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# Doing Business in Poland

## Reform Memorandum

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**Doing Business in Poland: Reform memo**

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Good regulations are important for growth, job creation and poverty reduction. The *Doing Business* Report measures regulations that encourage or constrain business activity across 10 core areas or “indicators” (Starting a business, Dealing with construction permits, Employing workers, Registering property, Getting credit, Protecting investors, Paying taxes, Trading across borders, Enforcing contracts and Closing a business) in 183 economies.<sup>1</sup> A higher ranking on the Report’s overall ease of doing business index corresponds to a more business-friendly regulatory environment.

In *Doing Business 2010*, Poland ranks 72<sup>nd</sup> out of 183 economies,<sup>2</sup> the same ranking as the previous year.<sup>3</sup> Poland ranks behind many of its neighbors: Germany (25), Lithuania (26), Slovak Republic (42) and Belarus (58). It also trails Ireland (7), Slovenia (53) and Spain (62). It ranks ahead of Czech Republic (74), Greece (109), the Russian Federation (120), and Ukraine (142).

Poland’s performance across the indicators is uneven. It ranks 15<sup>th</sup> globally on the ease of accessing credit, but 163<sup>rd</sup> on the ease of dealing with construction permits. Recently, it is credited with major reforms in Closing a Business,<sup>4</sup> and by improving the area of access to credit by allowing all legal persons (including foreign entities) to hold or grant security interests. Table 1 lists details of Poland’s standing across all *Doing Business* indicators.

This memorandum provides reform recommendations for five areas in which Poland shows low performance: Starting a business, Dealing with construction permits, Registering property, Paying taxes and Protecting investors. Table 2 provides a summary of the reform recommendations, which are described in more detail in pages 3 - 17 of the memo. All recommendations were refined and adjusted following the visit to the country in June 2010 by the Doing Business Reform Advisory (DBRA) team. These recommendations are based on comparative best practices on investment climate regulations highlighted by the Doing Business report. Additional examples of best practices may be requested to the DBRA team.

Improvements in the rankings are difficult to predict for Poland and other countries. Rather than aiming at specific advancements in the rankings, we recommend that emphasis be placed on implementing key reforms to improve the ease of doing business. A concerted reform effort will certainly be reflected in the Doing Business indicators and—more importantly—provide a better business environment that is more conducive to economic growth.

Any reforms that Poland undertakes should be monitored and communicated. Monitoring the impact of reforms will highlight both areas of success as well as areas where further effort is needed. At the same time, communicating reforms effectively to implementing agencies, the business and legal communities, and the general public will ensure that changes are accepted and put in practice. Effective communication also publicizes the fact that the Government of Poland is taking serious steps to improve the country’s competitiveness. This in turn can raise investor perceptions and encourage investment and job creation—both from inside and outside of the country.

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<sup>1</sup> The Doing Business methodology has its limitations. Other areas important to a business such as a country’s proximity to large markets, the quality of its infrastructure services (other than those related to trading across borders), the security of property from theft and looting, the transparency of government procurement, macroeconomics conditions or the underlying strength of institutions—are not measured directly by Doing Business.

<sup>2</sup> The ease of doing business ranking is a simple average of the country percentile rankings on each of the 10 topics covered by Doing Business.

<sup>3</sup> *Doing Business 2010* added two economies that were not included in *Doing Business 2009*: Cyprus and Kosovo.

<sup>4</sup> Within the Closing a Business indicator, Poland introduced a new bankruptcy law requiring tighter professional requirements for administrators, and limiting the trustees’ pay to a maximum 3% of bankrupt estate’s value (down from a maximum of 5%).

**Table 1. Poland's performance on the *Doing Business* indicators**

Indicator	2010	2009	Change in rank from last year	Global Best Practice (2010)	Regional Best Practice (2010)
<b>Starting a Business</b>					
<i>Rank</i>	117	145	+28	<i>New Zealand</i>	<i>Georgia (5)</i>
Procedures (number)	6	10			
Time (days)	32	31			
Cost (% of income per capita)	17.9	18.8			
Min. capital (% of income per capita)	15.3	168.8			
<b>Dealing with Construction Permits</b>					
<i>Rank</i>	163	157	-6	<i>Hong Kong (China)</i>	<i>Georgia (7)</i>
Procedures (number)	30	30			
Time (days)	308	308			
Cost (% of income per capita)	124.2	137.0			
<b>Employing Workers</b>					
<i>Rank</i>	76	69	-7	<i>Australia, Singapore, United States</i>	<i>Georgia (9)</i>
Difficulty of Hiring Index	11	11			
Rigidity of Hours Index	33	33			
Difficulty of Redundancy Index	30	30			
Rigidity of Employment Index	25	25			
Redundancy costs (weeks of wages)	13	13			
<b>Registering Property</b>					
<i>Rank</i>	88	86	-2	<i>Saudi Arabia</i>	<i>Georgia (2)</i>
Procedures (number)	6	6			
Time (days)	197	197			
Cost (% of property value)	0.5	0.5			
<b>Getting Credit</b>					
<i>Rank</i>	15	27	+12	<i>Malaysia</i>	<i>Latvia (4)</i>
Legal Rights Index	9	8			
Credit Information Index	4	4			
Public registry coverage (% adults)	0	0			
Private bureau coverage (% adults)	68.3	50.0			
<b>Protecting Investors</b>					
<i>Rank</i>	41	38	-3	<i>New Zealand</i>	<i>Kyrgyz Republic (12)</i>
Disclosure Index	7	7			
Director Liability Index	2	2			
Shareholder Suits Index	9	9			
Investor Protection Index	6	6			
<b>Paying Taxes</b>					
<i>Rank</i>	151	147	-4	<i>Maldives</i>	<i>Macedonia, FYR (26)</i>
Payments (number)	40	40			
Time (hours)	395	395			
Total tax rate (% profit)	42.5	44.1			
<b>Trading Across Borders</b>					
<i>Rank</i>	42	41	-1	<i>Singapore</i>	<i>Estonia (3)</i>
Documents for export (number)	5	5			
Time for export (days)	17	17			
Cost to export (US\$ per container)	884	884			
Documents for import (number)	5	5			
Time for import (days)	25	25			
Cost to import (US\$ per container)	884	884			
<b>Enforcing Contracts</b>					
<i>Rank</i>	75	71	-4	<i>Luxembourg</i>	<i>Belarus (12)</i>
Procedures (number)	38	38			
Time (days)	830	830			
Cost (% of claim)	12.0	12.0			
<b>Closing a Business</b>					
<i>Rank</i>	85	85	0	<i>Japan</i>	<i>Cyprus (21)</i>
Time (years)	3	3			
Cost (% of estate)	20	20			
Recovery rate (cents on the dollar)	29.8	29.8			
<b>Overall ease of doing business</b>	<b>72</b>	<b>72</b>	<b>0</b>	<b><i>Singapore</i></b>	<b><i>Georgia (11)</i></b>

Source: *Doing Business* database, [www.doingbusiness.org](http://www.doingbusiness.org). Rankings published in *Doing Business 2010* are not comparable to those published in *Doing Business 2009* because two new countries were added. The DB09 rankings displayed here were recalculated to reflect these updates. In addition, the methodology for the Employing Workers indicator is under revision by the *Doing Business* project. Doing Business Reform Advisory is not providing reform recommendations on this indicator at the moment.

