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Property development process in accordance with the Polish building law

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1. Property Development Process

The execution of construction works is preceded by a whole complex of preparatory actions, such as determination of development conditions, preparation of designs or obtainment of relevant administrative decisions. All actions intended to carry out a development project, from the determination of the development conditions to the commissioning of the project, are called a property development process. The purpose of this memorandum is to view a property development process from the investor's perspective with identification of potential risks for the execution of a project. This memorandum concerns a construction process related to the execution of commercial projects, and it does not encompass procedures used in the case of small projects or buildings constructed for one's own use, such as single family houses.

Particular actions comprising the property development process, as described in more detail in the further points of this memorandum, may be divided into the following phases:

1.1 Ascertainment of the permissible use and legal status of real estate, or acquisition of real estate - first of all, the investor verifies among others whether the real estate may be developed in accordance with the investment plan and whether its legal status does not evoke concerns. If the outcome of the verification is positive, the investor acquires the real estate; at this stage division or amalgamation, if any, of the real property takes place.

1.2 Determination of development conditions and preparation of a building design - on the basis of the spatial development plan, and if there is no such plan, on the basis of a land development decision. In a case when there is no spatial development plan adopted by the municipal council, the investor applies for a land development decision prior to the acquisition of the real property. After the development conditions are determined on the basis of a spatial development plan or by way of a decision, one may proceed with the preparation of a building design.

1.3 Obtainment of a building permit - as a decision opening the way to the execution of construction works. To the application the investor attaches the building design, and among others the required decisions which demonstrate that the statutory requirements in respect of, among others, environmental protection, historical monuments, arable land, are fulfilled.

1.4 Execution of construction works - even if the actual performance of works is entrusted to a contractor, the investor remains obliged to fulfill the obligations in respect of, among others, the handover of the construction site on the basis of a handover report, ensuring that a work manager or an investor's supervisory inspector is appointed, filing a pre-construction notification or obtaining a construction log book.

1.5 Occupancy permit - the commencement of occupation of a building is permissible only after the final occupancy permit becomes non-appealable (the period for filing an appeal expires). In order to obtain a positive decision, approvals of the State Fire Department and the State Labor Inspection must be obtained. The handover of construction documentation to the target owner usually ends the property development process.

2. Sources of law regulating the Property Development Process

The main legislative acts regulating the investment process in Poland are as follows: the Building Law dated 7 July 1994 and the Act on Spatial Planning and Development dated 27 March 2003. In addition to the foregoing, there are however other regulations which do not describe the property development process in a comprehensive way, but refer to certain phases thereof and selected actions. Such regulations include in particular the Environmental Protection Law dated 27 April 2001, the Act on Protection of Historical Monuments dated 23 July 2003, the Public Procurement Law dated 29 January 2004, the Geodesic and Cartographic Act dated 17 May 1989, the Energy Law dated 10 April 1997, and the Geological and Mining Law dated 9 June 2011.

2.1 Building Law

The Building Law indicates when, prior to commencing its project, the investor is obliged to obtain a building permit, i.e. an administrative decision allowing the investor to commence and conduct the construction process or perform construction works. Further, the law sets out the requirements which must be met to issue relevant administrative decisions necessary to carry out a development project (including but not limited to a building permit). The Building Law also regulates situations in which the prior obtainment of a building permit is not required, but the authorities must only be notified of the intention to perform certain construction works. The Building Law also contains regulations concerning the issue by administrative bodies of an occupancy permit for a building. Please note that on 28 June 2015 an amendment to the Building Law will enter into force. However, the amendment will mainly affect projects consisting of the construction of buildings for one's own use, i.e. projects related to construction of single family houses.

2.2 Act on Spatial Planning and Development

The Act on Spatial Planning and Development is the main legislative act regulating the space management process. The scope of its regulations encompasses:

(i) determination of the principles of formation of spatial policy by local government units and administrative bodies; and

(ii) determination of the scope and rules of procedure in matters related to designation of lands for specified purposes with determination of the principles of their development.

The foregoing actions are to be based on protection and maintenance of spatial order and sustainable development. The main tool used to achieve such goals is - under the Act - the possibility given to the municipal council to adopt a spatial development plan for a certain area, which constitutes a local law act. If there is no spatial development plan, the site development methods and development conditions are determined by way of an administrative decision on land development conditions. The basis for adoption of a spatial development plan is a study of conditions and directions of spatial development adopted by the municipality. Thus, from the investor's perspective the provisions of a spatial development plan are of key importance since the investor's possibility of carrying

out the planned project plan is conditional thereon, and if there is no master plan – the land development decision issued upon the investor's motion.

2.3 Environmental Protection Law

The environmental protection in planning acts is reflected in the Act on Spatial Planning and Development dated 23 March 2003; however, such provisions have a general nature. A detailed regulation in this respect is included in the Environmental Protection Law. According to it, preparation and updating of concepts of spatial development of the country, the strategy of development of voivodeships, voivodeship spatial development plans, studies of conditions and directions of spatial development of municipalities and spatial development plans must be based on the principle of sustainable development and environmental protection. The Act further imposes upon the investor inter alia the obligation to take into consideration the environmental protection in the area on which the investor conducts works. More importantly, the Environmental Protection Law allows for using and transforming elements of nature only to the extent it is necessary in connection with the execution of a particular project. If the protection of elements of nature is not possible, according to the Act, one should take actions intended to remedy the damages caused, in particular the environmental compensation. Further, the Environmental Protection Law states that a newly constructed or reconstructed building object (or a complex of such objects or an installation) cannot be commissioned if it does not meet the environmental protection requirements indicated in the Act.

2.4 Act on Protection of Historical Monuments

On the basis of the Act on Protection of Historical Monuments, it is possible to provide for protection of indicated monuments in the spatial development plan or in the decision on determining the location of a public purpose investment, in a land development decision, decision on the permission to complete a road investment, decision on establishing the location of a railway line, or in a decision on the permission to complete an investment in the field of a public use airport.

Pursuant to such act, in the study of conditions and directions of spatial development of the municipality and in the master plan the conservator's protection zones are determined, as needed, encompassing areas on which restrictions, prohibitions and orders set out in the plan intended to protect monuments located within such area are in force. Further, the act introduces the obligation to consult with the Voivodeship Monument Conservator the drafts and amendments to the spatial development plan of the Voivodeship and the spatial development plan in respect of land development formation.

2.5 Public Procurement Law

The Public Procurement Law affects the property development process to the extent to which the act provides for application of procedures indicated therein (including the public auction procedure) related to management of public funds in order to carry out particular projects. In the development process, the public procurement regulations apply mainly to public projects, including technical infrastructure necessary for construction or proper operation of new buildings. The public procurement system, according to its assumptions, should ensure openness, equal access to contracts and the selection of the most advantageous offer, as well as the efficiency of preparation and execution of public projects.

