item 717, as amended), referred to as the "Master Planning Law", and in the Construction Law of 7 July 1994 (Journal of Laws no. 89 item 414, as amended), the "Construction Law". This article covers **practical issues relating to the construction process in Poland**.

Prior to the purchase of real property for the purpose of development, certain essential **information must be checked**, including :

- whether the real property is **included in the local zoning plan**
- whether the **function of the real estate** to be developed is agricultural, industrial, or construction
- whether the **seller** of the real estate **holds an appropriate legal title** to it and whether other entities, in particular state or local authorities, hold rights of first refusal or other rights regarding the real property to be purchased

All information regarding the real property to be purchased, including the above listed, comes from the **following documents**:

- **land-survey plans**, which let you check whether the property has access to public roads, electricity and gas installations, water supply and sewerage
- plans **dividing the land** into plots, which indicate the numbers and area of plots of which the real estate is comprised
- a current **excerpt from the land and mortgage register** of the real estate
- **notarial deeds** confirming the seller's legal title to the real estate

If the property's legal situation is clear and the real estate may be used in the intended manner, the construction process can begin. This includes obtaining a **final building permit**, which may be issued directly on the **basis of the**

local zoning plan; or if there is no such plan, on the basis of a **planning decision**.

The construction process should end with receipt of an **occupancy certificate**. In cases where the investment is of a specific nature, atypically located, or has other specific features, certain additional decisions may be required before the investment may be properly started or completed.

Unfortunately, at the beginning of **2004**, the majority of **zoning plans** in Poland **expired**. Therefore, until the authorities adopt new studies and zoning plans, investors must follow the procedure set out below. Therefore, an investor must now obtain a **Planning Decision**, without which a building permit may not be issued.

CONSTRUCTION WORK CONTRACT

Under a construction work contract, a **contractor** undertakes to construct an investment specified in a contract, performed in accordance with the design and the technical requirements. **The investor** undertakes to prepare and deliver the site, deliver the designs and acceptance of the investment, and pay the agreed fee.

The parties are generally allowed to **shape the contract freely**. In a construction work contract, the investor and the contractor agree upon the detailed scope of work to be performed by the contractor and the work to be subcontracted. The contractor may not execute an agreement with a subcontractor without the investor's consent. The **investor and the contractor** are **jointly and severally liable** for the payment of the **subcontractor**. It is possible to **use FIDIC model contracts** in Poland.

DEVELOPMENT TERMS AND CONDITIONS

In accordance with the Master Planning Law, a **local zoning plan** should describe:

- the function of the land
- general public areas requirements
- planning ratios and planning conditions, including all limitations required by law

If such plans exist for the real estate to be developed, the design must be in **strict compliance with the terms and conditions** set out in the plan and, second, the building permit should be issued directly on the basis of the plan.

If there is **no zoning plan** for the area where the investment is planned (which happens frequently at present), **Planning Decisions** must be obtained for the following:

- construction of the building or facility
- modification of the use of the investment or any of its parts
- carrying out other construction work

Application for planning conditions

The planning conditions are set upon the **investor's application filed along with:**

- **a copy of the main plan** (1:500 or 1:1,000) or, if there is no such plan, a copy of the cadastral map showing the ownership and value of plots adjacent to the one to which the application refers marked
- estimates of **water and energy consumption** and the method of **sewage disposal** during the construction work, and other needs relating to public infrastructure, and if necessary, also the method of waste neutralisation;
- description of the planned method of **land development** and characteristic planning features, including the function and size of the designed buildings and facilities presented in a graphic and descriptive form;
- specification of the **technical parameters** of the investment and information describing its environmental impact.

These constitute the so-called **characteristics of the investment**. The above documents should be thoroughly prepared to avoid requests for further supplementation or clarifications, which usually results in a delay in the issuance of a planning conditions decision.

