

CONSTRUCTION

V

V.1. Legislative and administrative framework.

Categories of construction works

V.1.1. Legislative framework

The major legislative acts governing the construction process in Bulgaria are the Territorial Development Act ("TDA") of 2001, and the various Ordinances on its application, such as: Ordinance No. 1 on the categorization of construction works; Ordinance No. 2 on putting into operation of completed construction works and the minimum warranty periods for them; Ordinance No. 3 on the acts and protocols executed in the course of construction works; Ordinance No. 4 on the scope and contents of project designs; Ordinance No. 7 on the rules and norms for development of the different types of territories and development zones, etc.

Provisions concerning separate aspects of design and construction process are contained in a number of other acts not directly related to construction, as well as in the ordinances issued by each municipality with respect to works executed on their territory.

V.1.2. Administrative bodies

The issuance of the principal documents in the construction process – visas, approvals of project designs, construction permits and operation permits (with a few exceptions) – typically falls within the competence of the chief architect of the respective municipality, against payment of a fee that is determined by each municipality on the basis of the type and size of the works. Where projects concern more than one municipality, or more than one district, these documents are issued by the relevant district governor, or by the Minister of Regional Development, respectively. The same documents with respect to special projects related to the national defense and security are issued by the Minister of Defense, or the Minister of the Exterior, respectively.

The administrative control for observing and applying the relevant laws and regulations is exercised by the Minister of Regional Development through its specialized body, the National Construction Supervision Directorate ("NCSD"). NCSD has extensive powers in all phases of the construction process, including the power to review appeals against construction permits issued, inspect sites and all construction documents, issue mandatory instructions to all project participants, ban the use of materials, suspend works, impose penalties, prohibit the access to and order the demolition of works, etc.

V.1.3. Categories of construction works

Construction projects are divided by TDA into 6 categories depending on their characteristics, significance, complexity and operational risks: I) big infrastructure projects of national significance such as

highways; I-t and II-d class roads; ground and underground railways; public ports and airports; transfer conduits of the utility networks; electric power plants and heat plants with a capacity of over 100 MW; industrial plants with over 500 working places; metallurgical and chemical plants, mines, quarries, etc.; II) smaller projects of national or regional significance such as roads of III-d class; distribution conduits of the utility networks; facilities and installations for treatment of waste; public service buildings and facilities for over 1,000 visitors; industrial plants with 200–500 working places; 25–100 MW electric power plants and heat plants, etc.; III) projects of local significance such as municipal roads and streets; high residential and combined buildings; public service buildings and facilities of more than 5,000 m² or for 200–1,000 visitors; industrial buildings with 100–200 working places; up to 25 MW electric power plants and heat plants; parks and gardens of over 1 ha, etc.; IV) private roads; medium-height residential and combined buildings; public service buildings and facilities of 1,000–5,000 m² or for 100–200 visitors; industrial buildings with 50–100 working places; parks and gardens of up to 1 ha, etc.; V) low-height residential and combined buildings; villas; public service buildings and facilities of less than 1,000 m² or for less than 100 visitors; industrial buildings with less than 50 working places, etc.; VI) category – temporary structures erected for the purpose of construction and other minor works for which no approval of the design is required and no construction permit is issued.

It is important to categorize the project properly, as the requirements for its implementation vary depending on the category.

V.2. Participants in the construction process.

Insurance

The persons recognized by the law as participants in the construction process with their specific obligations are: the investor, the designer, the contractor, the consultant, the supervisor, the structural engineer, the project manager and the supplier of plant and equipment. The relations between the project participants must be settled by written contracts.

- **Investor** is the person, individual or legal entity, that has the ownership title, or the right to construct in the land plot on which construction works are to be carried out.

- **The designer** of the construction works can be an individual who has a degree in his area of specialization and full designer capacity, or an entity employing such individuals. Designers are responsible for the preparation of the project design and, if explicitly assigned by the investor, for carrying out preliminary research and investigation. They also exercise control for the compliance of the construction works with the design, and are authorized to issue instructions in that respect, which are mandatory for the other participants in the process. In all categories of projects except VI, the designer's control is

mandatory for the structural part of the works; an extension of its scope may be agreed in the contract with the investor.

- The **contractor** is the individual or legal entity that executes the construction works under a contract with the investor. The contractor is responsible for the execution of the works in compliance with the approved designs and permits and the legal requirements concerning construction works, methods, materials and products, as well as for preparing the "as-made" documentation of the works, if explicitly assigned to him under the construction contract. The persons authorized to act as contractors are supposed to be subject to a registration regime under a special law which has not yet been adopted.

.The **consultant** is a legal entity that has been licensed by NCSD for exercising independent supervision over construction works and carrying out compliance evaluation of project designs. Apart from these two activities, such a person may be appointed by the investor also to carry out preliminary research and investigation, preparation of the design process and/or co-ordination of the construction process until the completed works are put into operation.

TDA mandates that a consultant be appointed by the investor for supervising construction works of I to IV category. The supervision of the lower categories of works can be exercised by the project manager.