2.6 Act on Protection of Nature and Water Law

Among the acts which may affect the property development process, one should further mention the Act dated 16 April 2004 on Nature Protection and the Water Law dated 18 July 2001. For example, on the basis of the Act on Nature Protection, within the landscape protection area (which encompasses areas protected due to the distinctive landscape characterized by differentiated ecosystems, valuable in view of the possibility of satisfying needs related to tourism and leisure or the function of ecological corridors; such area is demarcated by way of a resolution of regional authorities; on such area the prohibition to conduct earthwork permanently distorting natural topography, or the prohibition to construct building objects within a strip of land with a width of 200 meters from the cliff line and within the technical strip of the seashore may be introduced. Those are undoubtedly circumstances which may complicate the investor's plans consisting of the construction of e.g. a hotel in a place attractive for tourists. The interpretation of the Act on Nature Protection from the perspective of the development process further enjoins paying attention to the issues related to the Natura 2000 area. Namely, in accordance with the Act, it is prohibited to take any actions which may, individually or in combination with other actions, significantly adversely affect the protection of the Natura 2000 area.

2.7 Geodesic and Cartographic Law

The Act sets out inter alia the terms of performing land survey and cartographic works and regulates proceedings concerning real estate separation. Further, the act establishes and regulates the keeping of land records and geodesic records of utility networks, which are particularly important at the project planning and designing phase.

2.8 Energy Law

Also, the provisions of the Energy Law are important for the property development process, since they set out inter alia the principles of executing agreements to connect to networks and the requirements imposed upon installations and networks seeking connection.

2.9 Geological and Mining Law

The provisions of the Geological and Mining Law pertain inter alia to the performance of geological works and the preparation of geological and engineering report, necessary to construct building objects in the event that geotechnical documentation, prepared only on the basis of a geotechnical report, is insufficient.

3. Participants of the Property Development Process

The Building Law indicates the following participants of the construction process:

3.1 Investor

The investor is the entity using the real estate for construction purposes (the owner or in certain cases e.g. the tenant). Only such entity, after having fulfilled other conditions, may receive a building permit. Among the participants of the investment process, only the investor is a party to the administrative proceedings related to the construction process. The investor may entrust the construction

process to another entity (e.g. a developer), as the so-called substitute investor. Please note that the risk related to the actions of the developer is borne by the initial investor. If the investor has appropriate powers, it may simultaneously perform the roles of other participants of the construction process.

3.2 Investor's supervisory inspector

The investor's supervisory inspector supervises the compliance of the construction works with building permit, the design and the Building Law. An investor's supervisory inspector is established if such obligation results from the building permit or that is the will of the investor. The inspector must have building qualifications to manage construction works in a special field.

3.3 Architect

The architect is a natural person (one cannot indicate as the architect e.g. a company formed by architects) having qualifications to prepare designs in a given field. Since several architects representing various special trades usually participate in the process, the investor appoints the main architect to coordinate their works. The basic duties of the designer include: i) preparing the construction design in accordance with the requirements of the provisions of the Building Law, the conditions (arrangements) specified in administrative decisions regarding the construction project, applicable provisions of law and technical knowledge principles; ii) obtaining required opinions, arrangements and verifications of design solutions within the scope provided by relevant provisions of law.

3.4 Site manager or works manager

The appointment of the works manager is mandatory in the case of works executed on the basis of a building permit and in some cases where it is not necessary to obtain a building permit, but special regulations impose an obligation to appoint a construction manager (e.g. in the case of the construction of detached single-family residential buildings, whose impact area falls entirely on the plot or plots on which they were designed).

In addition to the coordination of works, the site manager is responsible for ensuring safety of works, documentation of the construction process, preparation of handovers and informing other participants of the progress of works. The appointment of works manager is necessary in the case of performance of specialist works, if they exceed the qualifications of the site manager.

The Building Law does not directly regulate the contractor's role in the construction process. The relationship between the investor and the contractor is regulated in the Polish Civil Code, in the provisions concerning construction work contracts.

4. Ascertainment of the Legal Status and Designation of Real Estate

Prior to commencing the project, the investor should in particular verify the designation of the real estate and its legal status.

4.1 The right to use real estate is not only restricted by technical and building regulations but also by the local law acts. Therefore, the investor should check whether the real estate is encompassed by a spatial development plan and verify whether the project it is planning complies with the designation of the real estate (agricultural, industrial or building), and the classification of land is. Please take

into consideration that the sale of agricultural property requires additional proceedings before the National Agricultural Support Centre. In cases specified in the Act on Forming the Agricultural System, the National Agricultural Support Centre has the right of pre-emption of the agricultural property.

4.2 Moreover, the investor should ascertain whether the seller holds the legal title to the real estate, whether the ownership title is subject to any restrictions, whether other entities have any claims or rights (e.g. the pre-emption right, easement, mortgage) and whether any annotations or warnings are entered in the land and mortgage register.

4.3 The investor should ascertain whether it will be entitled to use the selected real estate for construction purposes, i.e. whether on the basis of the legal title it holds (whether presently or at the time of the planned project) to the real estate it will be able to develop the site.

Despite the right to develop the property is most often exercised by the owner of the real estate, it is also possible to execute a development project on the basis of the entitlement arising from an obligation (e.g. the tenant's right to develop the leased land if the land lease agreement so provides; similarly, the lease or any other agreement containing the right to develop the land, easement or usufruct may constitute grounds for carrying out a development project).

4.4 If the legal status of the real estate does not evoke any concerns, and the designation of the plot makes it possible to carry out the planned project, the investor, after having obtained the title to use the real estate for construction purposes (e.g. by way of acquisition or land lease agreement) may commence the construction process.

5. Determination of Development Conditions

Each building object should be constructed in compliance with the development conditions determined for the site on which it is located. Therefore, prior the preparation of the building design, one should ascertain the development conditions for the site. They are specified in the spatial development plan hereinafter: "SDP"). If the real property is not encompassed by SDP, the investor should apply for determination of the development conditions by way of a land development decision.

5.1 Spatial development plan

5.1.1 The spatial development plan is the basic legal instrument of spatial design at the municipal level. The SDP is adopted by municipal council on the basis of the previously adopted study of conditions and directions of spatial development of the municipality (hereinafter: the "study").

5.1.2 Such study should in particular take into account the information indicated in art. 10 of the Act on Spatial Planning and Development, e.g. conditions arising from the development needs and possibilities of the municipality, the previous use, development and utilities, the spatial order and the requirements of its protection of the area. Article 10 of the above-referenced act indicates a minimum set of requirements, which should be taken into consideration in the study assuming that in a particular case such requirement may not be included in the study at all. In other words, in a particular case the study may contain provisions that are required and

not encompassed by the statutory scope of the act, i.e. exceeding the scope specified in the foregoing provision.

5.1.3 Having adopted the study, in order to determine the designation of the sites (in particular, for a public-purpose investment project) and to determine the development methods, the municipal council passes a resolution to proceed with the preparation of SDP.

