



Polska Izba Nieruchomości Komercyjnych

An Overview of Legal Developments Relevant to the Real Estate Industry (2024)

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Revised building regulations

On 1 August 2024, an amendment to the ordinance on the technical conditions to be met by buildings and their location came into force, which introduces a number of important changes aimed at combating development of residential projects contrary to good practices and standards, protecting green areas and improving the quality of life for residents. The new regulation was supposed to enter into force on 1 April 2024, but the date was changed immediately beforehand, and the new changes have been effective since 1 August 2024.

The new regulations have a significant impact on the real estate industry, including developers, investors, and local government units, as many obligations affect the planning of spatial policies in relation to public areas, including public properties.

One of the key changes is the introduction of a definition of a publicly accessible square and the requirement that at least 20% of the area of such squares should be biologically active. This is intended to reduce the excessive amount of concrete public spaces and provide more green space in cities.

The new regulations also introduce widely reported changes to the minimum distances between multi-family residential buildings and the plot boundary. After the changes, this distance amounts to a minimum of 5 metres, which is intended to increase user comfort and improve the residential environment.

In addition, the new building regulations require commercial units in a building to have a usable area of no less than 25 sq. m. It is possible to construct a smaller commercial unit if it is located on the first or second storey above ground level and has direct access to it from outside the building.

Many changes also concern the provision of facilities for families with children. In particular, the legislation has introduced the obligation to provide a utility room of minimum 15 sq. m located close to the entrance of the building for storing bicycles and strollers in multi-family residential buildings. The new legislation also regulates the construction of children's playgrounds and recreation areas for people with special needs. In the case of constructing multi-family building complexes with more than 20 flats, it will be necessary to build recreation areas that can also be accessed by people with special needs.

In addition, the amendment introduced specific acoustic provisions to be applied to different types of residential buildings and changes to the organisation of parking spaces for people with disabilities by limiting the number of such spaces to 6% of the total amount of parking spaces within a given investment.



In the case of public facilities with special parameters, e.g., for public administration with a floor area of more than 2,000 sq. m, it is now compulsory to provide separate changing rooms for adults with special needs in line with certain parameters.

The new Developer Act

From 1 July 2024, developers are bound by the new Developer Act, which introduces a number of changes and new obligations for developers, replacing the previous 2011 regulations. In particular, the aim of the new Act is to protect home buyers.

The beginning of July 2024 marked the end of the transitional period, which lasted from 1 July 2022, during which the provisions of the old Developer Act were applied to investments commenced before 1 July 2022. After this period, all investments had to be carried out in accordance with the new regulations.

The new law has made it compulsory to pay contributions to the Developer Guarantee Fund, which is designed to protect purchasers of flats in the event of the developer's bankruptcy. Contributions are paid on each payment made by purchasers who entered into a development agreement after 1 July 2024, up to a maximum amount of:

- ▶ 1% in the case of open housing trust accounts, or
- ▶ 0.1% in the case of closed housing trust accounts.

Banks have also gained more control over the disbursement of funds from escrow accounts and have a greater responsibility to ensure that their duty to monitor is carried out properly. The new regulations require banks to check that the developer is not involved in bankruptcy or restructuring proceedings before disbursing the funds, that it still holds the legal title to the property and the required building permits, and that it is not in arrears with taxes, social security, health insurance and Developer Guarantee Fund contributions.

In addition, under the amendment, developers must obtain a new residential trust account (MRP) and prepare a new, more detailed, information prospectus, the template of which is attached to the new law, which additionally forms an integral part of the development agreement. The prospectus should contain information for purchasers regarding:

- ▶ the price of the residential premises or detached house (which may also be expressed in square metres),
- ▶ the date on which the property is transferred to the purchaser,
- ▶ construction completion dates,

- ▶ information about the property, including a detailed scope of the standard of finishing works for the property's development status,
- ▶ the method of payment of the price for the property, and
- ▶ conditions for withdrawing from the development agreement on the part of the purchaser.

