Construction Permits Process in Poland

November 2010
I. Background

The *Doing Business* report records all the procedures, costs, and time required to build a warehouse and connect it to utilities in a country’s largest business city. *Doing Business 2011* reports that it takes 32 procedures, 311 days, and it costs 121.8% of per capita income to build a warehouse in Warsaw, following all the official requirements. On the ease of dealing with construction permits, Poland ranks 164th among all the countries in the report and 30th among the 30 OECD countries. The Polish government deems this ranking to be unsatisfactory its ambitious targets to improve its investment attractiveness and industry competitiveness. Moreover, the ranking does not convey the breadth and decisiveness of the government’s reform agenda, which has not yet materialized in the construction industry, due to specific non-sector related factors.

Poland was one of the Central European countries that survived relatively well the turmoil of the economic crisis of 2008-2009. While other European Union countries suffered a major decline in production between 2008 and 2009, including in the construction sector, Poland’s economy experienced positive GNP growth of 1.8%. Construction output increased even faster - 4.3% - as a consequence of the completion of many civil engineering projects co-financed by the European Union. However, residential and commercial construction in the large cities experienced negative growth.\(^2\) In Warsaw, where the usual number of building permits for construction projects used to be over 1,000 per year, only 300 permits were issued in 2009.\(^3\)

In 2009, to improve the investment climate, the Polish government introduced a radical regulatory reform in the construction sector. The government proposed a considerable number of amendments to the Construction Code and related laws,\(^4\) which the lower house of Parliament (Sejm) adopted on April 23, 2009.

These reforms sought to limit the scope of administrative decisions by the authorities in favor of the builders’ responsibility for safety and sustainability of their works. They eliminated the requirement for a construction permit (*pozwoleniu na budowe*) from the law (except for a short list of large and risky projects) and replaced it with the requirement for a registration of construction works (*rejestracji budowy*). For smaller and less risky projects, even the notification would not be required when a qualified construction site manager would be sufficient to protect the public interest. In the approved bill the Parliament has reduced the statutory time to

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3. Information received in authors’ interview with the Architecture and City Planning Department of Warsaw.

4. The legal and regulatory framework of the construction industry is based on the following laws:
   - Construction Law Act, issued on 07.07.1994 (DZ.U. 2006, No 156, item 1118, with further amendments)
   - Act on Public Roads, issued on 21.03.1985 (Dz.U. 2007, No. 115, item 115, with further amendments)
   - Act on the Establishment and Operation of Large Commercial Facilities, issued on 11.05.2007
   - Act on Spatial Planning and Development, issued on 27.03.2003 (DZ.U. 2003, No 80, item 717, with further amendments)
   - Act on State Sanitary Inspection, issued on 14 March 1985 (Dz.U.2006, No 122, item 851, with further amendments)
   - Act on Fire Protection, issued on 24 August 1991(Dz.U.2002, No 147, item1229, with further amendments)
   - Act on Environment Conservation, issued on 16 April 2004 (Dz.U.2001, No 92, item 880, with further amendments)
   - Environmental Protection Law Act, issued on 27.04.2001(DZ.U. 2006, No 129, item 902)
   - Administrative Proceedings Code, issued on 14.06.1960 (consolidated act DZ.U. 2000, No 98, item 1071, with further amendments)
adjudicate the application to 30 days. Within this period, the authorities should either “register construction works” as notified by the builder or reject notification by issuing a decision. In the case of “no objection” after the 30-day period the builder may commence the construction project while adjudicating applications within a 65-day period under the “construction permit” system.

Some of these changes were interpreted as possible violations of the EU Declaration on Citizens’ Rights, and the new law was sent to the Constitutional Tribunal for a decision on its legality. The Tribunal has been reviewing the issues of due process in public consultations for more than a year. Market-based reforms and the emergence of civil society in former planned economies brought about the process of public consultations in spatial development, in which all stakeholders (not only the state and vested interests) are able to voice their opinion regarding land use and spatial development plans, as well as specific construction projects. According to the laws in developed market economies, including the European Union, interested and affected parties may appeal decisions of the authorities regarding construction projects in their neighborhood, town, or city.