5.1.4 SDP must always contain the elements mentioned in art. 15 sec. 2 of the Act on Spatial Planning and Development. For example, the principles of protection and formation of spatial order, the requirements arising from the needs to arrange public spaces, or the method and deadline for temporary development, arrangement and use of lands must be inter alia specified.

5.1.5 Depending on the needs, SDP determines inter alia the borders of the areas within which real properties must be amalgamated and divided, permissible colors of building objects, or borders of the areas designated for construction of large-area shopping facilities.

5.1.6 Comments to the draft SDP made available to the public may be submitted by anyone who challenges the assumptions adopted in the draft plan.

5.1.7 It is obviously possible to amend the already adopted SDP or study. If the provisions of SDP (study) are amended or revoked, the municipality is obliged to follow the same procedure which applies in the case of adoption of the plan (study), provided that no exceptions which would allow to depart from this procedure have been envisaged. Thus, it is worth noting that irrespective of the type and scope of amendments, i.e. even if the change of the plan is insignificant (e.g. consists of a partial amendment of the text of the plan alone), the municipality should observe the rules of procedure set out in the Act on Spatial Planning and Development (e.g. judgment of the Supreme Administrative Court no. OSK 455/10). It may have significant legal implications in the context of rendering SDP (study) invalid in full or in part.

5.1.8 According to the legal literature (Joanna Dziedzic-Bukowska, Comments to art. 28 of the Act on Spatial Planning and Development [in:] Buczyński K., Dziedzic-Bukowska J., Jaworski J., Sosnowski P.T., Act on Spatial Planning and Development. Comments, LexisNexis 2014), the Act on Spatial Planning and Development provides for two main conditions of compliance with the provisions of law of a resolution concerning SDP and a study of conditions and directions of spatial development of the municipality:

- firstly, a substantive law condition - concerning the application of the principles of preparation of SDP (study),
- secondly, a formal and legal condition - concerning the use of the procedure for preparation of a plan (study) and the jurisdiction of authorities.

A breach of the principles of preparation of SDP or study is subject to a sanction of invalidity, the application of which does not depend on the extent of violation of the principles. The principles of preparation of a plan (study) are deemed to pertain to meritorious issues related to the

preparation of a planning act, i.e.: the contents of a planning act (the text and graphical part and other appendices), the provisions included therein, as well as planning documentation standards. In view of the foregoing, each and any breach of the principles of preparation of a planning act will result in the declaration of invalidity of the municipal council's resolution in full or in part. A breach of the procedure for preparation of the plan constitutes grounds for application of a sanction of invalidity, if only the procedure was materially breached.

From the investor's perspective, such issues may be important since in the event that the binding SDP or study are disadvantageous for it, the existence of any of the above-indicated conditions may give grounds to challenge them.

5.1.9 If SDP is already adopted for a given area, the investor will apply to a competent administrative body to issue a building permit. The body - upon inter alia verification of the compliance of the investor's plans with SDP - issues an administrative decision, in which it permits or refuses a permit to execute the relevant construction works.

5.2 Land development decision

5.2.1 A land development decision (hereinafter: "LDD") may be issued only and exclusively for a land which is not encompassed by SDP. LDD is issued for an indefinite period of time and its validity period is not indicated. If there is no master plan, LDD is required for any land-use change consisting of:

(i) the construction of a building object,

(ii) the execution of any construction works other than the construction of a building object,

(iii) any change of the method of use of a building object or any part thereof.

5.2.2 Please note that LDD must be really issued for any change of land use, also in the case of any land-use change which does not require a building permit, unless it is a single temporary change lasting up to one year. The fact that the change occurs only once combined with its duration means that after the lapse of not more than one year the investor cannot – even after the site has been restored to its previous condition - once again make an identical change of land use for another year. More importantly, the possibility of making a single temporary change (without the requirement to obtain LDD) pertains only to land use and does not refer to any change of use of a building object or any part thereof.

5.2.3 The body authorized to issue LDD is the commune head, mayor or president of the city, except for land development decisions pertaining to closed areas, which may be issued by a voivode (province governor). In the situation in which the planned project exceeds the area of one commune, the authority competent to issue a LDD is the commune head (mayor, president of the city), within the area of which the biggest part of the project site is located. The competent commune head (mayor, president of the city) is obliged to issue a LDD for a project exceeding the area of one commune in consultation with other commune heads, mayors

or presidents. The competent body issues LDD after consultation with the authorities relevant for a given project, as listed in art. 53 sec. 4 of the Act on Spatial Planning and Development. For example, the issue of a decision concerning a project to be executed in a health resort requires consultation with the Minister of Health.

5.2.4 However, it is not always possible to issue LDD. Namely, in accordance with art. 61 of the Act on Spatial Planning and Development a relevant decision may only be issued if all of the following conditions are met:

(i) at least one plot adjacent to the investor's plot, accessible from the same public road, must be developed in a manner which makes it possible to determine the requirements concerning new buildings in respect of continuation of functions, parameters, features and building and land development indicators, including the dimensions and architectural form of building objects, building alignments and site use intensity,

(ii) the site must have access to a public road,

(iii) the existing or planned utilities networks must be sufficient for the construction project,

(iv) the site cannot require the obtainment of the consent to the change of land use from agricultural and forest lands to non-agricultural and non-forest lands or must be encompassed by the consent obtained during the preparation of master plans which expired,

(v) no other provisions cannot prevent the issue of LDD.

5.2.5 The development of the adjacent plot, as referred to in point 5.2.4 (a), evoked controversies and was considered by the Supreme Administrative Court (e.g. in judgment no. II OSK 646/2007, dated 17.04.2007), which held that if a plot does not have a common border with any developed plot but is located relatively close (in urban planning terms) to such developed plot, then there are no obstacles to issuing a LDD.

5.2.6 In the proceedings related to the issue of LDD, the applicant does not have to hold the title to the real estate. The title to use the real estate for construction purposes is only verified at the stage of the building permit procedure. According to A. Despot-Mładanowicz in the Commentary to the Act on Spatial Planning and Development (ed. A. Plucińska-Filipowicz), "a land development decision in respect of the same site may be issued to more than one applicants. In such a situation copies of the decision are delivered to the other applicants and to the owner or perpetual usufructuary of the real estate for their information. Consequently, land development decisions may be issued to an unlimited number of applicants. The obtainment of such a decision by one applicant is without prejudice to the issue of other land development decisions to other applicants. Such decisions may pertain to various types of projects, but their characters may also be concerned with the same type of project".

5.2.7 In view of the foregoing, the body which issued a LDD is obliged to ascertain that such decision expired if another applicants obtained a building permit. Further, it is necessary to ascertain that the decision

expired if a master plan is adopted for the area on which the project is to be executed, and the provisions of such master plan are different that those of the decision (however, it does not apply to the situation in which a building permit has already been obtained).

5.2.8 It should be pointed out that LDD may be assigned to another entity, which will accept all conditions provided for therein. Consequently, such entity becomes entitled to apply for a building permit on the basis of the provisions of LDD assigned to it.