**Table 2: Suggested reforms to improve the Poland’s investment climate**

SUGGESTED REFORMS	SHORT-TERM RECOMMENDATIONS	MEDIUM-TERM RECOMMENDATIONS
<b>Starting a Business</b>	<ol style="list-style-type: none"> <li>1. 1.Unify all identification numbers into one universal number issued by the Registration Court</li> <li>2. Make available standard incorporation documents and empower registration officials to verify signatures</li> <li>3. Eliminate separate registrations for the National Sanitary and National Work Inspections</li> <li>4. Combine registration for VAT at the Registration Court</li> <li>5. Eliminate the minimum capital requirement</li> <li>6. Eliminate requirements for proof of address and the necessity to declare types of intended activities</li> <li>7. Eliminate paper publication of registration</li> <li>8. Establish a comprehensive name verification procedure</li> </ol>	<ol style="list-style-type: none"> <li>1. Conduct a feasibility study to assess the option of moving the business registration process from the Registration Court to a specialized department in the Ministry of Justice</li> </ol>
<b>Dealing with Construction Permits</b>	<ol style="list-style-type: none"> <li>1. Pro-actively use the risk-based approach when processing applications for construction and occupancy permits</li> <li>2. Shorten and enforce statutory approval limits when processing construction and occupancy permits</li> <li>3. Cautiously use “silence is consent” principle for construction permitting</li> </ol>	<ol style="list-style-type: none"> <li>1. Utilities and other agencies should issue public guidelines to simplify the preparations of technical conditions for each project</li> <li>2. Rationalize and consolidate post-completion inspections</li> <li>3. Streamline and re-engineer procedures to issue construction permits to save time and cost of investors using delegation and notification</li> </ol>

SUGGESTED REFORMS	SHORT-TERM RECOMMENDATIONS	MEDIUM-TERM RECOMMENDATIONS
<b>Registering Property</b>	<ol style="list-style-type: none"> <li>1. Offer standardized contracts for property transfers</li> <li>2. Conduct an internal mapping of processes at several registry courts to identify bottlenecks and best practice solutions</li> <li>3. Offer expedited processing services at the Land Registry</li> </ol>	<ol style="list-style-type: none"> <li>1. Use best practices from well-performing registry courts to resolve the delays at the Warsaw registry courts</li> <li>2. Consolidate land records in one place</li> </ol>
<b>Paying taxes</b>	<ol style="list-style-type: none"> <li>1. Make online payment mandatory for medium to large companies over a defined threshold of turnover</li> <li>2. Legalize the use of tax intermediaries</li> <li>3. Simplify tax forms and introduce user-friendly software to encourage electronic filing and payment</li> <li>4. Improve compliance with labor and social security contributions</li> <li>5. Simplify VAT compliance</li> <li>6. Align thresholds and ensure truly micro/small firms benefit from simplified regimes</li> </ol>	<ol style="list-style-type: none"> <li>1. Review and clarify tax legislation to avoid ambiguities</li> <li>2. Align corporate income tax laws more closely with EU provisions</li> <li>3. Strengthen the system of binding rulings</li> </ol>
<b>Protecting investors</b>	<ol style="list-style-type: none"> <li>1. Increase directors' disclosure obligations in case of related-party transactions</li> <li>2. Require a review of the transaction by an external body</li> <li>3. Make directors liable for the violation of their duties</li> <li>4. Allow courts to void the transaction</li> <li>5. Allow minority shareholders to inspect company documents before filing suit</li> </ol>	<ol style="list-style-type: none"> <li>1. Allow the appointment of a government inspector to investigate a company's activities before the transaction takes place</li> </ol>

## Starting a business

Doing Business measures the procedures, cost and time necessary for an entrepreneur to register and formally operate a new business. *Doing Business 2010* reports that entrepreneurs must go through 6 procedures to start a business in Warsaw, taking 32 days, costing 17.9% of Poland's per capita income and requiring a minimum capital of PLN 5,000 (~US\$ 1,696.) Globally, Poland ranks 117<sup>th</sup> in *Doing Business 2010* on the ease of starting a business and 23<sup>rd</sup> out of 27 countries in the Eastern Europe and Central Asia (ECA) region.

In the past year, Poland has made great strides towards streamlining the process to start a business. The Government lowered the minimum capital requirement from PLN 50,000 to PLN 5,000. The Registration Court, where business registration takes place, now accepts applications for businesses to register for Income Tax, Social Security and Statistics. These successes can serve as momentum to further simplify the process, both in the short and in the medium-term.

### *Short-term reform recommendations:*

#### **1. Unify all identification numbers into one universal number issued by the Registration Court**

Recent reforms in Poland created a one-stop shop for business registration at the Registration Court, under the Ministry of Justice. After the applicant submits all the required documents, the Registration Court sends these documents to the Tax Administration, the Social Protection Agency and the Statistics authorities. The different agencies then proceed to assign the applicants their own identification numbers (except for the Social Protection Agency) and enter them into their respective registries. This process is lengthy and cumbersome, and if any agency discovers mistakes or omissions in the applications (for example, a missing proof of the business address by the Tax authorities or mistakes in the activities codes by the Statistical authority), they are returned to the applicant and the registration process must start from the beginning.

In order to improve this process, the Registration Court should create one single application, in which the applicant would provide all required information necessary to each agency. In addition, one single company identification number should be used for the application in order to allow the Court to have one unified database of companies. The other agencies would be linked to this unique database in order to obtain, review, and update relevant information. The creation of a unified registry for businesses and the corresponding single identification number issued at the place of registration will require legislative changes. Either the current Tax identification number or the number currently issued by the Registration Court could serve as the source for this unified business identification number. A final decision will depend on the Government assessment of the easiest implementation for either one or the other options.

#### **2. Make available standard incorporation documents and empower registration officials to verify signatures**

Currently, the first interaction that an entrepreneur has with an outside agency before starting a new business is to notarize the incorporation document. The typical limited liability company (as measured by *Doing Business*), would pay PLN 1,010 in notary fees plus 0.4% of the amount of capital over PLN 60,000, plus 22% VAT on notary fees of 0.5% of the share capital (civil law transactions tax.) The procedure takes one day. Normally, the purpose of notarization is to check the legal validity of the document and/or to certify the free will of the parties entering into the agreement.

Since it is based in the Registration Court, presumably this agency has the legally trained personnel to perform those tasks. Hence, to further streamline the start-up process, the standardized incorporation documents can be made available to the general public, and the Court (instead of a notary) could check

the legal validity of the application on site when entrepreneurs choose to submit their entire application for registration using the standardized incorporation documents. The option for a notary to draft and notarize custom-made agreements would still remain, but to ease the cost of this option, the Government could push for lower notary fees. Such a reform measure would reduce the number of steps by one and, depending on how the reform is implemented it, further reduce the time and cost for businesses to start up.

### **3. Eliminate separate registrations for the National Sanitary Inspection and National Work Inspection**

Currently, entrepreneurs must register separately for the National Sanitary Inspection (Panstwowa Inspekcja Sanitarna) and the National Work Inspection (Panstwowa Inspekcja Pracy) ex ante, i.e. before they can begin operating their business. These separate registrations should be removed. The Registration Court could directly send the information on registered businesses to the National Work Inspection, relieving the businesses from the burden of communication. In practical terms, the registration application could include a box that employers may check if they plan to hire employees.

Also, any form of National Sanitary Inspection registration or permit should be required only for specific types of business activities within the framework of licensing conditions and should be removed for businesses performing general commercial activities. Top-performing European economies in the area of business registration, such as France and Ireland, do not require separate registrations with the National Sanitary or National Work Inspections.