The courts in Poland and other Central European countries have been flooded with claims by interested parties for compensation for real or perceived damages. The legal and judicial costs of putting construction projects through the approval, appellate, and implementation processes have skyrocketed. In many instances, they have become an excessive burden for developers, who opted out of investment opportunities in specific projects with high public interest. The government of Poland (as well as Hungary and other EU accession countries) has been looking for a balance between safeguarding the civil rights of citizens to participate fully in decision making regarding their habitat, and clarity and predictability of decisions in spatial planning and urban development. The government and Parliament of Poland put forward amendments to the construction laws, and the Constitutional Tribunal will soon pronounce its verdict.

Meanwhile, in May, 2010, heavy floods struck sizable populated areas of the country and prompted urgent calls to restore, without delay, destroyed or damaged dwellings. In response, the government adopted a regulation allowing 564 municipalities with heavily flooded areas to abide by simplified rules prescribed by the Construction Law in force. The regulation included waivers of the permitting procedures for people rebuilding their own damaged homes. The government’s reform agenda goes beyond these emergency measures. The status of reform implementation and direction of further reforms are presented in Figure 1.

II. Mission objectives, reporting and coordination

In June 2010, an Investment Climate Reform Advisory team conducted a review of the construction permitting process in Poland as part of a broader request of the Government of Poland for assistance to improve its business regulatory environment.

The objectives of the review of the construction permitting process were:

- Assess progress in reforming the construction sector;
- Discuss short and medium-to-long-term goals in reform implementation by government ministries, agencies, and municipalities; and
Deliver key reform recommendations to the government, in the context of, but not limited to, enhancing Poland’s performance in the Doing Business report’s “Dealing with Construction Permits” indicator.

In order to assess the progress of reforms, the mission followed the procedures to obtain a construction permit for a book warehouse located in a peri-urban area of Warsaw. The mission followed the standard Doing Business methodology to the maximum extent possible, although not all representatives of agencies involved in the permitting process were available for meetings.

The information was collected through meetings with the following representatives of government’s agencies and practitioners:

- Olgierd Roman Dziekonski, Undersecretary of State, Ministry of Infrastructure
- Monica Majewska, Department of the Construction Market, Ministry of Infrastructure
- Tomasz Zemla, Deputy Director, Architecture and City Planning Department, City of Warsaw
- Anna Macinska, Director, Law-Organization Department, General Office of Building Control
- Joanna Piekutowska, Director, Department of Administrative Ruling, Main Inspectorate for Environment Protection
- Piotr Kulpa, General Director, Main Sanitary Inspectorate
- Andrzej Kosinski, Deputy Director, Main Sanitary Inspectorate
- Leszek Zajac Deputy Director, Supervision and Control Department, State Labor Inspectorate
- Piotr Wojtaszewski, Deputy Director, Main Directorate of State Fire Protection

III. Construction Permit Process as documented in discussions with counterparts

The mission held a total of six meetings. The findings from these discussions with the regulatory bodies and government officials were subsequently discussed in interviews with industry practitioners—construction firms and developers, lawyers and architects. The mission’s findings were rather rich and led to significant interpretations, comments and recommendations regarding the improvement of Poland’s construction related regulations. Table 1 outlines the mission’s findings. The table contains comments and recommendations, which the Polish government may wish to consider, to improve the country’s construction permitting process. For additional information, the authors’ contact information can be found on the final page.
Figure 1. Reforms under implementation and additional reform recommendations.

**Reforms under Implementation**

**Processing of construction and occupancy permits**
- Risk-based approach in processing applications
- Digitization of maps
- Electronic submission of data
- Short and enforceable statutory approval limits
- Project supervision delegated to private sector professionals
- Cautious use of “silence is consent” principle in construction permitting

**Guidelines, inspections, construction permits**
- Utilities issue public guidelines to simplify preparation of technical conditions
- Elimination of excessive inspections for simple construction objects (such as Environmental Protection)
- Further streamlined and re-engineered procedures

**Enforce the “silence is consent” rule in issuing the occupancy permits by allowing specialized agencies 14 days and construction authorities 21 days to file an objection to the notification on completion of works**