For a **Planning Decision** to be issued, estimates of the project's **environmental impact** are necessary. In the case of larger investments, before an application for a Planning Decision is filed, the investor may be required to draw up a report on the **planned investment's impact on the environment**.

Planning decision

The **Planning Decision** specifies the investment type, planning conditions, and detailed rules for planning, as well as the borders separating investment areas.

Said decision does not give rise to any rights to the land and does not infringe ownership or third party rights.

The decision is issued by the **heads of local authorities**: *wójt, burmistrz* or city mayor (*prezydent miasta*). During the decision's term of validity, it is binding upon the authorities responsible for issuing building permits. The decision may be issued only if **all** of the following conditions are met:

- At least **one adjacent plot**, accessible from the same public road, is developed in a manner allowing determination of requirements for the planned investment as regards the continuation of:
 - land development
 - use purposes
 - parameters
 - features and ratios
 - dimensions and architectural form of the buildings and facilities
 - building line
 - degree of land exploitation
- The land must be **accessible from** a public road
- The existing or designed **infrastructure must be sufficient** for the planned investment
- No consent should be needed **for a change** of purpose of agricultural or forest lands to non-agricultural or non-forest, or such consent had already been issued in relation to the land but on the basis of local zoning plans that have already expired
- The decision is **compliant with specific regulations** (such as the Environmental Law, the Monument Protection Law)

In the course of the proceedings, the **relevant local authority analyses** the planning conditions, legal situation, and facts regarding the land on which the investment is planned.

This analysis covers, but is not limited to, the following:

- The location of buildings
- The ratio of the surface of planned objects to the area of the plot or plots on which the building is to be erected
- The width of the front façade
- The height of the upper edge of the front façade at its highest point
- The roof geometry
- Issues related to maintaining an appropriate distance between existing buildings and the designed buildings and facilities.

The Planning Decision may **become invalid**, for example if:

- another applicant is granted a **building permit**; or
- a new local plan is adopted for the area concerned in the decision and it determines the planning conditions in a manner other than the issued decision.

The former case results from the fact that a Planning Decision may concurrently be **issued to more than one applicant**. As soon as one of the applicants receives a building permit based on the Planning Decision, the relevant authority must state that any other applications have become invalid.

The latter case relates to situations when **a new local plan** is adopted for the area and the planning conditions determined therein are different to those specified in the decision. Then, Planning Decisions expire unless the final building permit has been issued on the basis of this decision.

Planning decision proceedings

The **Planning Decision** is issued in accordance with **administrative procedure law** and the **Master Planning Law**. These provide that planning proceedings may be

suspended for no longer than 12 months from the date of filing the application. The *wójt, burmistrz*, or city mayor **re-institutes the proceedings** and issues the Planning Decision **when**:

- the **municipality council** fails to adopt a resolution on the commencement of the local zoning plan's preparation within two months of the suspension date; or
- while the **proceedings are suspended**, i.e. within a maximum of 12 months of the suspension date, no local zoning plan or any amendment thereto is adopted.

However, in the case of an application relating to an area for which a local zoning plan must be prepared, administrative proceedings regarding planning conditions are mandatorily suspended until this plan is adopted. From the point of view of the planned investment, it is essential to check that the site of the planned investment is not located within an area for which no local zoning plan exists (even though such a zoning plan is required) and is not planned to be adopted in the near future. An application for planning conditions for such an area may cause a significant delay in the planned investment, as it is not possible to assess when the Planning Decisions, which are necessary to obtain a building permit will be issued.

Claims related to the adoption or modification of the local zoning plan

If, in relation to the adoption or modification of a local zoning plan, the former use of the real estate or any part of it has become impossible or significantly hindered, the owner or **perpetual usufructory may request that the municipality**:

- **compensate** for the damage suffered, or
- **buy** the real property or the relevant part of it.

These claims may also be **satisfied through replacement** of the real property with another parcel of real estate.