This reform may require legislative changes and the Doing Business Reform Advisory team stands ready to offer further technical assistance as needed.

### **4. Combine registration for VAT at the Registration Court**

In the past year, the Registration Court has incorporated the registration for income tax, statistics and social insurance. Entrepreneurs no longer have to approach these agencies separately and can register for all of them together at the Court. Yet following this step, entrepreneurs must separately register with the VAT authorities before beginning operations.

The Registration Court can build on its previous reforms by accepting—and processing—businesses' registrations for VAT. In particular, the registration application may include a box on planned VAT status that may be checked by applicants. There may be institutional implementation issues and complex logistics associated with this reform, so the Government may need an action roadmap to move this forward in detail, which should be further defined during implementation. Combining this step at the Court would further reduce the number of steps required to start a business in Poland. The Doing Business reform Advisory team stands ready to offer further technical assistance on this issue during the planning and implementation stages.

### **5. Eliminate the minimum capital requirement**

Polish entrepreneurs currently set aside PLN 5,000 (~US\$ 1,696) as minimum capital for starting their business. This fee—about 15% of the national income per capita—constitutes a significant and unnecessary barrier to new business start-up. Not only does it count against Poland's minimum capital indicator in Doing Business, it also adds an extra step to the start-up process. Entrepreneurs must spend one day to open a bank account and deposit the required PLN 5,000 before proceeding to registration. Also, there is no verification procedure in place, and the minimum capital can be spent immediately after the company is formed—so any justification for this requirement based on the protection of investors does not stand the current practice. This requirement can be changed through a targeted amendment to the Polish Commercial Companies Code, removing this specific provision.

Many countries defend the capital requirement as necessary to protect creditors, but the effect is counterproductive. Without all funding at their disposal, entrepreneurs have a harder time establishing an office, hiring employees, marketing new products and otherwise getting their business underway. Lenders also base their decisions on commercial risk, not whether the firm is able to make its minimum capital payment. Saudi Arabia, Egypt, Finland, Georgia and FYR Macedonia abolished or reduced their paid-in minimum capital requirement in 2006/07. In the European Union, Germany introduced a new form of limited liability company, reducing one of the highest minimum capital requirements in Europe from EUR 25,000 to EUR 1. France, the UK and United States did away with this requirement years ago. After removing the minimum capital requirement and streamlining its business registration in 2006, Saudi Arabia saw an 81% increase in new business start-up.

#### **6. Eliminate requirements for proof of address and the necessity to declare types of intended activities**

Currently, the proof of legal address of newly formed businesses can be requested by the Tax authority during the registration process. However, international and European best practices suggest that the address should only be declared by the applicant and its proofs should not be demanded. The elimination of this practice would bring Poland closer to a declaratory system of registration and also eliminate one internal step in the registration process that could in turn save time to entrepreneurs.

As for the declaration of intended types of activities and corresponding codes used for statistical purposes during registration process, statistical reporting is significantly more accurate after activities begin and therefore it can be safely removed as a requirement for business registration.

#### **7. Eliminate paper publication of registration**

Newly registered businesses are required to publish their registration. However, this separate paper publication is redundant and it does not serve the intended reasons of publicity. Instead, the registration database should be accessible online. Removing this process also will save PLN 500 for newly formed companies.

#### **8. Establish a comprehensive name verification procedure**

The current system of pre-registration verification of name uniqueness should be streamlined and digitalized. In addition, the Registration Court should give the entrepreneur the option of reserving the company name for a certain period of time (such as 24 – 48 hours.)

#### ***Medium-term reform recommendation:***

##### **1. Conduct a feasibility study to assess the option of moving the business registration process from the Registration Court to a specialized department in the Ministry of Justice**

If Poland intends to align business registration to European best practices, the process should become declaratory in nature. As the current process is laid out at the Registration Court, business start up involves cumbersome verification procedures and a high level of returned applications, in particular for those applications that present technical issues. As a consequence, businesses solicit advice from law firms and the costs associated with the registration process increase significantly.

If business registration were performed as a purely administrative function, and civil service personnel were trained to assist applicants on technical issues, it would be more predictable, inexpensive and

streamlined. At the same time, the justice system would be freed from this function and able to devote its resources to essential legal functions.

The feasibility study would shed light on the time and cost of moving business registration to a specialized department in the Ministry of Justice, and it would recommend which specific department within this Ministry would be more apt for this function.

## **Dealing with construction permits**

Doing Business records all the procedures, cost and time required to build a warehouse and connect to utilities in a country's largest business city. *Doing Business 2010* reports that on average, it takes 30 procedures, 308 days, and costs 124.2% of per capita income to build a warehouse in Warsaw, following all of the official requirements. Globally, Poland ranks 163<sup>rd</sup> on the ease of dealing with construction permits, and 21<sup>st</sup> in the ECA region.

In 2009 Poland started a radical regulatory reform in the construction sector. A considerable set of amendments to the Construction Code was introduced by the government and adopted by the Parliament on June 13, 2009. These amendments provided for significant limitations of scope for administrative decisions in favor of notifications, particularly for smaller and less risky project, including cancelation of permitting for construction applications in certain standardized cases. For even smaller projects even notification may not be required, less so a permit. Presence of a licensed and bonded construction site manager may be sufficient. The statutory time to process a construction permit application was reduced from 60 working days to 30. In addition, relevant normative changes have been initiated by adopting and incorporating Euro codes into Polish regulations and introducing the EU Energy Performance of Buildings program aligned with the corresponding EU Directive. As a guideline, the government is consulting the best practices from the European Union's "eEurope" project, where the topic of construction permits is one the 20 public services that needs to be provided online and whose regulations among the European countries are expected to converge rapidly. The most immediate requirements will be the digitalization of planning information as well as the creation of enabling tools to allow applicants to submit plans online.

The changes in the Construction Code were interpreted as an alleged violation of the EU Citizens' Right Declaration and the law was sent to the Constitutional Tribunal. Currently it is being reviewed, in particular on the issues of observance of the due process in public consultations and third parties' right to appeal executive branch's decisions (permits) in the construction sector.

### ***General recommendation:***

One of the major policy trends along the new EU framework is the expansion of the role of private sector building practitioners in inspections and technical review. Poland could anticipate the alignment with the EU framework by ensuring that the next revisions of the building code conform to this framework. A preliminary step would be to organize consultations with the private sector and all categories of building practitioners to determine the new role of the parties within the EU framework and seek the broadest possible consensus on the alignment of the existing regulation with the new framework.

### *Short-term reform recommendations:*

#### **1. Pro-actively use the risk-based approach when processing applications for construction and occupancy permits**

According to Doing Business respondents, the municipality of Warsaw typically takes around six months to review building permit applications and issue a decision. It seems that all applications—regardless of the complexity, size or risk to public safety—are subject to the same review process and hence delays. Ideally, if risk-based criteria are developed and transformed into clear and easy-to-use manuals, the municipality would have low-level staff scan applications for completeness and abidance to certain risk criteria. If the project is simple and low-risk, it should go through a simpler and faster review process than a larger and high-risk project. In best practice countries such as Australia, New Zealand and Canada, buildings below a certain height are subject to fewer procedures in—or even exempted from—the permit process.