5.2.9 Proceedings intended to issue LDD constitute administrative proceedings and are conducted on the basis of the provisions of the Code of Administrative Procedure. It means inter alia that a party to the proceedings may file an appeal against the administrative decision issued by the body of the first instance, and the decision of the body of second instance may be appealed to an administrative court. An appeal is filed with the appellate body via the authority which issued the decision, within fourteen days of the date on which the decision is delivered to the party.

5.3 Legal relation between SDP and LDD

5.3.1 SDP is a local law act binding on the area for which it was adopted by a resolution of the relevant municipality. On the basis thereof, the designation of the land is determined, public purpose projects are placed and the area development conditions are set out.

5.3.2 As opposed to SDP, LDD is not a local law act, but an administrative decision which is issued on a case-by-case basis at the investor's request by a municipal authority (commune head, mayor, president of the city) in order to change the land use.

5.3.3 In order to obtain LDD - as opposed to SDP - the investor must participate in the administrative proceeding conducted by the authority, which involves the obligations to provide the authority with appropriate documentation. For example, please note that among documents to be attached to the application for LDD there should be a description of the planned land development method and the characteristics of the land development, including the designation, dimensions of the planned building objects, presented in a graphical and descriptive form. Naturally, proceedings intended to issue LDD are thus more troublesome for the investor than relying on the adopted SDP in the investment process.

5.3.4 It could, however, seem that the legal position of two investors, one of whom would like to execute a project within an area encompassed by SDP, and the other on the area without the adopted SDP , on the basis of LDD - is equal. As a matter of principle, it is actually the case, since both SDP and LDD constitute spatial planning instruments, provided that SDP sets out the zoning rules for the entire municipality and LDD is intended to ascertain whether in a given case an investment plan will not violate the spatial order. Briefly speaking, if the planned project complies with the local spatial order, it does matter for the investor from the legal viewpoint whether SDP was adopted for a given area, or whether he will have to participate in the proceedings intended to issue LDD, since in both cases investor will have to obtain a building permit.

5.3.5 However, in connection with the trend prevailing in administrative courts' decisions, there are exceptions from this rule in respect of projects consisting of construction of large-area shopping centres (i.e. shopping facilities the area of which exceeds 2000 m2). The Voivodeship Administrative Court in Olsztyn directly held, in its judgment dated 18 February 2014 (II SA/Ol 1131/13), that only if the sales area within the planned project does not exceed 2000 m2, can the executive body determine development conditions pertaining to the relevant project by way of an administrative decision. Also, the Supreme Administrative Court held that the construction of a large-area shopping facility is possible only and exclusively on the basis of the adopted SDP , since in its judgment dated 1 March 2013 (II OSK 2071/11) the court stated that: "it is right that the provision of art. 10 sec. 2 point 8 in connection with sec. 3 of the Act on Spatial Planning and Development constitutes a source of the obligation to prepare a spatial development plan for the areas on which large-area shopping facilities are to be constructed". Further, if in the study of conditions and directions of spatial development the municipality has not indicated areas designated for construction of large area shopping facilities, the execution of any such project is not possible either on the basis of SDP or LDD (judgment of the Voivodeship Administrative Court in Gorzów Wlkp. dated 15 January 2015, II SA/Go 791/14).

5.3.6 If, however, the competent authority nevertheless issues for any reason LDD allowing the investor to construct a large-area shopping centre, it does not yet mean that it will be possible to execute the project. Namely, such possibility arises only from the building permit. According to the legal literature (Anna Ostrowska, Commentary to art. 35 of the Building Law [in:] Gliniecki A. (ed.), Building Law. Comments.), "the fact that the authority competent to issue a building permit is bound by the provisions of the land development decision does not mean that such authority is not obliged to react to the irregularities of the decision ascertained by it. Although the authority cannot by itself eliminate such decision, but it should suspend the proceedings on the basis of art. 97 § 1 point 4 of the Code of Administrative Procedure in order to allow the competent body to assess, in the supervisory proceedings, the compliance with law of the decision determining the development conditions". Practically, in the event that it is ascertained that LDD is incompliant with law (since e.g. it allows for construction of large-area shopping facility on the basis of LDD) it means that the body competent to issue a building permit should refuse to issue a permission to commence the construction process.

6. Building Permit

6.1 A building (demolition) permit concerning a building is an example of an administrative decision strictly regulated by law, i.e. a decision the conditions of issue of which are strictly specified by the provisions of law, which excludes the authorities' discretion at the decision making stage. If the requirements set out in the law are fulfilled, the competent authority cannot refuse to issue a building permit for the investor.

6.2 The building permit is issued - as a matter of principle - by a starost (local authority) having jurisdiction over the location of the project, which acts as an architectural and construction body of the first instance. In towns having county

rights, the authority competent to issue building permits is the president of the city, who also fulfils the functions of a starost (local authority). In matters related to building permits for objects and construction works listed in art. 82 sec. 3 of the Building Law and in matters listed in the regulation of the Council of Ministers issued on the basis of the authority included in art. 82 sec. 4, a voivode is the body of the first instance. A higher-level authority than the starost (president of the city having county rights) is a voivode, and a higher-level authority than the voivode as the body of the first instance - the Chief Building Supervisory Inspector.

A voivode, as the body of the first instance, is competent to issue building permits for inter alia civil airports with related objects and facilities, subway with the related building facilities, municipal and country roads, if the necessity to construct or reconstruct them arises from the construction or reconstruction of a state or voivodeship road, or transmission network, within the meaning of art. 3 point 11a of the Energy Law dated 10 April 1997.

6.3 A party to the proceedings intended to obtain a building permit is the investor being a natural person, a legal entity or an unincorporated organizational unit, which holds the right to use the real estate for construction purposes and organizes the construction process and bears the economic burden thereof. As a matter of principle, the investor files an application for a building permit and is the recipient of the decision granting the building permit.

6.4 An application for a building permit may also be filed by an entity holding the right to use the real estate for construction purposes, which, in its application, will indicate another entity - the investor, to whom the decision granting the building permit is to be issued. Such third party, being at the same time the recipient of the administrative decision, would then play the role of the so-called substitute investor (Piątek W., Commentary to art. 3 of the Building Law [in:] Gliniecki A. (red.), Building Law. Comments., LexisNexis 2014).

6.5 The parties of the building permit proceedings include also the owners, perpetual usufructuaries and managers of real properties located within the area affected by the building object. If the administrative authority competent for architectural or building matters (i.e. a starost or voivode) ascertains during the proceedings that real properties of the above-mentioned entities are located within the area affected by the planned project, then it should grant them a status of a party to the proceedings and send to them the decision granting the building permit issued by the authority to allow such entities to file an appeal against the decision within 14 days of the delivery thereof.

In judicial decisions of the Supreme Administrative Court there is a prevailing view that a party also has a legal interest in proceedings under the environmental protection regulations, in particular regulations concerning noise.