**Additional Reform Recommendations**

**One-stop-shop” at municipality for issuance of utility technical terms**
- Replace permits with notification-based regulatory system to ensure smooth implementation of enacted changes without compromising requirements for safety, health, and environment
- Ensure transparency of applied rules (e.g., public access to registered permits and notifications)
- Ensure public access to registered notifications and rights to appeal by affected parties

**Enhance the role of private sector professionals in construction oversight by delegating the right to validate the final opinions and provide them to the applicants**

**Consider broader public access to the register of notifications of completion in order to alert interested parties on compliance with the registered design (not to challenge the registered project)**
- Increase the financial and criminal liability of inspectors (both public and private) for neglect and oversight in order to better protect the public interest
- Introduce further anti-corruption measures in the inspection processes
- Rationalize and consolidate post-completion inspections; to reduce the time and cost burden on entrepreneurs, introduce multifunctional inspections
### Table 1. Construction Permitting Procedures

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<tr>
<th>Construction Permit Procedures, per World Bank mission’s mapping, June 2010</th>
<th>Construction Procedures, per amendments to the Construction Law as adopted by the lower chamber of the Parliament (Sejm), April 23, 2009</th>
<th>Comments</th>
<th>Recommendations</th>
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<tr>
<td><strong>PRE-CONSTRUCTION</strong></td>
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<td>Request technical conditions for electricity connection from PGE Poland, the electricity distribution company in Warsaw – 4 weeks⁵</td>
<td>Construction Law requires (art. 34, para 3, item 3) construction design to include statements of relevant bodies that the supply of power, water, heat, gas, sewage disposal has been secured and terms and conditions for connection of the warehouse to these networks are defined. In the Sejm bill this article is removed for unknown reasons.</td>
<td>Construction of a modern building is possible only when utility connections are secured by getting terms and conditions of warehouse connection to the networks. Privatization and private management of public utilities do not address this need. Being natural monopolies, most of these utilities should be regulated by the government and users should have equal and unrestrained access to utility services.</td>
<td>Restore the provision in the amended law. Consider setting up a one-stop-shop for processing utility applications at a municipal site, as in neighboring countries (e.g., Lithuania).</td>
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<td>Request technical conditions for water and sanitation from <em>Miejskie Przedsiębiorstwo Wodociągów i Kanalizacji</em>, the water and sanitation company in Warsaw – 4 weeks⁶</td>
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<td>Request technical conditions for telecommunications from <em>Telekomunikacja Polska</em> – 4 weeks⁷</td>
<td>No change is proposed in Art. 20 of Construction Law which lists as a duty of the designer “to”</td>
<td>The time limits for issuing an extract are specified in the Spatial Planning and Development Law.</td>
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<td>Request an extract and a printout from the local spatial development plan –</td>
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<td>Consider accepting maps issued more than 6 months beforehand (e.g., 12 months)</td>
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⁵ Source: Proces inwestycyjny (w odniesieniu do inwestycji kubaturowych). Working material prepared by the Ministry of Infrastructure.  
⁷ Source: Ibid
| 1 day | prepare the construction design in accordance with the decision on conditions for construction and land development” without specifying the time limits for the local authorities to issue an extract. | The Law on Administrative Proceedings gives the investor the right to complain to a higher administrative body in case of a delay. The maps, to be valid, must be not more than 6 months old and prepared by licensed surveyors. | validity) and reducing the statutory deadline to issue the updated extract and printout. Consider introducing digitization of maps and electronic submission of data. |
| Receive a copy of the extract and updated spatial development plan – 4 weeks | | |
| Request and obtain design approval from licensed sanitary, fire, work safety and hygiene and the administrator of the public roads – 14 days | No change is proposed in art. 5 of the Construction Law which requires that basic requirements be fulfilled related to these aspects of construction “taking into account the expected period of use and in accordance with technical knowledge principles.” | These procedures have been streamlined and synchronized. There is room for further simplification, though, which is not yet envisaged in the improvements adopted by the Sejm Bill. Currently the review work is mostly done by the licensed private sector practitioners (e.g., there are 400 fire safety experts in Poland and similarly a large numbers for sanitary and work safety inspectors). Their conclusions must be validated by the corresponding state inspectorate. | Phase in full delegation of the review function to the licensed private sector practitioners starting with smaller and/or less hazardous projects, particularly since the licensing process is rather demanding. For example, out of 40 candidates to become licensed for project review on fire safety, only two were selected in 2010. Full delegation will allow the state inspectorates to focus exclusively on large and/or high risk projects saving investors’ time in processing the bulk of applications. |
| Request and obtain the construction permit. The basic provision of the Construction Law (art.28) provides for works to commence solely on the basis of the final decision | The fundamental change proposed by the Sejm Bill was the replacement of the permitting system in construction with the declarative principle by significantly limiting the scope of administrative decisions in favor | Replacing permits with notifications for most construction projects is a major reform proposal. Other simplification measures will also lead to aggregate cost savings for investors. The government should | Clarify the requirements to the requisites of the notification in the proposed amendment of Art 30.1 Allocate additional time for public consultations and the |
on the construction permit (except for small structures). If the permit is not issued within 65 days from the date of filing of the application, the authority of higher instance shall impose a fine on the procrastinating authority of PLN 500 for each day of delay (art 35.6). Smaller and lighter structures may be built on the basis of notifications which should be filed not later than 30 days before the construction commences provided authority does not object with a decision (art 30.5).