In the region, Croatia significantly decreased the time and number of procedures required to obtain building permission by replacing the building permit with a simple decision on the construction conditions. According to the Law on Physical Planning and Construction (Official Gazette Nr. 76/2007, entered into force on October 1, 2007), the building permit is no longer necessary in most cases. It is only required for the construction of infrastructure objects and other buildings provided for by special regulation. The construction of a building with a combined surface area under 400 sq meters requires a decision on the construction conditions, which replaces the building permit. The construction of a building exceeding these parameters requires a confirmation of the main project design. It is to be issued by the same body competent for the issuance of the location permit (in this case, the Municipality of the City of Zagreb), and replaces the building permit. The request for confirmation of the main project design must be accompanied by the following documents: location permit, written report on the control of the main project design, description of the identity of designer who drew the project design, and the certification of the parcel for the new land plot.

Project clearances from the fire department, sewage and water authorities, telephone, labor inspectorate, and sanitary inspection need to be obtained only in cases where a building permit is required—which is not in most cases, including the warehouse measured by *Doing Business*. This has resulted in the elimination of five procedures.

The risk-based approaches are not meant to reduce public safety, or increase health and environmental threats, but rather they allow authorities to focus on big impact risks that would otherwise not receive sufficient attention; basic issues like fire, sanitary, and labor safety are not affected.

#### **2. Shorten and enforce statutory approval limits when processing construction and occupancy permits**

Currently, construction work cannot begin before the builder has obtained the building permit. The legal time for making an administrative decision on the building permit is 65 days, but the authorities are allowed to take up to another 60 days for “difficult cases.” According to Doing Business respondents, the decision regarding the building permit is rarely given and enforced within the legal time period.

The statutory time limit for approvals is very long, even without taking into account the additional waiting period in practice. The Municipality of Warsaw, like other Polish cites, after analyzing capacity and streamlining administrative processes, should consider reducing the time limit – for example, to 30 days maximum – and take steps to ensure that the time limit is met by the authorities. This time should be

more than sufficient since municipal controllers would have nothing else to check but compliance with urban plans and zoning rules, leaving verification of technical aspects of the building's design to qualified and insured private practitioners. For example, staff incentives or disciplinary measures may be put in place to encourage compliance. Publicity campaigns about the statutory time limits could also put pressure on the authorities to comply.

### **3. Cautiously introduce the 'silence-is-consent' (notification) principle for construction permitting**

Another way to encourage municipal staff and other approving authorities to comply with statutory time limits is with a "silence-is-consent" rule. Such a rule would allow the builder to proceed with the construction after the statutory time period has elapsed, unless the agency has otherwise rejected the application. The rule could also allow builders to occupy the building after 30 days unless the building is otherwise deemed unsound. Now, the average wait time for the occupancy approval is 74 days. The Czech Republic has seen great success with its silence-is-consent rule. The time necessary to comply with license and permitting processes in Prague was reduced by almost two months after implementing the new rule.

The silence-is-consent approach should be implemented in a very cautious way, however. If the current system as controlled by the municipality is unable to check for basic safety requirements, then a silence-is-consent rule could have the detrimental effect of leaving a number of projects unchecked—with dangerous consequences for the public at large. A strong enforcement system is needed to cope with the silence-is-consent rule. For the rule to be enforceable, the government needs to be very confident about the skills base of applicant architects and engineers and their level of professionalism and accountability. For this to happen, high professional standards are necessary, preferably ensured through sound certification systems, in addition to well codified building regulations. To test the approach, the municipality could consider phasing in the rule by first applying it only to small, simple and low-risk projects, starting with smaller cities or towns, and bringing in larger ones like Warsaw at a later stage.

#### ***Medium-term reform recommendations:***

### **1. Utilities and other agencies should issue public guidelines to simplify the preparations of technical conditions for each project**

Currently, building companies must approach utility and other agencies (such as surface roads) to request technical conditions. Each agency then takes two to three weeks to study the project plans and issue a decision on whether the project could be connected to the utility or roads. These requirements add at least four steps and over three weeks to the building permit process. It is likely that each agency is applying a standard set of guidelines to decide whether a project complies with the technical conditions necessary for a connection. In best practice countries, these guidelines are made public so that building companies or their hired inspectors can check the project for compliance and report back to the authorities.

Utility and other agencies referred to in Article 34, paragraph 3, subparagraph 3 of the Polish Building Law Act should issue public guidelines so that those companies or their hired inspectors can comply with the requirements as they draft the project. Then they would attach their findings to the building permit application that they submit to the municipality. The municipality would have the option to order further checks on the plans.

The municipality should consider establishing links with all utilities in one system, where notifications and other documents can be exchanged electronically. This will speed up the process, reduce documents needed and processing time. Finally, utilities may want to change their respective regulations mandating their staff to process these requests much faster and allowing for electronic exchange of data.

## **2. Rationalize and consolidate post-completion inspections**

Currently, the building company must notify, seek approval from and receive an inspection from six different agencies following completion of the building project. These agencies include: the natural environment inspectorate, the governmental sanitary inspectorate, the governmental labor inspectorate, the fire department, the geodetic authority, county building supervision inspectorate. The separation of these inspections causes undue delays and additional steps for the building company. There may also be overlap or inconsistently applied rules among the agencies themselves. Ideally, one of the agencies (perhaps the county building supervision inspectorate) could organize the others and make one consolidated inspection instead of several different inspections. For this purpose the inspection law prescribing that only one inspection may happen at a time should be modified to allow for one multiagency “super inspection” at a time. In best practice countries, such as Denmark and Georgia, one agency or one committee is responsible for conducting the final inspection and issuing the occupancy approval.

## **3. Streamline and re-engineer procedures to issue construction permits to save time and cost of investors using delegation and notification**

The process to obtain a building permit and acquire all necessary pre-construction and post-completion approvals in Warsaw requires 30 steps and takes over 300 days. At least 10 different authorities, including utilities, are involved in the process. After rationalizing and streamlining the existing process, Poland is aiming at significantly limiting the scope of administrative decisions in favor of notifications, particularly for smaller and less risky projects, including cancelation of permitting proper for construction applications in certain standardized cases. Toronto has taken this approach: its “Commercial X-press” targets simple commercial projects and offers a turnaround time of 10 working days. In Amman, the municipality took a slightly different approach—it piloted the one-stop shop first for large projects in high-density, mixed-use areas, intensive development corridors, and industrial zones, then later extended the services to all projects. France also has a relatively simple system of clearances that all go through the municipality. In Paris, the applicant first submits all the requested documents, which can be obtained from City Hall or on the Internet. If one document is missing, claims must be made within a fortnight after registration. When the application is accompanied by all the required documents, the contractor will receive acknowledgment of receipt, indicating the date and registration number and the time needed for title investigation. The building permit will be issued within 2 months after registration of the application, and the contractor shall deem the permit tacitly granted if no reply is received within the 2-month period. Within the European Union, Denmark (6 steps, including utility connections) and Sweden (8 steps including utilities) also have efficient models for applying and obtaining a building permit.

## **Registering property**

The registering property indicator records the full sequence of procedures, time and cost necessary for a business to transfer title of a land and a building to another business so that the buyer will be in a position to use the property for expanding its business, as collateral in taking new loans, or to sell to another business. On average, in Poland (Warsaw) it takes 6 procedures, 197 days, and costs 0.5% of the property value to carry out this process. Poland ranks 88<sup>th</sup> out of 183 countries on the ease of registering property, its low performance due mainly to long delays at the registry court.

