

Polska



Greenfield & Brownfield investments: Investment process

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The choice of location affects about 80% of the investment and follow-up costs (including development costs, transport costs, wages, taxes and energy).

The first choice between greenfield and brownfield defines the basic scope of possibilities to **choose between the location advantages**. Below is a short extract about the main location factors which we must consider during the investment process.

- greenfield vs. brownfield,
- the investment inside or outside the Special Economic Zone,
- the distance, quality and time of logistics to the main customers,
- labour costs, availability and the quality of desired blue-collar and white-collar workers,
- infrastructure and development costs (all media, roads, access and extension possibilities),
- the availability of required components suppliers,
- the appropriate contacts in local authorities.



Step-by-step investment process

Architecture Planning

If the Start of Production (SOP) or other deadlines for an investment have been set up for a near date, the planning of buildings and other utilities must be prepared in advance. If the location has an official zoning plan passed (in the form of the resolution of a local government), an architect can start planning without any delay. If there is no zoning plan the investor must apply for Conditions for Area Development and Construction (CADC), which define the basic scope of the buildings allowed to be constructed on the specific property. Depending on the complexity of buildings allowed under CADC the procedure of obtaining CADC decision takes from three to six months.

For the phase of architectural planning, a minimum period of three-six months must be taken into consideration before a well-prepared document is sent to the architectural office to apply for a building permit. Many

companies often underestimate the volume of official documents and procedures which must be prepared in order to start their operations in Poland.

Zoning plans

The property may be utilized only within the limits allowed in the zoning plan, regulated by the Act from 27th March, 2003 on Zoning Planning. Zoning plans are drawn up by communal authorities and in order to be effective have to be passed by communal council in the form of resolution. The procedure related to the change of a zoning plan requires reconciliation with numerous authorities and public consultation what makes it time consuming (minimum time of nine months).

The zoning plan defines all conditions regarding prospective land use and the scope of business that may be conducted on the properties located within geographical limits, defined in the zoning plan. Zoning plan regulations are general and apply to all owners of real estates. Local authorities are empowered to create zoning plans with respect to municipality development. The municipality creates the zoning plan in accordance with voivodship and country zoning plans.

Zoning plans may be changed by the municipality either in accordance with the owner's application or when the area is modified by the Government. The latter situation is rather exceptional and takes place when the modifications are related to public interest (such as building roads and railways). It should be noted that in case of special economic zones all properties, located within a boundaries of a special economic zone have a zoning plan passed and effective.

Conditions for area development and construction

A significant area of Polish territory has no zoning plans. This situation requires an application to the municipality for CADC. CADC is required for any investment process of land development or new investment, such as the re-development of brown field sites. CADC may be applied for by an owner of a real estate or a third party. There can be multiple different CADC issued for a single property (unlike zoning plan or building permit, where only one document of that type may be issued and valid for a single property). Depending on complexity and real estate features (like soil class), different external authorities may be engaged in the process of reconciliation of CADC.

An application for a CADC should confirm specified conditions, e.g. that at least one adjacent plot is developed for a similar aim, has access to a public road and that the infrastructure is adequate for the planned investment. Obtaining the CADC may take up to six months, depending especially on whether the application presents the expected influence of the investment in the local community.



Environmental decisions

Before applying for a building permit an investor is obliged to conduct the environmental impact assessment (EIA) for the planned investment and CADC. The aim of the process is to define the related environmental risks at the stages of investment planning, construction and operations and minimize the negative impact. The process of EIA ends with obtaining an environmental impact decision (EID).

EID imposes environmental conditions for planning, construction and operations of an investment. Architectural design, building permit and other permits have to be compliant with conditions set in EID. As EID defines the level of noise and emissions it has an impact on future operations as well.

As EID has to be attached to the building permit application it has to be obtained first. In cases where there is no zoning plan and an investor applies for CADC, the environmental decision needs to be obtained before CADC. EIA is usually carried on simultaneously with the design process, as the architectural design and building permit need to be compliant with EID. The most important legal acts of the EIA process are the Act of 3rd October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in the Environmental Protection and Environmental Impact Assessments and The Regulation of the Council of Ministers of 9th November 2010 on types of projects likely to have a significant impact on the environment. The above act defines three types of investment projects with reference to EIA procedures:

- always having a significant impact on the environment (group I),
- may potentially have a significant impact on the environment (group II),
- cases in which modifications of civil structures are classified as projects from group I or group II.

Legal regulations list what types of investments should be qualified into group I or II. If an investment is not on the list, no EID is required. However, this must be confirmed by relevant authority. As the EIA process requires significant amounts data and expertize, it is strongly recommended to contract a specialized company that supports an investor in the EIA process. The EIA procedure is carried out by the local government (commune), reconciled with local and regional authorities and in some cases consulted publicly. It can be divided into following key steps:

1. An investor prepares initial documents and submits them to the local government - commune:

- in case of group I - requests authority to define scope of the Environmental Report,
- in case of other investment - provides general information regarding the investment (on a defined form) and requests decision if Environmental Report and Decision are required.