The fact that any plot is shadowed cannot justify challenging the decision granting the building permit since the Building Law does not provide for any restrictions on casting a shadow on any plots, but it only regulates the issues related to shading premises designated for people and their illumination and access to sunlight (judgment of the Voivodeship Administrative Court in Gorzów Wlkp. dated 14 May 2014, II SA/Go 212/14).

6.6 An application for a building permit is filed in the architecture and building department of the authority of the first instance (i.e. most often in the County Office) using a ready standard form. The following documents should be attached to the application, among others:

(i) four counterparts of the building design,

(ii) land development decision, zoning decision (if required),

(iii) the investor's declaration that it holds the legal title to the plot,

(iv) certificates confirming that architects are members of regional architects chambers,

(v) opinions, approvals, permits required by specific provisions of law, depending on the type, specifics or place of the development project, e.g. concerning a construction process within the area subject to nature protection or monument conservator protection, a construction process on areas registered in the municipal landmark register, and sanitation and fire protection requirements.

6.7 In accordance with art. 34 sec. 3 of the Building Law, each building design of an object which requires a building permit, should consist of three parts:

(i) the plot or land development plan, containing: demarcation of the borderline of the plot or the area, location, contours and layout of the existing and planned building, land technical infrastructure network, sewage drainage or purification systems, transportation system and green areas,

(ii) the architectural and building design describing among others: the function, shape and structure of the building, its characteristics as to energy consumption and environmental issues, proposals for necessary technical and materials solutions in order to illustrate the principles of adopting the building to its environment;

(iii) information about the area affected by the object.

Further, in certain cases, as needed, the building design should contain:

(iv) in the case of a state or voivodeship road, a statement of the relevant road authority on the possibility of connecting the plot with the road, in accordance with the regulations concerning public roads,

(v) results of geological and engineering studies and geotechnical conditions of construction of building objects.

6.7.2 The assessment whether such needs exist is within the discretion of the architect, as well as the architectural and building authority, which in the event of the lack of any of such elements requests the investor to deliver it within the indicated period of time on the basis of art. 35 sec. 3 of the Building Law, otherwise the authority may refuse to approve the building design and to grant the building permit.

6.7.3 The geological and engineering documentation should be attached to the building design, in particular if the structure of the planned object is highly complicated and there is no sufficient data about the ground structure and hydrographic conditions.

According to the Supreme Administrative Court, it is not necessary to prepare such a report concerning a plot of land if the adjacent plots are developed and contain objects similar to the one to be constructed (judgment of the Supreme Administrative Court dated 23 January 2013, II OSK 1740/2011).

6.8 The authority should issue a decision on the building permit within 65 days. In the event that the architectural and construction administration body does not issue a decision on the building permit in the period specified above, a higher-instance authority may impose a fine of PLN 500 on that authority for each day of delay.

6.9 The architectural and building authority examines the application to check whether it is complete, whether the building design complies with SDP or LDD, whether the plot of land development plan complies with the regulations (including technical and building regulations) and whether the design was prepared by a person having appropriate qualifications. If any irregularities are ascertained, the authority indicates the period to remove them. If the application does not contain any irregularities or such irregularities are removed, the authority has to issue a building permit to the investor.

6.10 If the irregularities ascertained by the authority are not removed within the indicated period, the authority will issue a decision refusing to approve the design and grant the building permit. Such negative decision may be appealed to the body of a higher instance within 14 day of delivery of such decision.

6.11 Please note that a building permit is not granted for an indefinite period of time and it expires if the construction process is not commenced prior to the lapse of 3 years of the date on which such decision became final or if the construction process is suspended for a period longer than 3 years.

6.12 Sometimes, after the issue of the decision granting the building permit the investor changes the concept of the planned project. A significant departure from the approved building design or other conditions of the building permit is permissible, but only after the obtainment of a decision on amendment of the building permit. Any amendment of the building permit requires the institution of a new administrative proceeding. Such proceeding is only limited to the scope of the change being made to the building design and the decision granting the building permit.

6.13 Any significant departure from the approved building design occurs when the change is of such nature that it requires an opinion, approval, permit or any other document, required by specific regulations or the change concerns among others:

(i) characteristic parameters of a building object, including its cubic capacity, built up area, height, length, width and number of floors,

(ii) the fulfilment of the requirements necessary in order for disabled people to be able to use the object,

(iii) any change of the planned method of use of the object of any part thereof,

(iv) provisions of the SDP plan or the LDD.

However, according to the prevailing decisions of administrative courts, all circumstances of a particular case should decide about whether a given departure is significant (judgment of the Voivodeship Administrative Court in Kraków dated 11 December 2013, II SA/Kr 1112/13).

6.14 More importantly, there is a possibility of assigning the final building permit (and the decision to resume construction works) to another entity, which derives directly from art. 40 of the Building Law. Such a decision may be assigned at any time and at any phase of construction works. Thus, such decision may be assigned both when the construction of a building has not yet been commenced and when the building has already been completed, but not yet commissioned. Upon commissioning of the construction project the building permit is realized, therefore, in such a situation the issue of a decision on assignment would be pointless.

6.15 Also, a building permit for a part of the investment plan may be assigned, in particular if the project subject to the application for assignment constitutes a building object which may function independently in accordance with its permitted use, irrespective of its separation from the whole investment project (see: judgment of the Supreme Administrative Court dated 25 April 2007, II OSK 679/06).

6.16 The requirements to issue an administrative decision on assignment of a building permit to another entity are as follows:

(i) there is the consent of the investor, to which the building permit was issued,

(ii) a new investor accepts all conditions included in the building permit,

(iii) a new investor has the right to use the real estate for construction purposes.

It is not permissible to issue a decision on assignment of the building permit on the condition that the purchaser will obtain the legal title to real estate within a specific period of time.

6.17 The Application for assignment of a building permit is filed by the previous investor or a new investor. If the applicant is the previous investor, its application constitutes the consent to the assignment of the building permit. If the application is going to be filed by an entity intending to continue construction works, such entity will have to attach the investor's consent to such assignment. The authority competent to assign the building permit is always the body of the first instance competent to issue the building permit.

In the event of sale of the real estate, in respect of which the seller holds a building permit or a permit to resume construction works, it is best to give the consent to the assignment in the form of a notarial deed. In any such case, the seller or the purchaser files an application to the competent authority for the assignment of the building permit, with such notarial deed attached thereto, and the authority issues a decision to assign the permit to the purchaser. The same applies to the assignment of the permit to resume construction works.

Article 40 of the Building Law does not apply in the case of any merger of commercial law companies. It thus does not exclude the application of art. 494 § 1 and 2 of the Commercial Companies Code, in accordance with which the

acquiring company or the newly created company assumes, as of the merger date, all rights and obligations of the merging company or companies merging by way of creation of a new company. In particular, as of the merger date, all permits, concessions and allowances granted to the merging company or any of the companies merging by way of creation of a new company are transferred to the acquiring company or the newly created company, unless otherwise stated by the law or the decision granting such permit, concession or allowance. The above-indicated administrative acts should be deemed to include a building permit and a permit to resume construction works.