## ***Short-term reform recommendations:***

### **1. Offer standardized contracts for property transfers**

Currently, companies wishing to transfer property are obliged to notarize their sale-purchase agreement. Normally, they may also ask the notary or a lawyer to draft the sale-purchase agreement. In most cases, these legal professionals usually begin from a standardized template. Yet for the entrepreneur, this practice adds one procedure, up to one day and a fee (according to the value of the transaction) to the property transfer process. It would be easier and more convenient for parties to access standardized contracts (such as the templates already used by legal professionals) that could be downloaded online or obtained at the registry. The introduction of standardized contracts will reduce the potential for mistakes and irregularities on the contracts – and hence the time it takes to record the transfer later on in the process (which currently takes six months.) Offering such standardized contracts would also decrease the cost of registration by eventually rendering the notary’s intervention optional. For complex cases (to be defined by the Registry Court), the authorities could still use notaries to verify any hidden liabilities on the property. Both Montenegro and the United Kingdom offer standardized contracts to the public.

### **2. Conduct a mapping of the internal processes at several registry courts to identify bottlenecks and best practice solutions**

The Warsaw registry courts normally take several months to finalize a transfer of ownership of property. This time includes the digitalization of the file, the review and approval of the file by a legal clerk, and is then followed by a 21-day waiting period for the new ownership to enter into force. The time to register is unusually long compared to other European capitals: just 3 days in Sofia; 9 days in Bucharest; and 30 days in Bratislava. The Ministry of Justice of Poland reports that the Warsaw courts are overloaded with the volume and complexity of transactions, while other courts around the country perform better. The Ministry could conduct a mapping of the internal processes at the Warsaw registry courts, and do the same with other courts around the country that are processing transfers faster. In this way, the Ministry would be able to see if there are any best practices that can be adopted by the courts in Warsaw to improve their processing times.

The mapping should be done with a defined methodology and with a view to discover potential concrete solutions. For example, the mapping could count the number of internal steps, defined as an approval or stop of the application with a staff member. The time from receipt of the application until passing it on to the next staff member also should be recorded. In this way, the bottlenecks in Warsaw will become obvious and the Ministry can take action to resolve them. Likewise, if the number of approvals or the time to complete them is lower in other courts, the Ministry may decide to eliminate some of the internal steps in the Warsaw courts.

### **3. Offer expedited processing services at the Land Registry**

Applying for land transfer registration at the land registry takes about 6 months, according to *Doing Business* respondents in Warsaw. Compare that to Germany, where the registry can complete the transfer in a week. Georgia offers another of example of efficiency: there, the entire transaction takes five days from start to finish. In the long term, to speed the transfer of property Poland should continue the computerization of its land records begun in 2005. In the meantime, the Land Registry could also offer clients a choice of expedited procedures: pay a slightly higher fee and the registration is completed faster. Fast-track procedures help prioritize the work of government offices and allow entrepreneurs who are in a hurry conduct transactions expeditiously. For example, the Land Registry could offer an expedited processing time of one or two weeks for clients that pay double the normal processing fee. To further

encourage both the clients to take advantage of the scheme and the Registry to meet its promise, the service could be backed by a ‘money-back guarantee.’ A number of countries around the world, including Argentina, Hungary, Lithuania, Slovak Republic and the Ukraine, offer expedited processing services.

***Medium-term reform recommendations:***

**1. Use best practices from well-performing registry courts to resolve the delays at the Warsaw registry courts**

The Ministry of Justice should carefully monitor the results of the mapping of internal procedures at the registry courts and use them to resolve bottlenecks and adopt best practices. There are several advantages to this approach: the solutions may be simple and not require any changes to laws; the mapping—as well as the solutions—can probably be done at a low cost; and the approach encourages solutions that make more efficient use of the resources of each registry court.

**2. Consolidate land and real estate records**

Parties wishing to transfer real property must first verify the land and real estate records at three separate locations: the Land Registry, the Department of Geodesy and Cartography, and the Local Spatial Development Plan. This is burdensome and increases opportunities for conflict on the title. In the longer term Poland should also consolidate land records in one physical place, or at least on one electronic database—as is planned by the Ministry of the Interior, by 2016. The Land Registry Court and the Department of Geodesy and Cartography, for example, are already in the process of digitizing their records. In addition to digitization, the databases of all three agencies need to be made compatible. Once all of the records are unified, at least two procedures and perhaps some of the delays may be eliminated from the transfer process. Georgia, Lithuania and Norway are just a few examples of numerous countries with consolidated property records systems.

## **Paying Taxes**

In the past year (2008-2009), Poland has made significant changes in this area. On January 1, 2008, the social security rates decreased. The employer's share dropped from 18.52% to 16.52% of the gross salary and the employee's share dropped from 15.71% to 13.71%. In addition, on December 1, 2008, important amendments towards simplifying the VAT came into force. Now, all businesses are entitled to opt for a quarterly method of VAT filing, even though they retain a system of monthly payments. Furthermore, the city of Warsaw decreased transport taxes per truck owned from PLN 2,527 to PLN 1,130. Property taxes increased from PLN 0.62 to PLN 0.71 per square meter of land and from PLN 17.31 to PLN 19.01 per square meter of building. Lastly, as of January 2010, the threshold of turnover at which companies must enter the VAT regime was raised from 50,000 PLN to 100,000 PLN, and the government plans to raise this threshold again in 2011 to 150,000 PLN.

As of June 2009, Polish corporations must make 40 separate tax payments each year, taking on average 395 hours to complete the forms and file them with the relevant agencies. At 42.5%, the total tax rate is not high compared to other countries. But the administrative burden of making monthly payments in person for corporate income tax, property tax and VAT drives Poland's low ranking on the ease of paying taxes (151).

### ***Short-term reform recommendations:***

#### **1. Make online payment mandatory for medium to large companies over a defined threshold of turnover**

Poland permits online payment and filing for social security contributions, corporate income tax and VAT—but the latter two pertain only to “large taxpayers”.<sup>5</sup> This option should be extended to all taxpayers, not just the large ones. In addition, except for social security contributions, large taxpayers are not currently using them to pay taxes and file returns because they are not persuaded that the option to file electronically is to their benefit. To reduce the administrative burden on both the taxpayers and the tax authorities, online filing and payment should be made mandatory for all companies with a threshold above a certain limit (for example, 1 million EUR.) In 2008, the Czech Republic mandated electronic filing for all taxes, reducing compliance time by 317 hours. In Belarus, the online portal became fully operational for use by all taxpayers and in FYR Macedonia electronic filing is now mandatory for all taxes. In France, e-filing is mandatory for annual turnover over 760,000 EUR (to be lowered to 500,000 EUR in 2010).

In addition, electronic filing and payment can be popularized with a governmental information campaign on the subject—along with clear assurance that such payments will fulfill all legal requirements. If more than 50% of filings were completed electronically, and if Poland extended online payment even further to municipal property tax, the number of payments as measured by *Doing Business* could decrease.

#### **2. Legalize the use of tax intermediaries**

Currently, any firm wishing to use online filing and payment options must purchase a digital signature key, and then continue to renew the key at a cost. The high cost of the digital signature key and its renewal dissuade many companies from enjoying the benefits of online filing and payment. Rather than lowering the price of these digital signature keys, an alternative is to empower tax intermediaries to electronically file and pay on behalf of their clients. The government would need to legalize the use of such intermediaries to use their own digital signature on behalf of their clients, as currently it seems that the signatures cannot be used for more than one individual (who may represent a company.)

#### **3. Simplify tax forms and introduce user-friendly software to encourage electronic filing and payment**

Currently, the private sector reports that some tax forms are difficult to fill in and are not compatible with inputting into the electronic filing and payment systems. In addition, there is a lack of user-friendly software that would help taxpayers to compute and comply electronically.