If, in relation to the adoption or modification of a local zoning plan, the **property's value has decreased** and the owner or perpetual usufructory disposes of the real property but has not exercised its right to request compensation for purchase of the real property, it may **request that dam-**

ages from the municipality be paid in an amount equal to the decrease in the real property's value. If, however, the adoption of a local zoning plan or a change to it caused an **increase in the real estate's value**, and its owner or perpetual usufructer disposes of the real property, the wójt, burmistrz, or city mayor collects a **one-time fee** set in the local zoning plan as a percentage of the increase in the real property's value. The fee may **not be higher than** 30% of the increase in the real property's value.

The **amount of compensation** for a decrease in the real property's value **or the fee** for an increase in the property's value is set on **the date of sale**. It is also essential that both the compensation and the fee are due and payable only if the real property is **disposed of within five years** of the date on which the local zoning plan or a modification to it that resulted in a revaluation of the real property entered into force.

If **real estate the value of which has increased** as a result of a modification or adoption of the local zoning plan is disposed of, a specific amount of the fee to be **paid by the seller**, to the extent provided by the planning provisions, is set by the wójt, burmistrz, or city mayor after the execution of the sale agreement. If requested by the owner or perpetual usufructer of the real property to be sold, it may also be set prior to the execution of the notarial deed.

EXCLUSION OF LAND FROM AGRICULTURAL OR FOREST USE FOR BUILDING PURPOSES

Decisions permitting exclusion of the land from production

According to the Act on Protection of Agricultural and Forest Land (Journal of Laws of 1995 No. 16, Item 78, as amended), a construction process, or rather **construction works, cannot be commenced** on arable land classes IV and V-VI comprising organic soils and peat bog if the planned investment area of this land exceeds one hectare, or on forest land other than that owned by the State Treasury, without the consent of the Head of the Province (*Voivod*) expressed in the form of a decision after the agricultural authority (*izba rolnicza*) issues its opinion in this respect.

If a change of land purpose to non-agricultural or non-forest purpose refers to arable land classes I-III, and the

planned investment area of this land exceeds 0.5 hectare, or forest land owned by the State Treasury, the decision on exclusion of such land from agricultural or forest production must be issued by the Minister of Agriculture and Development of the Countryside for arable land classes I-III or the Minister of Environment, Natural Resources and Forestry for forest land.

The **consent to the change of purpose** of land from forest or arable to other purposes, by the *Voivod* or competent minister, respectively, is issued upon the motion of the *wójt*, *burmistrz*, or city mayor. To the application for exclusion of forest land owned by the State Treasury, the *wójt*, *burmistrz*, or city mayor attaches the opinion of the head of the regional management of State Forests and, in the case of a national park, the opinion of the park's director. The Voivodeship Marshall attaches his opinion to the applications for the decisions to be issued by competent ministers (State Treasury forests, arable lands). The decision on exclusion of arable or forest land from production is issued before the building permit is obtained, after the land is actually excluded from production.

The **non-agricultural and non-forest purpose** of agricultural and forest land that requires a decision to be issued on exclusion from production is **specified in the local zoning plan**. Therefore, it is worth noting that if the local zoning plan does not provide for the possibility of the exclusion of agricultural or forest land from production and such exclusion becomes necessary, then the whole plan has to be changed. This procedure is **described in the Master Planning Law**. However, it is complicated and effort-consuming, and therefore rather arduous for the investor. Additionally, if there is no zoning plan (as discussed above) such exclusion may be impossible.

Payments and annual fees

The **consent to the exclusion** of land from production is related to the obligation of a **one-time payment and annual fees**.

This obligation, however, **does not relate to** exclusion from agricultural or forest production for housing purposes if the area for investment is:

- 0.05 hectare (500m²) or less in the case of a detached house;
- 0.02 hectare (200m²) or less per residential apart-

ment in the case of a multi-apartment building.