2. The local government gives initial ruling (after reconciliation with other authorities if needed),

- in case of group I - defines scope of the Environmental Report,
- in case of group II - decides that Environmental Report and Decision are required,
- in other cases - decides that no EID is required - an Investor receives official confirmation that should be attached to building permit application.

3. An investor prepares an Environmental Report and submits it to the local government - commune.

4. The local government analyses the report, reconciles it with relevant authorities and issues the EID (or may refuse to issue EID).

In stages 2 and 4 the local government may decide to start a public consultation. The EIA process requires amendments or complimentary information. An investor may be requested for amendments or complimentary information from the local reconciling authorities which are: local office of the National Sanitary Inspection (Sanepid) and Regional Authority for Environmental Protection (RDOS).

The EID process is one of the more complex and time consuming stages of the permitting process and depending on investment complexity and environmental impact takes from four to six months. If no EID is required, official confirmation should be received between 2 to 6 weeks upon application. EID is valid for 6-years from the day of validation and the validity of the decision may be extended by 10- years. EID can also be transferred to a different entity.

Building permit

A building permit is an administrative decision approving the architectural design and entitles an investor to start construction work. Building Permits are issued by a district construction authority - Starosta. In larger cities building permits are issued by the city office. Some large and infrastructural investments (like sea ports or national roads and motorways) require building permits to be issued by a regional authority - Voivodship.

Building permits are issued upon application of an investor. Before the building permit is issued an authority verifies if architectural design and attached documents are legally compliant with Polish Construction Law (the authority is not entitled or allowed to check the technical characteristics of the design), zoning plan and informs owners of neighboring real estate about the fact that a building permit is about to be issued. With the exception of architectural design a building permit application shall contain:

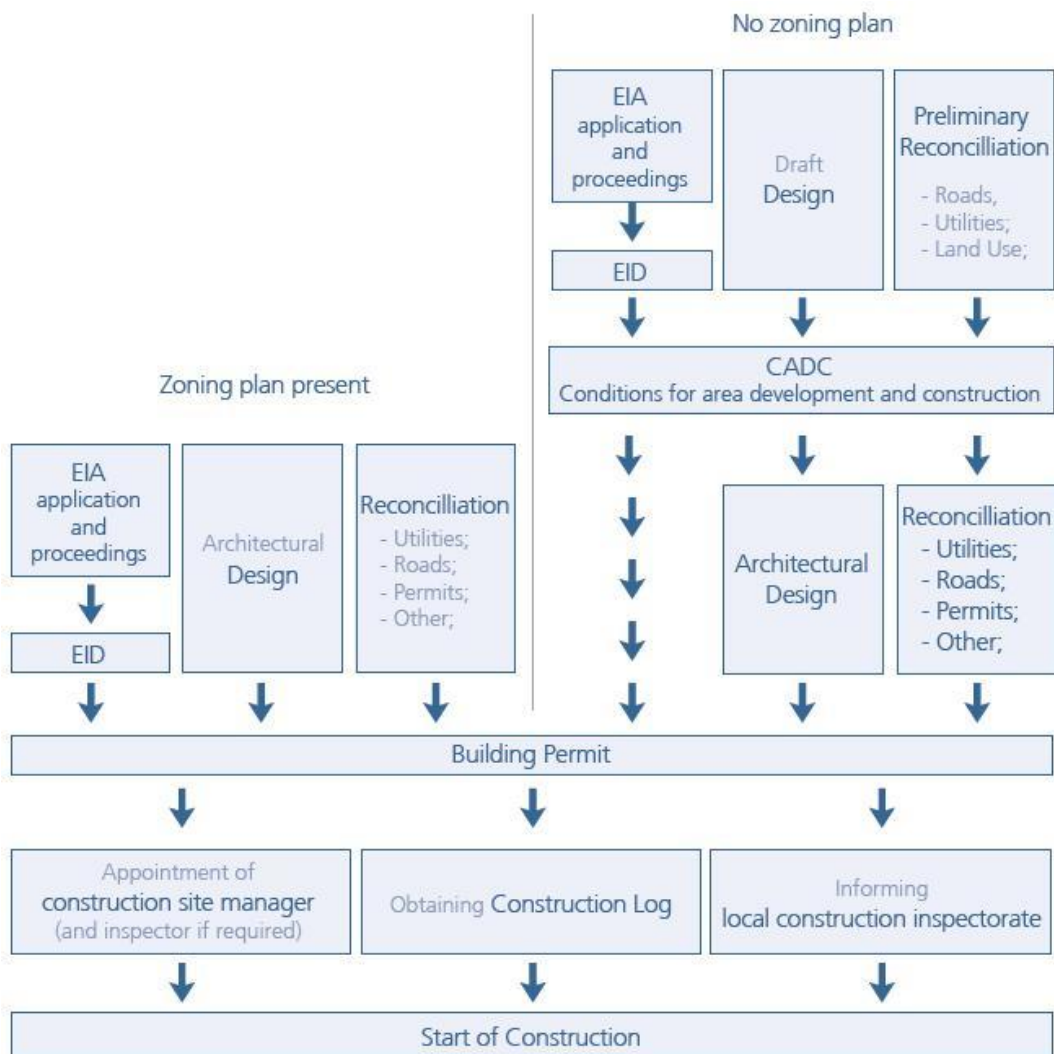
- a copy of the zoning plan or CADC decision;
- environmental Impact Decision,