The government should be proactive in redesigning more user-friendly forms and software programs to encourage taxpayers to comply and also reduce the number of mistakes made. The government may also want to seek feedback and inputs from the private sector in this regard, and possibly involve them in the improvement of forms and software. One encouraging development, for example, is the taxpayer hotline that the tax authorities have set up. The government could seek taxpayer feedback through this mechanism, or perhaps through an online survey on the tax authorities’ website.

The cost of this reform could be quantified during the implementation phase but its potential benefits, as highlighted above, could be substantial.

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<sup>5</sup> "Large taxpayers" are defined as the ones that had revenue (net of VAT) equaling at least EUR 5,000,000.

#### **4. Improve compliance with labor and social security contributions**

Currently, Doing Business reports that over half of the time spent by firms to comply with taxes and contributions is devoted to filing and paying the labor and social security contributions (222 staff hours per year.)

In the first place, the government should analyze the reasons that companies find it difficult to comply with the social contributions. For example, the Ministry of Finance together with the social security administration (ZUS) may conduct focus group interviews with the private sector—especially small businesses—in order to ascertain the reasons that impact their compliance burden.

Secondly, the Ministry of Finance and ZUS may look to other European governments for inspiration in designing solutions. One example is Italy: its reform program to rationalize the information and reporting of labor and social contributions is expected to save the country 4.8 billion EUR.

#### **5. Simplify VAT compliance**

Currently, the threshold of turnover at which Polish companies must comply with VAT is just 100,000 PLN (~24,500 EUR.) This is a very low threshold as compared with other European economies: in the UK, it is about 80,600 EUR; in Ireland it is 70,000 EUR. VAT regulations are typically more onerous as they require special accounting and documentation, making compliance particularly difficult for small businesses. While the government plans to raise the threshold further to 150,000 PLN in January 2011, this is still very low and would continue to encompass small businesses that may be unable to fully comply. The government should instead consider raising this threshold towards European standards, after a revenue-impact analysis is conducted.

Further simplifications can be made to ease the administrative burden on both businesses and the tax authorities. The government has already introduced the option of quarterly payments, for example, for some companies. The tax administration may wish to follow Ireland's example to further simplify: there, companies paying an annual total of VAT less than 3,000 EUR are allowed to pay just twice per year.

Finally, one of the main burdens of complying with VAT for small companies is the amount of paperwork and record-keeping required. This is true also in Poland. One remedy would be to legalize electronic invoicing. For example, the Netherlands reduced legal requirements for e-invoices in 2009 (with an anticipated savings of 300 million EUR annually.) Turkey is taking a phased approach: it has a pilot program of e-invoicing in the telecom sector.

#### **6. Align thresholds and ensure truly micro/small firms benefit from simplified regimes**

In Poland, small and micro-enterprises are defined on different terms for each of several taxes: VAT, corporate income tax, and the presumptive tax regime. According to the terms for each type of tax, a business may or may not qualify for a simplified payment regime. They are defined as follows: to qualify for the presumptive income tax regime, an entrepreneur must not have a sales turnover over 150,000 EUR in a year. For qualifying as a “small entrepreneur” and, thereby, being able to pay corporate income tax quarterly and enjoy a special one-time depreciation up to 50,000 EUR, the entrepreneur must not have a sales turnover over 800,000 EUR (recently changed to 1.2 million EUR.) For VAT, “small entrepreneur” is defined as one with a sales turnover of 1.2 million EUR to be eligible for quarterly filing. And finally, the VAT threshold is PLN 100,000, i.e., 24,000 EUR. These differing terms create confusion for the taxpayers and also open up opportunities for businesses to avoid taxes by taking advantage of each of these different sets of terms.

It is good practice to align eligibility thresholds for simplified regimes for small taxpayers and the VAT exemption threshold. Poland would need to set out appropriate definitions of micro and small businesses. The preferred tax treatment for micro businesses could be a presumptive tax regime for businesses with turnovers below the VAT threshold. The simplified, flat tax regime may be restricted to “small entrepreneurs.” Other simplification provisions for small incorporated businesses and medium taxpayers could be introduced, particularly with respect to recording and reporting requirements. These changes may raise implementation and logistical issues. Accordingly, during the implementation phase a road map to overcome these issues will be developed.

### *Medium-term reform recommendations:*

#### **1. Review and clarify tax legislation to avoid ambiguities**

Respondents from the private sector report that tax legislation is often unclear. They comment that tax provisions are filled with fiscal jargon and expressions that make them hard to understand for non-professionals. Furthermore, Polish tax provisions too often include references to other provisions and laws, while the laws themselves are, typically, very long and thus rarely read. Furthermore, they report that some provisions are unclear even for tax professionals. For example, in 2009, the Supreme Administrative Court issued a ruling on a highly disputed issue relating to VAT on gifts distributed for marketing purposes. Based on the ruling there is no output VAT on such distributions, but the relevant provisions were ambiguous. Another example relates to provisions on "capitalized" interest (interest added to the principal loan amount.) Due to ambiguity in the tax law it is not clear to tax professionals whether capitalized interest can be included into the tax-deductible cost at the moment when they are capitalized, or at the moment when they are paid. There are conflicting court rulings on the issue, even though the subject itself is very important.

Studies indicate that “Tax complexity is one of the principal sources of tax compliance costs”<sup>6</sup> and that “changes to the tax system (the changes themselves, the pace of change and the timing of change) can increase compliance costs as both small businesses and their tax agents seek to understand new taxing arrangements.”<sup>7</sup>

Through a formal review of the most important pieces of tax legislation, these ambiguities could be clarified and taxpayers would be able to refer to one central source that includes all of the most up-to-date legislation and court decisions on tax administration. Such a measure could potentially reduce the time it takes taxpayers to comply with the tax laws.

#### **2. Align corporate income tax laws more closely with EU provisions**

An important issue raised by the private sector is that Poland does not have a well developed system of case laws in taxation. It is noted that, were the corporate income tax law more closely aligned with those of the European Union, the benefit of existing case laws of the European Court of Justice would also become available to Polish taxpayers and tax authorities. This would provide easy resolution to disputes on factual and legal issues already resolved by the European court.

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<sup>6</sup> Report of Taskforce on Reducing Regulatory Burdens on Business, Australia Tax office, Rethinking Regulation, January 2006, p. 108

<sup>7</sup> Australia, Board of Taxation, Scoping Study of Small Business Tax Compliance Costs: Report to Treasurer, 12/2007, p. 1

### **3. Strengthen the system of binding rulings**

Currently, it seems that every tax dispute is dealt with as a new case, which may cause delays in rulings and hence the payment of taxes. The Ministry of Finance has already begun the practice of issuing interpretations centrally, and has authorized four tax chambers to do this. A mechanism that would make one administrative court's rulings binding in case of similar facts across the country needs to be developed. Such a measure would speed up dispute resolution in cases where facts are similar to other cases decided previously, and therefore improve the confidence of taxpayers in the fiscal justice system.

Reforms in tax administration pay off. Countries that make it easier to pay taxes tend to see greater firm participation in the formal economy and lower rates of unemployment among women.<sup>8</sup>

## **Protecting investors**

Doing Business measures the strength of minority shareholder protections against directors' misuse of corporate assets for personal gain. On an index range of 0-10, Poland scores 6.0. This overall index of investor protections is an average of three sub indices. While Poland's performance on the ease of shareholders suit index is high (score of 9), as is the extent of disclosure index (score of 7), the extent of director liability index (score of 2) indicates weak protections in this area. Globally, Poland ranks 41<sup>st</sup> on the strength of investor protection and 7<sup>th</sup> in the region.