In the event of division of companies, pursuant to art. 531 of the Commercial Companies Code, as of the division date or as of the spin-off date, the merging company or the newly created company set up in connection with the division assumes, in particular, the permits, concessions and allowances related to the assets of the divided company allocated to it in the division plan, which were granted to the divided company, unless otherwise stated by the law or the decision granting such permit, concession or allowance (Ostrowska A., Comments do art. 34 of the Building Law [in:] Gliniecki A. (red.), Building Law. Comments., LexisNexis 2014).

6.18 It is not commonly known, but in order to carry out a project it may appear necessary to obtain a permit to cut trees or bushes on the real estate. Such a permit is issued - as a matter of principle - by the commune head, mayor or president of the city at the request of the possessor of the real estate, upon consent of the owner of such real estate (the consent of the owner of the real estate is not needed in the case of perpetual usufruct). The permit to cut down trees or bushes on the real estate registered in the landmark register is issued by the Voivodeship Monument Conservator. The issue of the permit depends on the payment by the applicant of an appropriate fee which is conditional upon the trunk perimeter and the tree type and species. The fee rates arise from the Act on Nature Protection dated 16 April 2004 and the Regulation of the Minister of Environment dated 3 July 2017 on the rates of fees for particular tree types and species. An application for such a permit may be submitted both before and after the obtainment of a building permit (judgment of the Supreme Administrative Court dated 25 March 2011, II OSK 549/10).

Judicial decisions emphasize that a permit to cut down trees or bushes is discretionary (please see the judgment Supreme Administrative Court in Warsaw dated 4 April 2013, Ref. II OSK 2337/11), which means that the investor may not obtain the approval to remove some or even all trees indicated in its application. It is connected with the fact that the competent authority must assess the public interest and the equitable interests of the applicant. Practically, it happens that a public administrative authority does not grant its consent to the removal of certain trees the location of which does not conflict with the project planned on the real estate, and which the investor would like to remove for practical or aesthetical reasons. It may also happen that in the competent authority's judgment certain trees or bushes growing on the real estate cannot be removed at all even if they conflict with the project planned by the investor. According to the judgment of the Voivodeship Administrative Court in Warsaw of 13 June 2012, Ref. IV SA/Wa 175/12, a permit to cut down trees may only be issued in the situation when the reason stated in the application for such permit is

considered by the authorities to be important and to justify abstaining from protection of trees provided for in the Act on Nature Protection.

6.18.1 When planning a project, it is worth paying attention whether trees or bushes located on the real estate are designated to be preserved on the basis of the provisions of SDP. One should further check whether any of the trees growing on the real estate has not been considered as a monument of nature. A permit to remove such a tree on a developed area will most certainly not be issued. Trees that are monuments of nature are subject to special protection. In relation to monuments of nature, Article 45 par. 1 of the Act on Nature Protection establishes a series of prohibitions, among others: destroying, damaging or transforming an object or area. The prohibitions referred to in the preceding sentence shall not apply to the exceptional cases specified in Article 45 par. 2 of the above-mentioned act, among others the elimination of sudden threats to common safety.

6.18.2 Further, prior to the acquisition of the real estate the investor, as far as possible, should have an inventory of trees and vegetation done on the real estate in order to identify the tree types and species, the exact number of trees and bushes, the tree trunk perimeters at 130 cm and the area covered with bushes. It will allow to calculate the approximate amount of the fee for removal of trees which may affect the profitability of the whole development project.

6.18.3 According to the present legal regime, if any tree or bush is removed without a permit or before the permit becomes final, an administrative fine is imposed equal to twice the fee for removal of such tree or bush. In the case where the removal of a tree or bush is exempt from paying the fee, the administrative cash penalty is set at the amount of the fee that would be incurred if such a waiver were not granted (see Article 89 of the Nature Protection Act).

6.19 Additionally, in connection with the building permit application process, there appears another issue which is important from the investor's perspective, concerning copyrights to the building design prepared by architects, which constitutes the necessary attachment to the application for a building permit.

6.19.1 As part of property development projects, certain works within the meaning of the Act on Copyrights and Related Rights may be created. They may include architectural works, such as a conceptual design, architectural and building design or execution design. Protection under the copyright law may also extend onto works which are not strictly architectural works. It is thus worth bearing in mind the so-called individual discipline designs which are supposed to supplement the architectural design in technical terms. Those are e.g. designs of sanitary, electrical and telecommunication systems. The architect should either grant the investor a permission to use such designs (by way of a license), or transfer the copyrights to such designs to the investor (by way of an assignment). From the investor's perspective, the best solution is the assignment, which may prevent any future conflicts with the architect and gives the investor more possibilities in legal terms. However, even if the investor effectively acquired all copyrights, and the author waived his

moral rights, the investor cannot make any changes to the design, unless it has obtained the architect's permission to exercise the so-called derivative rights. A derivative work is, simply speaking, an elaboration of the initial work. If the investor wishes to reconstruct or expand a building object after a certain period of time, it then elaborates the initial work.

6.19.2 As the design for reconstruction or expansion of a building object - prepared by an entity other than the initial architect - will be considered as elaboration of the original design, the investor should ensure that the agreement with the architect contains provisions concerning derivative rights or obtain at a later stage the architect's consent to the exercise of such rights, provided that the architect's permission to disseminate and use the elaboration of the original design, rather than only to create such design, will be necessary.

If the building design has been created by architects who form a company, it is advisable that when signing an agreement with such company concerning the assignment of copyrights and derivative rights the investor should make sure that the agreement is signed by all architects being the authors of the design and forming such company, rather than only the partners authorized to represent the company.

7. Construction Process

One may only proceed with construction works on the basis of a final building permit, except when under the law a notification of the construction process is required or in the event of the release from the obligation to file the notification or obtain a permit. If the decision is final it means that it is a decision which can no longer be appealed (most often in connection with the lapse of time to file an appeal). A decision becomes final after the lapse of 14 days of the delivery thereof to the parties to the proceedings. Below please find the obligations under the administrative law which are imposed upon the investor by the Building Law at the stage of execution of the construction works.

7.1 Execution of the contract with the contractor of construction works

7.1.1 The relationships between the investor and the contractor are regulated by the contract and the provisions of civil law. Contracts with the contractor are governed by the regulations of the Polish Civil Code concerning contracts for construction works. The provisions on the contract of a specific work shall apply respectively to the effects of a delay by the performer of the beginning of the building work or the completion of the building or the performance of building work in a manner which is defective or inconsistent with the contract, to the warranty for the defects of the building constructed, and also to the investor's right to renounce the contract before the building is completed.

In accordance with case law, the criterion used in distinguishing an agreement for specific work from a contract for construction works is the evaluation of the project being executed pursuant to the requirements Building Law. The subject matter of a contract for construction works is a project of a greater size, individualised features, both physical and functional, usually involving the requirement to prepare the design and appoint mandatory supervisors.