- declaration that an investor holds a legal title allowing him/her to apply for a building permit,
- documents confirming that the design was reconciled with all relevant authorities (like utility providers, administrators of public roads that provide access to the real estate).

The building permit is valid for 3 years from the day it was issued and validated. Building permits may be transferred to other entities. Validation procedure protects interests of entities that may be influenced by an administrative decision, such as the building permit or EID. After a decision is issued a notification with a copy of a decision is sent to all engaged parties (neighbours and relevant authorities), which have 14 days to officially raise claims from the day they receive a copy of a decision. Notifications are usually sent via regular mail which means that validation time takes 14-days + time required to deliver a letter with notification. If there are no objections or claims raised a decision receives a validation stamp.

Before construction work is started an investor needs to get a “validation stamp” on the building permit and receive a construction log and inform the local construction inspectorate (Powiatowy Inspektor Nadzoru Budowlanego) 7-days before construction work is planned to be started and appoint an official construction site manager (and work inspector if required).

In case of less complicated investments or some redevelopment work a less complicated procedure of “construction works notification” may be used. In such case, an investor submits a simplified design (with relevant attachments) to a district construction authority. If an authority does not raise any objections within 30-days construction work may be started without further formalities.



Source: Polish Investment and Trade Agency, *Poland your business Partner. Invest in Poland, 2016.*

Use and operations permit

After the construction works are finished an investment needs to obtain the usage permit before operations are started. In cases of less complicated constructions it is enough to inform a local construction inspectorate about the fact that construction works were accomplished. If the inspectorate does not raise any objections within 14-days from the day it received the information an investor may start to use the building. Building permit defines whether an investment requires a usage permit or only notification. In both cases the following documents needs to be delivered to construction inspectorate:

- declaration of construction site manager (and construction inspector if required) that all work was accomplished, carried out compliant with the design and the construction site with the surrounding area is cleared from construction remnants,
- construction log,
- as-built geodesic map,
- approvals of connections issued by all relevant utility operators and road administrators,
- approvals and certificates for built-in materials, equipment and machines,
- protocols of checks and approvals for all relevant installations (electricity, fire protection, water, gas),

- approval of technical inspectorate for certain built-in machinery and equipment (lifts, tanks, boilers, cranes),
- documentation confirming energy characteristics of the building.

In order to receive the usage permit an investor needs to perform the following steps.

1. Collect all the above documents (Document confirming energy characteristics may be added in step 3).
2. Inform local firefighting authority and local office of the National Sanitary Inspection that the construction work was finished. Both authorities are entitled to check the construction site and all documents within 14-days after the information was received. In case they do not react within the above-mentioned time an investor may proceed to the next step. If one or both authorities decide to check the construction site and documents an investor has to receive a written positive approval to proceed further (if any authority raises objections to the construction site or documents improvements have to be made to receive approval).
3. After approvals are issued (or the above authorities do not react) an investor shall officially inform the local construction inspectorate, which checks the construction site and all documents again. If there are no objections the usage permit is issued. The building may be officially used after the usage permit is validated.

Additional procedures

Although not needed to obtain the usage permit there are some other permits related to environment protection that should be obtained before operations are started:

- emissions permits - approving the start of operations of all installations emitting pollutants to air and water,
- approval of the Environmental Inspectorate - if an investment required an EID an investor shall notify the Regional Environmental Inspectorate (Wojewódzki Inspektor Ochrony Środowiska) about the planned start of operations 30-days in advance. The inspectorate is entitled to check the construction site and relevant documents to confirm that the investment was accomplished compliant with EID.

In 2015 there were major amendments to Constructional Law. The most important was for housing. However, this also exerts some influence on the investment process, eg. in the industry. The legislator, for example, resigns from the requirement to submit an application for a building permit and statements of ensuring the supply of utilities. Whether the object meets the requirements for attachment to specific networks will be verified only at the stage of putting the object in use.



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