Periodic pre-emptive rights of municipalities in flood-affected areas

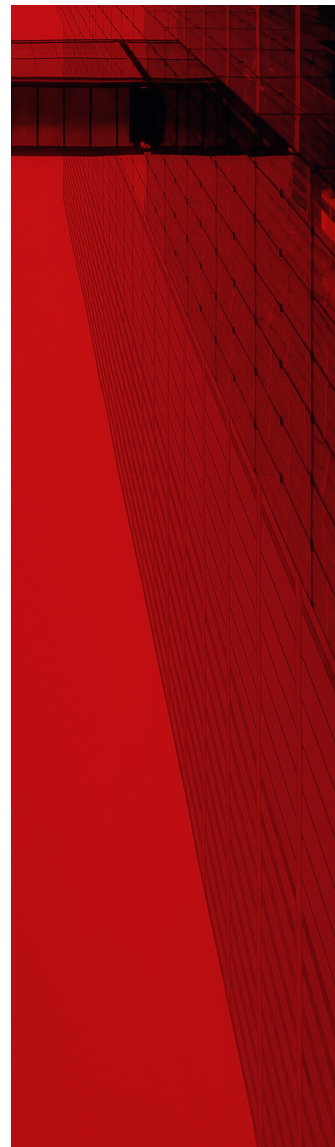
On 5 October 2024, a new type of pre-emptive rights was introduced into the Polish legal system, which was granted to municipalities for the acquisition of premises and single-family residential buildings in areas affected by this year's flooding. The new pre-emptive right of municipalities covered areas where a state of natural disaster had been declared, i.e., certain municipalities in the Lower Silesian, Opole, Lubuskie and Silesian provinces. However, this right is available to municipalities for a limited period of time, i.e., until 30 April 2025.

Residential premises and single-family homes acquired by the municipality under the new provision will form part of the municipality's housing stock. The purpose of the new right is to allow municipalities to renovate and rebuild damaged residential premises and buildings and then transfer them to the people affected under the rules for renting out premises found in the municipal housing stock.

Due to the fast-tracking of the amendments to the Act on Special Solutions for Flood Relief, the public, the real estate industry and notaries did not have the opportunity to prepare for the introduction of the new provisions, nor was there public consultation or effective communication regarding the introduction of the new type of pre-emption right. In addition, the new provision raises a number of concerns about its legitimacy, as municipalities have been reluctant to exercise this right and the sudden change in the law has resulted in many agreements concluded in the period immediately after the introduction of the amendment being deemed invalid.

It should therefore be taken into account, when planning the acquisition of premises or single-family homes located within the municipalities covered by the new regulations, that the conclusion of a conditional agreement is inevitable and that the development process in these areas will therefore be prolonged.

An additional questionable issue is the definition of the pre-emptive right in the case of a single-family home and not for real estate developed with a single-family home. Nevertheless, taking into account the purpose of the Act and the well-established line of jurisprudence concerning the disposal of a building together with the legal title to the real estate, it should be assumed that the pre-emptive right applies to the real estate developed with a single-family home and not to the building itself.



New definitions of 'building' and 'structure' in tax law

Previously, the Act on Local Taxes and Fees did not define buildings and structures, but referred to the Construction Law, which gave rise to inconsistent tax rulings resulting in the Constitutional Tribunal challenging the existing definitions in its judgment of 4 July 2023 (case file no. SK 14/212). The amendment to the Act on Local Taxes and Fees entered into force on 1 January 2025; however, it leaves many avenues for interpretation, which may be due to the short period of time devoted to the draft, as the legislator has been working on the amendment since June 2024.

The new definition of a building includes a structure erected as a result of construction work, together with installations ensuring that it can be used for its intended purpose, it is:

1. permanently connected to the ground,
2. separated from the ground by means of building partitions,
3. has a foundation and a roof.

The definition of a structure mainly refers to objects brought in as a result of construction work, including when they form part of an object not listed in the Act. The catalogue of the objects listed in the Act refers to objects:

1. which are not a building, listed in the Annex to the Act, together with the installations ensuring that it can be used for its intended purpose,
2. wind power plants, nuclear power plants and photovoltaic power plants, biogas plants, agricultural biogas plants, energy storage facilities, boilers, industrial furnaces, cableways, ski lifts and ski jumps, in the parts that are not buildings - only as far as their structural parts are concerned,
3. building fixtures and fittings, including such intended for treating or collecting waste water and other technical equipment directly linked to the building or structure referred to in point (a) and necessary for its intended use,
4. technical devices other than those mentioned in points 1 to 3 - only as far as its construction parts are concerned,
5. foundations for machinery and technical equipment as technically separate parts of objects constituting a utility whole.

These changes are intended to clarify related tax rules and eliminate ambiguities in interpretation in order to facilitate the application of tax law. However, despite their intended purpose, they raise many concerns.

In the definition of a structure itself, there may be inconsistencies with the definition of what is construction work and what technical conditions a building should fulfil in order to be considered permanently connected to the ground. In the case of the definition of a building, concerns around its interpretation have arisen with regard to the determination of the utility whole. These reservations result from the inability to refer to the developed case law on the grounds of the Construction Law and the need to develop new lines of case law for tax purposes.

In addition to the introduction of new definitions, the amendment also provides for the taxation of other technical equipment related to building parts and foundations for machinery and technical equipment, which causes further controversy concerning the broad catalogue of taxable objects, which may consequently lead to an increase in the taxation of real estate and leaves the determination of the tax amount to the local tax authorities.