### ***Short-term reform recommendations:***

#### **1. Increase directors' disclosure obligations in case of related-party transactions**

According to the Code of Commercial Companies (CCC,) directors do not need to comply with a full disclosure obligation to the board of directors. The reviewed Code—other than requiring that interested parties in a transaction should immediately signal their conflict of interest to the board of directors—should also require these parties to disclose the nature of their interest and the extent to which the parties stand to gain personally from company actions, i.e. the full details of the transaction. Article 377 of the CCC would need to be revised. The laws in Bulgaria, Romania and Macedonia, FYR, compel the director to fully disclose all material facts on the transaction to the board of directors.

#### **2. Require a review of the transaction by an external body**

Moreover, it should be required that an external body—for example an independent auditor—reviews the transactions before they take place. The auditor's report should evaluate the main terms of the transaction and present an opinion on whether the transaction is being concluded at market terms. Currently, Poland does not have such provisions in place. France and the United Kingdom have this provision in their Commercial Code and Company Act, respectively.

#### **3. Make directors liable for the violation of their duties**

A diligent and loyal director should put the interests of the company and its shareholders before his/her personal interest. In cases where the director violates those duties, investors should be able to hold directors liable—both individually and jointly—for any damage caused. Articles 483, 486, and 490 of the CCC may need to be revised. The law can include requiring the defendants to pay to the company both

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<sup>8</sup> *Doing Business 2008, p. 40-43.*

the damages caused to the company and the profits he or she made from the conflict of interest and/or the violation of his/her duty. Articles 483, 486, and 490 of the CCC may need to be revised.

#### **4. Allow courts to void the transaction**

Courts should have the power to rescind not only transactions that are fraudulent or made in bad faith, but also related-party transactions that are harmful or unfair to the company—regardless of whether fraud is involved. Sixty-nine countries provide for this remedy under certain circumstances, including Canada, the Netherlands, Belgium and the USA. Articles 483, 486, and 490 of the CCC may need to be revised.

#### **5. Allow minority shareholders to inspect company documents before filing suit**

There is no provision to allow minority shareholders this right before they file suit. Regulations should give shareholders the right to inspect relevant documents of the company if they suspect inappropriate activities by directors. The law can grant this right with some exceptions, for example the protection of corporate secrets. This would maintain the balance between the needs of managers to operate without overly burdensome intrusion by shareholders, and the needs of shareholders to monitor management actions.

Countries like Sweden, Estonia or Hungary have in place these types of provisions which increase the transparency of the company's activities.

#### ***Medium- to long-term reform recommendation:***

##### **1. Allow the appointment of a government inspector to investigate a company's activities before the transaction takes place, if management refuses to furnish the investors with adequate information**

Currently, The Act On Public Offering specifies in Articles 84 and 85 that the minority shareholder(s), i.e. those holding at least 5% of the voting rights, have the right to request that an ordinary General Meeting of Shareholders be convened for the purpose of adopting a resolution on the appointment of an expert for special purposes, or that adoption of such resolution be placed on the agenda of the next General Meeting of Shareholders<sup>9</sup>. Effectively, this means that a majority of shareholders' approval is required to request appointment of a government inspector. Instead, the Act should be revised to allow shareholders with 5% or less of the voting rights to directly request appointment of a government inspector. France, Ireland and the UK are several countries that grant minority shareholders this right.

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<sup>9</sup> In case the General Meeting of Shareholders does not adopt a resolution in accordance with the request referred to in above, or adopts such a resolution in breach of the provision specifying the content of the resolution of the General Meeting of Shareholders (Article 84.4), the requesting shareholder(s) may, within 14 days from the resolution date, move to the registry court for appointment of the designated entity as the special-purpose auditor.

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# Construction Permits Process in Poland

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## 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 164<sup>th</sup> among all the countries in the report and 30<sup>th</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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,<sup>12</sup> 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

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<sup>10</sup> Poland. A Report by Mariusz Sochacki, PAB-PCR&F Institute, for the 69<sup>th</sup> EUROCONSTRUCT Conference, Dublin, June 24 – 25, 2010.

<sup>11</sup> Information received in authors' interview with the Architecture and City Planning Department of Warsaw.

<sup>12</sup> 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)

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 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.

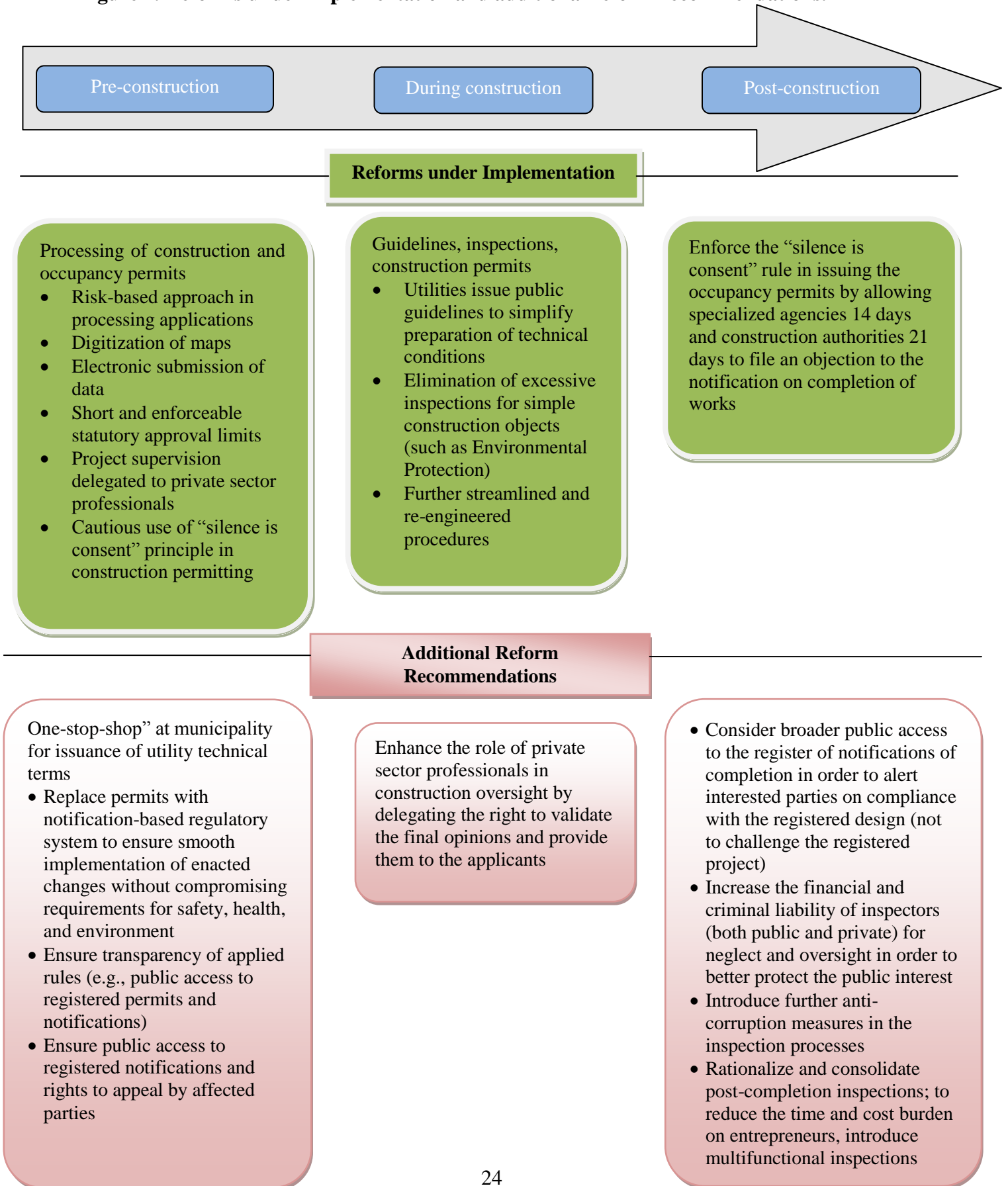
The information was collected through meetings with the following representatives of government’s agencies and practitioners:

- 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.**



**Table 1. Construction Permitting Procedures**

<b>Construction Permit Procedures, per World Bank mission's mapping, June 2010</b>	<b>Construction Procedures, per amendments to the Construction Law as adopted by the lower chamber of the Parliament (Sejm), April 23, 2009</b>	<b>Comments</b>	<b>Recommendations</b>
<b>PRE-CONSTRUCTION</b>			
Request technical conditions for electricity connection from PGE Poland, the electricity distribution company in Warsaw – 4 weeks <sup>13</sup>	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.	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.	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).
Request technical conditions for water and sanitation from <i>Miejskie Przedsiębiorstwo Wodocagow i Kanalizacji</i> , the water and sanitation company in Warsaw – 4 weeks <sup>14</sup>			
Request technical conditions for telecommunications from <i>Telekomunicacja Polska</i> – 4 weeks <sup>15</sup>			
Request an extract and a printout from the local spatial development plan – 1 day	No change is proposed in Art. 20 of Construction Law which lists as a duty of the designer “to prepare the construction design in	The time limits for issuing an extract are specified in the Spatial Planning and Development Law. The Law on Administrative	Consider accepting maps issued more than 6 months beforehand (e.g., 12 months validity) and reducing the

<sup>13</sup> Source: Proces inwestycyjny (w odniesieniu do inwestycji kubaturowych). Working material prepared by the Ministry of Infrastructure.

<sup>14</sup> Source: Ibid

<sup>15</sup> Source: Ibid

<p>Receive a copy of the extract and updated spatial development plan – 4 weeks</p>	<p>accordance with the decision on conditions for construction and land development” without specifying the time limits for the local authorities to issue an extract.</p>	<p>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.</p>	<p>statutory deadline to issue the updated extract and printout. Consider introducing digitization of maps and electronic submission of data.</p>
<p>Request and obtain design approval from licensed sanitary, fire, work safety and hygiene and the administrator of the public roads – 14 days</p>	<p>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.”</p>	<p>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.</p>	<p>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.</p>
<p>Request and obtain the <b>construction permit</b>. The basic provision of the Construction Law (art.28) provides for works to commence solely on the basis of the final decision on the construction permit</p>	<p>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 of notifications for most</p>	<p><i>Replacing permits with notifications for most construction projects is a major reform proposal.</i> Other simplification measures will also lead to aggregate cost savings for investors. The government should be commended for proposing such</p>	<p>Clarify the requirements to the requisites of the notification in the proposed amendment of Art 30.1</p> <p>Allocate additional time for public consultations and the post-notification right to</p>

<p>(except for small structures). If the permit is not issued <b>within 65 days</b> 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).</p> <p><i>In 2009, fines for delays beyond 65 days were imposed on 40 local governments; in 2010, only on 10.</i></p>	<p>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.</p> <p>Other reforms:</p> <ul style="list-style-type: none"> <li>– Reducing to 30 days the time limit for the authority to object the notification to a larger contingency of construction projects (instead of 65 days per current law (Art 30a.4).</li> <li>– For some light and small forms which require notification in the current law, neither notification nor decision will be required</li> <li>– For another group of projects notification may not be accompanied by design</li> <li>– For building renovations and finishing works, notifications are not required -- participation of a construction site manager will be enough.</li> </ul> <p>–</p>	<p>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).</p> <p>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?</p>	<p>appeal when construction is located in high density urban areas or seriously affect environment or people living/using existing structures in peri-urban areas.</p> <p>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.</p> <p>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 parties.</p>
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**DURING CONSTRUCTION**

<p>Conclude agreements with utility providers of electricity, water and sanitation, telecommunications – 14 days</p>	<p>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.</p>	<p>The mission visited <i>Miejskie Przedsiębiorstwo Wodocagow i Kanalizacji</i>, 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.</p>	<p>Utilities should issue public guidelines to further simplify preparation of technical conditions.</p>
<p>No periodic inspections during the construction cycle are required.</p>	<p>n/a</p>	<p>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.</p>	<p>On this requirement, Poland offers a <b>best practice</b> on delegation of construction supervision to private parties, either qualified site or project managers and/or to project designers (so called “author’s supervision”), and/or other third parties.</p>

<p>Role of the Environmental Protection Inspection in the process of construction – nil</p>	<p>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 <i>Doing Business</i> report, these inspections rarely happen.</p>	<p>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.</p>	<p>The Polish experience and the risk-based classification of construction objects for environmental inspection purposes may be offered to developing countries <b>as best practice.</b></p>
<p>In 2006 – 2008, amendments to the Construction Law provided overall simplification of the construction permitting process.</p>	<p>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</p>	<p>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</p>	<p>Using experience of EU countries and elsewhere (e.g., Quito in Latin America), consider further study and implementation of best practice experiences to allow commercial activity at or around heritage sites.</p>

	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.	
POST-CONSTRUCTION			
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.	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 completed building, if needed, but missed deadline means approval. <b>The silence-is-consent rule is correctly applied.</b> 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).	The government may want to consider <b>anti-corruption measures</b> 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).

Receive inspections from the government sanitary inspectorate, labor inspectorate, the government fire directorate – 14 days	The Sejm Bill proposes to add financial and criminal liability on the respective inspectors (Art.90).	A positive step which would improve compliance in the construction sector.	Make reference to a legal act in which the financial liability will be estimated.
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	The Sejm Bill upheld this clause specifying in an additional clause the start time of the 21 day period, i.e., the stamp of the Polish Post service per Art 54.2 (and not the authorities' log date which is easier to manipulate).	Another manifestation of a wise use of the silence-is-consent rule in the Sejm Bill, not in the current law, is a provision which clarifies that “confirmation of completion of the works does not release the investor from the delegation to obtain the approvals or permissions to use as required by separate regulations” (Art. 55.2).  The Sejm Bill did not change the provisions of the law regarding transparency and accessibility to the notifications' registry.	Consider provisions of a wider public access to the register of notifications and permits for construction.  Once provided an opportunity to comment on the notification other stakeholders should not have unlimited right to torpedo the investment process (e.g., by commenting on appropriateness of a construction project at the occupancy stage). When the properly notified and registered building is complete, complaints and appeals may be accepted only in those cases where they relate to the builders' compliance with the registered design.
Submit altered site maps to archives of the Geodesic Authority – 1 day	No change		Consider introducing digitization of maps and electronic submission of data.
Professional liability in the construction industry is	The Sejm Bill, nevertheless, contains additional caveats to	A positive step which would improve compliance in the	Rather than imposing fines, the best practice of imposing a

well detailed in the existing law.	strengthen construction rules and norms governing professional liability, <i>inter alia</i> , 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 Infrastructure <sup>16</sup> 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.

<sup>16</sup> Proces inwestycyjny (w odniesieniu do inwestycji kubaturowych). Working material prepared by the Ministry of Infrastructure.

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