*In 2009, fines for delays beyond 65 days were imposed on 40 local governments; in 2010, only on 10.*

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<th>of notifications for most construction projects (except large and high risk). After registration, notifications do not require decisions by the government bureaucrats. This saves time and resources for investors, who, at the same time, take full responsibility for the accuracy and conformity of the project information.</th>
<th>be commended for proposing such steps. In the text of the Sejm Bill though there must be a provision for time for no objection not only by the authorities, but also by other stakeholders (neighbors, general public, etc.) who should be given clearly defined time span to raise their objections to the filed notifications and file them with the authority. Building without a registered notification may be stopped and the builder fined (Art. 50.1). The proposed bill is modest regarding the transparency aspect of the notifications filed. Will all stakeholders have access to the notification log? How the appeal process will be organized in the new system based on declarations and not on permits?</th>
<th>post-notification right to appeal when construction is located in high density urban areas or seriously affect environment or people living/using existing structures in peri-urban areas. Such an opportunity should be given to the stakeholders after the notification stage by ensuring transparency of the notification log and announcements in the media and postings in the area of the construction site. The proposed bill may include more provisions as to public dissemination of the filed notifications, the public consultation process and ways to appeal the registered notifications by interested partied.</th>
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<td><strong>DURING CONSTRUCTION</strong></td>
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<td>Conclude agreements with utility providers of electricity, water and sanitation, telecommunications – 14 days</td>
<td>Utility connections are regulated by specialized laws on electricity, water and telecom. The general provisions of the Construction Law to this effect are proposed to be removed.</td>
<td>The mission visited <em>Miejskie Przedsiębiorstwo Wodociągów i Kanalizacji</em>, the water and sanitation company in Warsaw, and was impressed by the quality of services provided by the company, which benefitted from extensive EU technical assistance. PGE Poland, the electricity distribution company in Warsaw, is the largest integrated electricity producer in Poland. The State owns 85% of its shares. The telecom sector is competitive.</td>
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<td>No periodic inspections during the construction cycle are required.</td>
<td>n/a</td>
<td>As a comparison, in many transition economies the regulatory authorities continue to intervene in the construction process with periodic visits of the construction authority’s inspectors all along the building cycle: (a) completion of the ground level works, (b) structural parts (walls), (c) roof works, (d) heating and water systems, (e) electric works, (f) painting and wall paper works and amelioration of territory, (g) installation of doors, windows, and floor. These inspections hardly improve quality of construction and are known to be opportunities for corruption.</td>
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<td>Role of the Environmental Protection Inspection in the process of construction – nil</td>
<td>Until 2008, most of construction projects required notifications to and inspection visits by the Environmental Protection Inspection. In a 2008 regulation, those visits were divided into 3 categories, two of which require EPI involvement (industrial facilities and plants, parking lots for more than 100 trucks or 300 passenger cars, developments of more than 2 ha, other). Smaller and less risky sites are grouped into category 3, which does not require EPI involvement. Inspections may be sent on discretion of the municipal authorities. In the case of a book warehouse analyzed by the Doing Business report, these inspections rarely happen.</td>
<td>In many developing countries (e.g., in Latin America) the inflated role of environmental agencies resulted in its omnipresence at many stages of the construction permitting process. In some countries those are the most corrupt links in the approval chain.</td>
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<td>In 2006 – 2008, amendments to the Construction Law provided overall simplification of the construction permitting process.</td>
<td>Several proposals in the Sejm Bill will simplify the process further: -If in the process of construction the investor decides to transfer the operation to another investor, under the current law the authority should issue a decision in this respect. In the new law an investor’s statement will be enough (Art.40.1). - A permit from architecture or construction for authorities will</td>
<td>The proposed simplification measures are aimed at promoting of market-based principles and deregulation of construction (passing the site from one investor to another), carefully balancing the public interest with ease of investor’s entry and exit, by consolidating authority in the hands of one regulator (conservation authority) and not spreading responsibility among</td>
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not be required construction works on buildings registered as monuments. All decisions regarding such buildings (including demolition) will be made by the conservation and preservation office (Art.39.1, 39.2 and 31.1). many government offices none of which can held accountable for the permitting process as it is observed now.