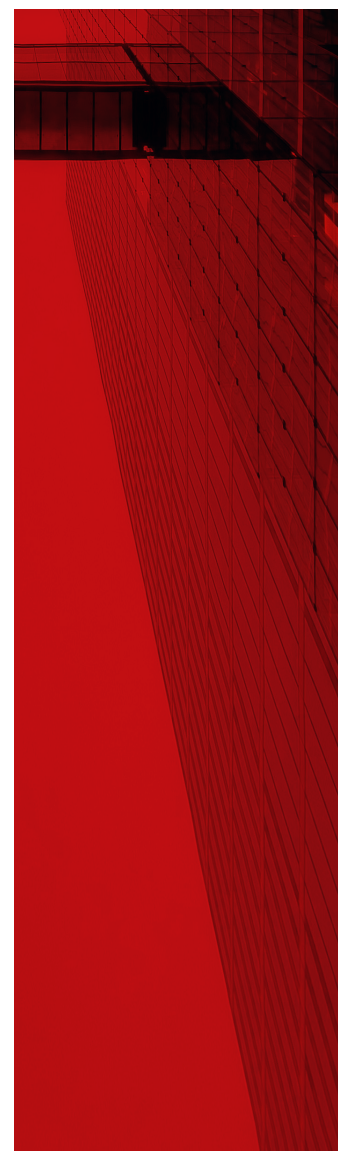
The broad scope of interpretation of the new definitions may give rise to the need to obtain new tax interpretations in order to avoid errors in taxes paid and declarations filed. However, the amendment also introduced the possibility of extending the deadline for entrepreneurs to submit property tax declarations until 31 March 2025 on condition that prior written notice of exercising this right is submitted to the tax authorities.

Planned changes to the marketing of agricultural land

At the beginning of July 2024, information emerged on changes planned by the Ministry of Economic Development and Technology to the regulations on the marketing of agricultural land in order to increase the availability of land for housing development by removing restrictions on agricultural land located within the administrative borders of cities. These changes would, among other things, facilitate the conversion of an agricultural plot into a building plot and, consequently, also reduce the price of flats to be built on converted land within urban boundaries.

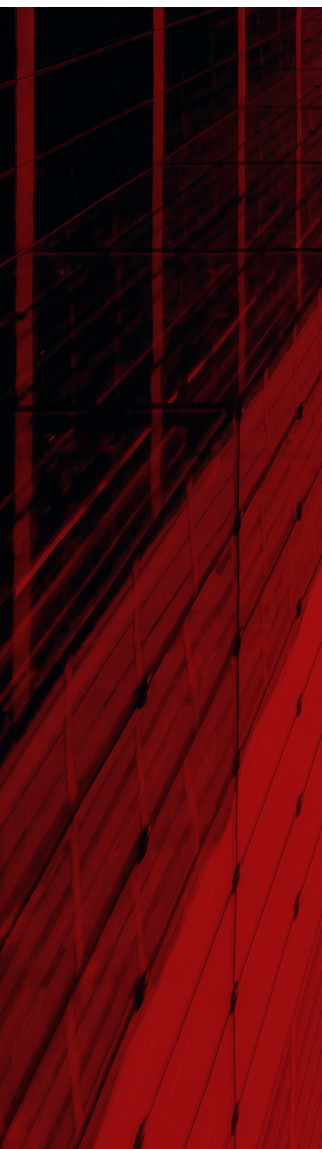
The main changes that would contribute to the stated objective would be:

- ▶ the exclusion of agricultural land located within the administrative boundaries of cities from the provisions of the Act on the Formation of the Agricultural System, which would facilitate the conversion of agricultural land into building plots,
- ▶ agricultural urban properties would also be excluded from the pre-emptive right of the National Agricultural Support Centre, which would speed up the process of acquiring such properties,
- ▶ local authorities would have access to land from the National Real Estate Stock.



The current provisions of the Act on the Formation of the Agricultural System significantly restrict the sale of agricultural real estate and the commencement of investment projects on it, at least for the period of time it takes the National Support Centre for Agriculture to issue a decision concerning the right of first refusal, which is also being used by the authorities more frequently. The current provisions regulate the statutory requirement to carry out agricultural activity for five years, which also greatly restricts the disposal of agricultural real estate, despite its suitability for residential development.

These changes, if implemented, would greatly facilitate the development of urban housing and contribute to solving the housing shortage on the market.





Polska Izba Nieruchomości Komercyjnych

The Polish Chamber of Commercial Real Estate

Since 2016, the Polish Chamber of Commercial Real Estate has brought together representatives from all sectors and services of the commercial real estate market in one organization, enabling them to have a real impact on the surrounding economic, political, and social environment. The PINK Association is both their representative and a platform for exchanging experiences, knowledge, and cooperation. By collaborating with other organizations, it promotes best practices in the commercial real estate market. The Association includes developers, investors, asset managers, property managers, design companies, construction consultants, real estate market advisors, as well as legal, tax, and financial advisory firms.

Publications of the PINK Association are available on the website:
<https://stowarzyszeniepink.org.pl/en/>