The **payment for the exclusion** from production decreased by the value of land set on the basis of market prices applied in a given village on the real property market constitutes the equivalent of a specified number of tonnes of rye seed, the value of which is determined depending on the class of the excluded land. The equivalent of one tonne of rye seed is the same as the equivalent used for calculating agricultural tax (i.e. on the basis of the Central Statistical Office). The provisions of law also specify in detail the payment for the exclusion of forest land and other agricultural areas with specific locations.

The **payment should be made within 60 days** of the date on which the decision on exclusion from production becomes final and non-revisable. In practice, the obligation to make the payment is rather unlikely to arise, as market prices for land are usually much higher than the amount of this payment.

The **annual fee for a given year** should be paid before 30 June of that year. It is calculated on the basis of the equivalent of a tonne of rye seed used when calculating agricultural tax for the first six months of that year as announced by the Central Statistical Office.

Compensation

If, finally, a **permit is granted for the exclusion** of forest land from production, a one-time fee may still be due if the trees on the land have been prematurely cut down. The amount of the compensation equals the difference between the anticipated value of the forest stand at the age when it may be cut down, as specified in the forest arrangement plan, and its value at the moment when it is actually cut down.

Compensation for premature cutting is not due when the land is excluded from forest production for housing purposes, and has an area of:

- 0.05 hectare or less in the case of a detached house;
- 0.02 hectare or less per residential apartment in the case of a multi-apartment building.

Then, as in the case of payments and annual fees, the obligation to pay compensation for premature cutting is waived. This obligation may also be **waived in the case of public utility investments**.

Settlement of payments and annual fees

The **owner of land is responsible** for settling payments and annual fees. If the land is sold, this obligation is transferred to the purchaser. If a decision on exclusion from production is issued but the actual exclusion does not take place before the land concerned is sold, the obligation to make payments and settle annual fees is transferred to the purchaser that actually excludes the land from production.

OBTAINING A BUILDING PERMIT

In accordance with Construction Law, **construction work may be started** only on the basis of a final, non-revisable building permit decision issued by the competent authority - the *starosta* or the city mayor.

However, Construction Law specifies **types of work** that may be performed **without a building permit**.

These include commercial investments related to:

- agricultural production
- free-standing single-storey utility buildings
- electricity, water supply, and sewage disposal systems
- gas, heating and telecommunications connections to buildings
- specific types of parking bays
- repair work
- work related to the reconstruction of existing buildings or facilities

In some cases, **if work that does not require a building permit is** to be performed, the competent public administration authorities need to be notified before it is started. The work may be commenced if, within 30 days of the notification, the authority does not raise objections, but no later than two years after the work commencement date indicated in the notification.

From time to time, **the building permit is conditional upon the investor having obtained permits**, approvals, consents, or opinions of other authorities specified in separate regulations, e.g. a permit for the performance of work within a public road area which may be related to the need to occupy part of this road during the construction

work (such additional permits, consents, or approvals are also related to specific payments).

Building permit application

The investor **applies for the building permit**. The application is filed in the form specified in the secondary regulations of the Construction Law.

The **following documents should be attached** to the building permit application:

- **four copies of the building permit** design, along with all opinions, approvals permits and other documents required under specific regulations (among others: on zoning planning, on real estate management) and the certificate confirming the rights of the building process participants
- **a statement confirming the right to dispose of** the real property for the building purposes drawn in accordance with a specified model form
- **a planning decision**, if it is required due to the lack of a local zoning plan
- **other documents** provided for in the Construction Law if required due to the characteristic location of the investment or its environment (restricted areas, mining objects).

As in the case of the Planning Decision, obtaining a building permit decision requires that proceedings be conducted regarding the **investment's environmental impact**. Sometimes, usually in the case of larger investments, before the building permit decision is applied for, a report must be prepared on the investment's impact on the environment, irrespective of the fact that such a report has already been prepared at the Planning Decision stage.

