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EXPERT:

Agata Biernadska from Łaszczuk & Partners law firm, discusses the changes in the Construction Law

EVER SINCE ITS INCEPTION 30 YEARS AGO, ONE OF THE MOST FUNDAMENTAL FUNCTIONS OF AMCHAM HAS BEEN TO MAINTAIN PLATFORMS FOR SHARING PROFESSIONAL KNOWLEDGE AND EXPERIENCE BETWEEN ITS MEMBERS. THERE ARE SEVERAL SUCH PLATFORMS, INCLUDING AMCHAM MONTHLY MEETINGS, THE AMCHAM COMMITTEES, AND THE EXPERT SECTION OF THE CHAMBER'S MAGAZINE.

IN THIS DISPATCH, **AGATA BIERNADSKA, ADVOCATE AND ASSOCIATE AT ŁASZCZUK & PARTNERS LAW FIRM**, COMMENTS ON NEW PROVISIONS OF THE CONSTRUCTION LAW THAT INVESTORS WILL WELCOME.

EXPERT Construction law

BUILDING MADE EASIER

A change in construction regulations is on its way

The amendment of the Polish Construction Law on February 13, 2020 will simplify and expedite the real estate development and construction process and achieve greater stability in the determination process. An analysis of the amendment suggests that it is a step in the right direction. The amendment will come into force on September 19, 2020.

NO BUILDING PERMITS

The amendment introduces into Art. 29 of the Construction Law transparent catalogs of projects not requiring a building permit but requiring notification to the competent authority, and projects requiring neither a building permit nor notification. Various provisions under previous laws included information on this topic, which sometimes made it difficult for investors to determine what type of approval was required from the architectural and construction administrative authorities for the given project. Sometimes answering this question required an analysis of the entire act, and even then, the answer was not always obvious. The introduction of clear regulations will speed up the development process and dispel investors' doubts about the formal legal requirements for carrying out the project. A new feature is an express provision in the Construction Law stating that projects involving postal lockers do not require a building permit or notification. This also applies to ATMs for deposits or withdrawals, ticket machines, vending machines, and ma-

chines for delivering other types of services, with a height of up to three meters. It had been unclear how to classify postal lockers under prior law as investors were unsure whether the installation qualified as a structure and if a building permit was required and had to notify the competent authority of the intention to erect the device.

NEW CLASSIFICATION

The February 13, 2020 amending act introduces a division of construction designs into designs to develop a plot or site, architectural and construction designs, and technical designs. This division is aimed at simplifying procedures and expediting proceedings. The architectural and construction administrative authority will approve the design for the development of the plot or site. They will also approve the architectural and construction design via the decision issuing a construction permit but will approve the technical design only at the stage of applying for an occupancy permit.

COMMENCING OCCUPANCY WITHOUT PERMIT

A "yellow card" mechanism has been introduced regarding the occupancy of a structure without the required notification of the construction supervision authority of completion of construction or a required occupancy permit. Under this mechanism, the authority supervising construction must instruct the investor or owner that the structure cannot be occupied without an occupancy permit



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or without making an effective notification of completion of construction. The authority must record in the inspection if they find that a structure or part of a structure is being occupied without the required permit or notification of completion of construction. 60 days later, the authority will verify whether the structure is still being occupied in violation of the regulations. If the user of the structure (or part of a structure) does not cease the illegal occupancy, then the construction supervision authority must issue an order imposing a fine for the illegal occupancy of the structure. Such a fine may be imposed multiple times, and the amount of the fine will increase each time.

INABILITY TO INVALIDATE OCCUPANCY PERMIT

One of the changes to the Construction Law that investors have most eagerly anticipated is the introduction of a rule forbidding the invalidation of a decision issuing an occupancy permit more than five years after the decision became legally final. Under prior law, irregularities in the construction process that could potentially invalidate an occupancy permit were often discovered when a potential property acquirer was conducting due diligence. This situation constituted a considerable risk for the buyer, and parties in such cases often decided to take out insurance covering the title to the property.

UNLAWFUL STRUCTURES

The amendment introduces solutions to streamline the legalization procedure as well as a new and simplified proce-

cedure to legalize the unlawful structures that are buildings constructed 20 or more years earlier. In this simplified procedure, the authority will check aspects such as when the construction was completed and whether the structure is fit for occupancy. The authority will not verify, for example, whether the structure complies with the local zoning plan. Significantly, the investor will not be required to pay any legalization fees in the case of the simplified legalization procedure.

OTHER IMPORTANT CHANGES

Other significant changes introduced in the amendment include streamlining the process to transfer a building permit or the rights regarding the notification of construction. Also, the requirement to notify the supervising construction authority of the intended commencement date for works on single-family residential buildings was eliminated. Regulations concerning the completion of construction were tidied up and clarified as well. The amendment also changes the definition of the impact zone of a structure. Under the new definition, a structure's impact zone means the area around a designated structure. It is based on separate regulations introducing restrictions on the development of the area related to the structure. In practice, this means that it will be more difficult for the owner of a neighboring property to join the administrative proceeding as a party.