7.1.2 The Civil Code states that the role of the contractor under the contract for construction works is to deliver the object provided for by the contract, and the role of the investor is to take preparatory actions necessary for such purpose (e.g. hand over the construction site, provide the design, take over the object) and pay the remuneration. In the contract for construction works, the parties specify inter alia the works which the contractor will execute personally, and the works which the contractor will perform through subcontractors, provided that the investor's consent is necessary to execute contracts with subcontractors. It should be emphasized that the investor bears joint and several liability with the general contractor for payment of the subcontractor's remuneration.

7.1.3 In Poland, it is permissible to execute agreements for design works and construction works based on international standard contract forms such as FIDIC (the so-called red and yellow book).

7.2 Handover of the construction site to the contractor

The Contract for construction works, by operation of law, obligates the investor inter alia to hand over the construction site to the contractor. The person obliged to take over the construction site on the side of the contractor is the site manager. A significant effect of the handover of the construction site is the fact that liability for any damages arising on the site passes onto the contractor. The Building Law states that the handover of the construction site should occur on the basis of a handover report, setting out also the scope and condition of the site being handed over.

7.3 Appointment of a person having appropriate qualifications as the works manager

7.3.1 The investor is obliged to appoint a person licensed to manage construction works as the works manager. It is not obligatory in the case of works which are not executed on the basis of the building permit; further, the building permit may release the investor from such obligation. The duties of the works manager include inter alia: keeping the construction (demolition) log book and other documentation, displaying an information board, coordinating tasks related to the work safety and health protection (see point 8.4), protecting the area where works are performed from third party access, reporting to the investor any vanishing or covered works for acceptance, preparation of as-built documentation.

7.3.2 If a significant part of work is specialist work, the investor may also be obliged, in the building permit, to appoint an additional works manager for a given specialization, if special technical and professional qualifications in this respect are necessary.

7.3.3 The site manager should be disclosed in the construction log book and should confirm, by his signature in the construction log book, that he has agreed to act as the site manager. In accordance with case law, only the person whose scope of rights and obligations at the construction site corresponds to the scope of rights and obligation of the site manager under the Building Law may be considered as the site manager (judgment of the National Chamber of Appeal (KIO) of 26 June 2015, no. 1271/15).

7.4 Appointment of the investor's supervisory inspector and architect's supervisory inspector, if any.

7.4.1 The investor may supervise the construction process by itself or appoint a person with appropriate qualifications. In the circumstances when it is justified by a high degree of complexity of the design, the investor may also be obligated to appoint the investor's supervisory inspector in the building permit. The investor's supervisory inspector among others: represents the investor at the construction site by monitoring the compliance of the construction process with the design and the building permit, the applicable regulations and the technical and professional knowledge, may give instructions to the works manager and demand that certain adjustments be made. It is not permissible to combine the functions of the site manager and the investor's supervisory inspector.

7.5 Preparation of the safety and health protection plan

The preparation of the safety and health protection plan is necessary if works are planned to be conducted for more than 30 days and to involve more than 20 workers or for the scope of works exceeding 500 man-days. The site manager is obliged to ensure that the plan is prepared. The plan sets out among others: an indication of land or plot development elements that may pose a threat to human health and safety, and information on anticipated threats occurring during the execution of construction works. The safety and health protection plan should be prepared prior to the commencement of the construction process.

7.6 Notification of the planned date of commencement of construction works

7.6.1 The act provides for the investor's obligation to: i) give notification of the planned date of commencement of construction works, for which a building permit is required or ii) give notification of construction work or notification of reconstruction work in the cases specified in the Building Law. The time of commencement of the construction process (the date to be indicated in the notification) is specified by the act as the date of commencement of the so-called preparatory works: geodetic setting out of the object on the site, site levelling, arrangement of the construction site or making utility connections for the purposes of the construction site. The commencement of any of the foregoing works is considered as the beginning of the construction works, to which the prior notification obligation pertains. The date of commencement of the works cannot occur earlier than the date on which the building permit becomes final.

7.7 Obtainment of a construction log book

Upon commencement of works the investor applies to the authority that issued the building permit for a construction log book. The construction log book is issued within 3 days of the date on which the building permit became final or from the day on which the investor acquired the right to perform construction works on the basis of the application. The construction log book is kept by the manager.

In accordance with case law, the construction log book, as an element of the construction documentation, can be treated as an official document which should be presumed to be true (judgment of the Supreme Administrative Court of 11 October 2017, no. II OSK 1764/16).

7.8 Supply of electricity, water, heat or gas for the purposes of the construction site

The investor must also bear in mind the regulation which allows for supply of electricity, water, heat or gas after the building permit or notification of construction works is presented. Any supply of utilities in breach of the regulations is subject to a fine.

8. Occupancy Permit

Prior to commencing the occupancy of the building object, an occupancy permit must be obtained unless the act releases from such obligation.

8.1 The occupancy permit is necessary if:

(i) in order to construct an object a building permit was required and the object is classified as a category specified in Article 55 par. 1 of the Building Law,

(ii) if the municipal building supervisory inspector imposed such obligation,

(iii) the commencement of the occupancy of the building object is to occur prior to completion of all construction works.

In respect of other facilities, for the construction of which a permit or notification of construction process is required, one proceeds with occupancy after the notification of completion of the construction process is given to the building supervisory authority, if the latter does not object by way of an administrative decision (the so-called tacit consent) within 14 days from the date of delivery of the notification.

8.2 Notification to the State Sanitary Inspection and the State Fire Department

The investor who must obtain an occupancy permit for the object is also obliged to notify the State Sanitary Inspection and the State Fire Department. If such bodies do not respond within 14 days, they will be deemed to have given their tacit consent.

8.3 Issue of the occupancy permit

8.3.1 The occupancy permit is issued upon the investor's application by the building supervisory authority. The application should be accompanied by, among others:

(i) the original construction log book,

(ii) the site manager's statement confirming that the construction of the building object complies with the building design and the terms of the permit as well as the applicable regulations, the construction site has been restored to an appropriate condition and order, the adjacent areas have been properly arranged,

(iii) test and inspection reports,

(iv) confirmation of acceptance of the construction connections.

8.3.2 Before issuing the decision, the authority inspects the compliance of the completed facility with the terms and conditions set out in the building permit (inter alia the compliance of the land development with the design, the compliance with the characteristic parameters of the design of the roof geometry, the installations, and particularly important building products).

The authority conducts the inspection within 21 days of the delivery of the investor's application.

8.3.3 The competent authority may, in the occupancy permit for the building object, specify the conditions of occupation of such object or make its use conditional upon the performance of certain construction works within the indicated period of time.

8.3.4 Occupation may only be commenced when the decision becomes final, i.e. when it cannot be appealed. The decision becomes final after the lapse of 14 days of the delivery thereof to the parties to the proceedings.