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<th>POST-CONSTRUCTION</th>
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<td>Upon completion of the construction, the builder must notify the government sanitary inspectorate, the government labor inspectorate, and the government fire directorate about his intention to put the building to use (Art 56.1). Until 2008 there was a similar requirement to notify the Environmental Protection Inspection (see above). It has been eliminated from the current law. These inspectorates need to take a position regarding this proposal within 14 days upon receipt of the notification. Silence is considered to be inspectorates’ no objection to the project (Art. 56.2) – 14 days.</td>
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<td>The Sejm Bill kept this “silence-is-consent” rule in its text. The inspectorate may or may not send inspectors to the site to verify compliance with the design registered previously with the builder’s notification. Inspectors are visiting most of the completed works upon completion and submitting opinions to the building authority. This provision is best practice. The 3 inspectorates have the right to inspect the competed building, if needed, but missed deadline means approval. <strong>The silence-is-consent rule is correctly applied.</strong> The Sejm Bill proposes not applying the silence-is-consent to high risk projects like railroads, surface roads, power networks, pipelines, ships, recreational facilities, residential buildings (Art. 56.3).</td>
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<td>The government may want to consider <strong>anti-corruption measures</strong> in all three inspectorate (like rotation of inspectors from one city district to another, not allowing inspectors to visit the same sight alone, etc), and in the future the objective could be setting up a combined multi-functional inspectorate which would carry out labor, sanitary and fire inspections in one time, which may lead to cost and time savings for firms and will reduce corruption opportunities, as the experiences of some countries has shown (Columbia, Bosnia).</td>
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<tr>
<td>Receive inspections from the government sanitary inspectorate, labor inspectorate, the government fire directorate – 14 days</td>
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<td>Upon completion of the project, the builder must notify the building authority of the intention to put the building to use (Art.54). Silence-is-consent is also applied to this procedure, but the authority is given 21 day to object the notifications vs. only 14 days are allowed for specialized inspectorates to file their objections – 21 days</td>
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<td>Submit altered site maps to archives of the Geodesic Authority – 1 day</td>
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<td>Professional liability in the construction industry is</td>
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well detailed in the existing law. strengthen construction rules and norms governing professional liability, *inter alia*, by extending the period for claims to be submitted for starting the proceedings from three to five years (Art. 100). construction sector. ban (or cooling off period) for a professional liability breach may be considered.

| Upon completion of the building and receipt of the occupancy permit, the investor must register the property “as a standalone unit.” The application is filed and a certificate should be issued. | These procedures seem to be regulated by other laws, not the construction law. | The working document of the Ministry of Infrastructure⁸ provides for 6-to-8 weeks. The legal requirement is 4 weeks, or 6 – 8 weeks for complex cases. | The data should be provided and examined regarding the registration procedures for newly built structures in property registries. In these data, there must be an indication of whether the land title and rights for buildings are registered in one real estate property document, or whether land and improvement rights are registered separately in different registries, which is the case in many post-communist countries. |

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⁸ Proces inwestycyjny (w odniesieniu do inwestycji kubaturowych). Working material prepared by the Ministry of Infrastructure.
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