Building permit decision

The building permit may be **granted exclusively on** the basis of a valid zoning plan or planning decision if the building permit application was filed within the validity term of this decision.

The building permit relates to the **whole construction project**. Therefore, if the planned investment consists of more than one object that is able to operate on its own in terms of functionality, the investor must submit a planning design for the whole investment. From the practical point of

view, it is worth noting that an investment consisting of more than one object is usually located on more than one plot. Therefore, when applying for a building permit, all the numbers of the plots on which the investment-related work will be conducted, quoted in the decision, should be thoroughly checked. The same situation occurs when the investment consists of one large object, which is to be erected on more than one plot. Mistakes in entering plot numbers in the building permit decision may substantially delay the whole process, as the building permit would have to be corrected.

If necessary, in the building permit decision, the **competent authority describes the specific conditions** for protecting the construction site and of conducting construction work, the period of use of temporary facilities and specific supervision requirements on site. The building permit decision may also specify the obligations and conditions related to the commencement of occupancy of the completed investment.

The building **permit decision expires** if construction does not start within two years of the date on which this decision became final and non-revisable, or if the construction is suspended for more than two years.

Building permit design

As has already been mentioned, **four copies of the building permit design** must be attached to the building permit application. This design, drawn up by a licensed professional, is to be approved in the building permit decision.

It is also possible that before the building permit decision is issued, the investor, who meets the building permit conditions, may **obtain a separate decision** on approval of the building permit. Such a decision issued at the investor's request is valid for a specified period of not longer than one year. Specific requirements regarding the building permit design, as well as the designer's rights and obligations, are specified in the Construction Law and secondary regulations.

Modification of the approved building permit design

If the investor modifies the already approved building permit design or other terms and conditions of the building permit, and if such modifications are substantial, it must obtain a decision on the modification of the building permit. The procedure is the same as in the case of the original

building permit.

If modifications of the building permit design or other conditions are **minor**, a decision on the modification of the building permit is **not required**, subject to the reservations listed in the Building Law that refer to the characteristic features of the construction, its area, and the basic features of the investment to be erected.

Building permit proceedings

The building permit decision is issued in accordance with administrative procedural provisions, and is subject to the Construction Law regulations. The **parties** to the building permit proceedings are:

- the investor and the owners
- perpetual usufructors of the land
- the administrators of real property located within the area affected by the investment.

From the practical point of view, during the whole construction process and, particularly, at the building permit stage, a power of attorney is an essential. It often happens that investors authorise designers' offices or other engineering firms as their attorneys to act on their behalf before public administration authorities, while under the provisions of law only an individual and not a corporate entity may act as a legal attorney.

Occupying the building

An investment for which a building permit is required **may be occupied after the competent authority is notified** of the completion of construction work and provided that this authority does not raise any objections, within 21 days of the receipt of a notice in this respect. To the notice, the investor attaches the documentation related to the construction work described in detail in the Construction Law. In certain cases specified in the Construction Law, before the investment is occupied, an **occupancy certificate** must be obtained. This requirement applies mainly to **specific categories** of objects or when the building permit already imposes an obligation to obtain an occupancy certificate.

After the construction work is completed, an investor who is obliged to obtain an occupancy certificate must also **notify:**

- The Environmental Inspectorate
- The State Sanitary Inspectorate (Sanepid)
- The State Labour Inspectorate (PIP)
- The State Fire Service - of the completion of work and the intention to start use.

Legalisation of investments completed without required permits

In accordance with the latest amendments to Construction Law, investments completed in **violation of applicable provisions**, in particular without the required building permit or contrary to the terms and conditions specified in the building permit, **may be legalised only** if all the following conditions are met:

- documentation held by the investor shows that the completed investment satisfies the safety requirements, is covered by the zoning plan and is compliant with the zoning plan; and
- investment design satisfies all the detailed requirements, and
- A legalisation fee has been paid.