8.3.5 The regulatory body refuses to grant a building permit, if during the inspection it ascertains that certain conditions set out in the building permit have not been fulfilled. In such a situation, the authorities impose upon the investor the obligation to prepare and submit a substitute building design, including the changes to the design submitted together with the building permit. The authorities may also impose the obligation to conduct appropriate works to restore the building to the condition consistent with the building permit. They may also refuse to grant a building permit due to the fact that the documents submitted by the investor together with the application for an occupancy permit are incomplete, if the missing documents have not been provided within the indicated period.

8.4 Further actions after the obtainment of the occupancy permit

When commissioning the building, the investor hands over to the owner or the property manager the construction documentation and the as-built documentation along with other documents and decisions concerning the building, and, if needed, operating manuals of: the building, the installations and the equipment related with the building. The documents should be kept for as long as the building exists.

9. Consequences of Breaches of Law in the Building Process

9.1 Revocation of the building permit

9.1.1 The building permit may be revoked as a result of a material departure from the approved building design without the authorities' approval.

9.1.2 The decision granting the building permit, just like any other administrative decision, may also be revoked by way of extraordinary means of appeal (means of appeal applicable to final decisions), i.e. through invalidation (art. 156 et seq. of the Code of Administrative Procedure) or resumption of proceedings (art. 145 et seq. of the Code of Administrative Procedure). The grounds for challenging the building permit may include for example: an illegal omission of an entity who is a party to the proceedings intended to issue the building permit, or a gross breach of law, e.g. consisting of the issue of the building permit in contradiction with the provisions of SDP or LDD.

9.1.3 In the event of revocation or invalidation of the building permit, the construction process may be commenced or resumed after a new decision granting the building permit is issued. In the event of any material

departure from the approved building design, the construction process may be resumed after the permit to resume construction works is issued.

9.1.4 From the investor's perspective, the issues related to the revocation of the building permit in respect of the project that has already been completed. Despite the fact that the revocation of the building permit does not automatically result in the impossibility to use the object, the situation does not comply with the Building Law. The loss of the building permit should cause the building regulatory authorities to institute an appropriate procedure to "legalize" the object. The purpose of such procedure is to inspect the correctness of the construction works performed by the investor and restore them to the condition compliant with law, if necessary.

In accordance with the view prevailing in case law of administrative courts: "the rectification proceedings" are concerned with restoration of the building or the completed construction works to the condition compliant with the Building Law, and in particular the technical conditions. At the stage of issue of the decision referred to in art. 51 sec. 1 of the Building Law the regulatory authorities must thus assess whether the completed construction works comply with the requirements of the Building Law. Such assessment does not only encompass the compliance of the completed works in terms of their technical condition, but also the compliance with the requirements of the Building Law, including the assessment whether the performed works do not breach any protected third party rights.

9.2 Land use violation

9.2.1 In the Polish law there is no definition of "land use violation". However, it should be assumed that a land use violation is:

(i) the construction of a building or any part thereof without the required building permit,

(ii) the construction of a building or any part thereof without notification or despite the authorities' objection,

(iii) the execution of construction works: i) without the required building permit or notification, ii) in any manner which may pose a risk to safety of people or property or a risk to the natural environment, iii) on the basis of a notification in breach of the provisions of the Building Law concerning such notification,iv) in a manner significantly differing from the terms and conditions of the building permit or the applicable regulations,

(iv) the commencement of occupation of a building or any part thereof without the required occupancy permit, notification of completion of the construction process or despite any objection,

(v) the construction of a building with irregularities in respect of the terms and conditions set out in the building permit.

9.2.2 A breach of the provisions of the Building Law can have various consequences, ranging from the necessity to pay a financial penalty to the order to demolish the illegally constructed object. The competent authority

should, however, always remember that the remedies it uses, in particular those which are painful for the investor, should be commensurate and adequate to the breach, and such remedies should only be used to the extent necessary to remove or prevent a breach of law (M. Cherka, W. Grecki, Land use violation in the Polish Building Law, LEX 2013).

9.2.3 The competent authority is first obliged to examine whether it is possible in respect of a given land use violation of a qualified nature (i.e. a violation of such nature that it is possible to issue a decision to demolish the object) to achieve compliance with law; if the answer is positive, then the legalization proceedings will be instituted. As a result thereof, the order to demolish the object becomes an exception since it may be issued only after it is definitely ascertained that legalization is not possible.

The legalization mechanisms are different depending on the kind of the land use violation. The main division of the legalization procedures is the division into the procedure for legalization in respect of projects which require a building permit and in respect of projects which require a notification, but there are more detailed regulations of this issue in respect of particular kinds of land use violations.

9.2.4 However, the legalization of a land use violation does not constitute the investor's obligation, but the investor's right. If it does not observe the statutory requirements making the legalization possible, it means that it does not want to exercise its right, which in turn will justify the order to demolish the object.

9.2.5 The form of the legalization procedure - as has been mentioned above - depends of the kind of a land use violation. However, it should be pointed out for example that the legalization procedure may consist of the obligation imposed by the authorities to submit appropriate documents such as a certificate of the commune head, mayor or president of the city confirming the compliance of the construction process with the provisions of the binding SDP or LDD, a statement confirming the right to use the real estate for construction purposes, the building design, permits required by specific regulations. As part of the legalization procedure, the authorities will also impose a legalization fee, the amount of which depends on the kind of violation.

9.2.6 A land use violation, pursuant to art. 90 of the Building Law, constitutes a crime subject to a fine, restriction of personal liberty or imprisonment of up to 2 years. The penalty will be thus imposed upon the person who performed construction works consisting of:

(i) the construction or completion of a building object or any part thereof without the required building permit,

(ii) the construction or completion of a building object or any part thereof without a notification or despite the competent authorities' objection,

(iii) the execution of construction works other than the construction of a building object without a permit, notification or despite the competent authorities' objection,

(iv) the execution of construction works in a manner which may pose a risk to safety or people or property or a risk to the natural environment.

In order for the said crime to be committed, no damage or a risk of damage has to occur, since it has a formal nature. The crime under art. 90 Building Law may be committed not only by the investor, but also the investor's supervisory inspector, the site manager, the works manager and the architect. Their liability will be different depending on the assessment of a particular case, provided that various forms of cooperation are possible (such as perpetration or aiding). It should be pointed out further that the law enforcement authorities and criminal courts independently assess whether in a particular case a land use violation occurred (M. Cherka, W. Grecki, Land use violation in the Polish Building Law., LEX 2013).

9.2.7 It should be emphasized that the legalization of land use violations does not eliminate criminal liability for the crime specified in art. 90 Building Law (judgment of the Supreme Court dated 14 March 2013, IV KK 390/12). In connection with that, it should be pointed out that a land use violation may have far more severe consequences for the investor than only financial ones. A legally valid judgment confirming that a crime was committed is reflected in the National Criminal Register, which may result inter alia in the impossibility to hold positions which require clean criminal record, or give grounds for refusing a concession to conduct any business activity.