The **supervisor** (consultant or project manager):

- is responsible for the lawful commencement of the construction works, the completeness and correctness of all acts and protocols executed during the construction, the execution of the works in compliance with the approved project designs and the legal requirements, the observation of the safety requirements, the prevention of damage to third parties or property resulting from the works, the fitness of the completed works for putting into operation, the assessment of their energy efficiency and accessibility to disabled persons;

- is obliged to inform the regional branch of NCSD of any breach of the technical norms and regulations it has identified in the course of the construction works; .is authorized by law to issue mandatory instructions and orders to the contractor that can be appealed within 3 days before NCSD;

- must sign all acts and protocols executed in the course of the construction works and issue a final report to the investor upon their completion;
- is jointly liable with the contractor for any damage resulting from breach of the technical norms and regulations, or deviation from the approved designs.

When appointing a consultant, investors should bear in mind that a consultant cannot act as a supervisor or carry out compliance evaluation of the designs for projects in which it or its employees or related parties are involved as designers, contractors or suppliers.

The **structural engineer** is an individual possessing a special capacity for exercising technical control over the structural part of detailed project designs (technical and execution designs). He must

also countersign the "as-made" documentation. .The **project manager** is the civil engineer managing the execution of the construction works on behalf of the contractor. If the works are executed by the investor himself, he is obliged to appoint a project manager. Project managers are also responsible for the supervision of works of V and VI category, where no consultant has been appointed by the investor. .If the investor has assigned the supply and the assembling of the construction plant to a **supplier**, then the latter is, by virtue of the law, responsible for its due and timely supply and assembling, as well as for the passing of the tests thereof.

Designers, consultants, contractors and supervisors are obliged to insure their professional liability for damage caused as a result of unlawful acts or omissions in the course of the fulfillment of their obligations. A special Ordinance determines the minimum limits under the insurance policies for the different project participants and for the different categories of works.

As the mandatory insurance covers the liability of the insured under any project in which it participates during its term of validity, the investor may, in its contracts with the respective project participants, require that they undertake additional insurance especially for its own project. Extended insurance coverage (e.g. contractor's-all-risks, employer's liability, etc.), if required by the investor, has to be agreed contractually, as it is not mandatory under the law.

V.3. Preliminary research and investigation.

Visa

V.3.1. Preliminary research and investigation

Prior to commencing any works, the investor may require that preliminary research and investigation be made in order to determine the most appropriate location and to estimate the legal admissibility and the expedience of the project. Though not a mandatory phase of the process, it is often necessary and useful for the investor to obtain in advance data on the site specifics (e.g. geological, seismic, hydrological, climatic and other conditions, existing structures and networks in and around the site), on the specific technical and zoning requirements affecting the project, etc. The scope of such preliminary research and the person(s) to which it is assigned will vary depending on the type of project and the investor's requirements.

V.3.2. Visa

In specific cases listed in TDA the investor must, before commencing the design of the project, obtain from the respective administrative body an excerpt from the detailed zoning plan covering the plot and the surrounding properties (visa), which marks the existing structures, the permitted boundaries, height, density, intensity and any other requirements to construction in the plot. If the plan is in the process of being approved or modified, an excerpt from the draft plan is issued instead of a visa. As per TDA, the visa

should be issued within 7-14 days of being requested, depending on the issuing body. It is valid for a term of 6 months, after which it can be revalidated by the same body, if no changes in the zoning plan have been effected meanwhile.

V.4. Project design

V.4.1. Phases of designing

Project designs can be prepared in 3 steps (phases) with a different level of detail: conceptual, technical and execution. The parts and contents of each phase of designing are specified in detail in Ordinance 4.

The investor must determine in the contract with the designer the phases he requires, bearing in mind that: (i) a one-phase design is sufficient for projects with a low level of functional and technological complexity, and must in any event be a technical or execution design;

(ii) in a two-phase design, one of the phases must in any event be a technical or execution design;

(iii) the three-phase design is mandatory for complicated or complex projects.

Each phase of the project design must be approved by the respective administrative bodies before commencement of the construction works. No approval is required for some minor works listed in TDA.

V.4.2. Compliance evaluation

Project designs must be subjected to an evaluation of their compliance with the detailed zoning plan, the territorial development norms and regulations, the legal requirements concerning construction works, the requirement for coordination between the separate parts of the design and for completeness and structural integrity of the engineering calculations. Compliance evaluation for projects of I or II category must be made by a consultant (different from the designer), who issues a report on its findings. In addition, the structural part of technical and execution designs must be evaluated by a structural engineer. In lower categories the appointment of a consultant is optional; if such is not appointed, the compliance evaluation is made by the municipal experts, but only after the structural part of the design has been approved by a structural engineer.

V.4.3. Approval of the project design. Validity

For the purpose of getting an approval, the investor must present to the competent authorities the design itself, the compliance evaluation report, an approval by the fire safety authorities, as well as preliminary agreements with the utility companies for connecting to the technical infrastructure networks. The prescribed term for approval is 7 days after submission of all required documents, and 1 month – in the event that the compliance evaluation was not made by a consultant.

The approved project design serves as grounds for the issuance of a construction permit, for which the

investor may apply simultaneously with the submission of the design for approval. It loses its validity if within 1 year the investor has not applied for a construction permit.

The refusal to approve project designs can be appealed by the investor before NCSD within 14 days after notification.

V.5. Construction permit

Construction works can only be carried out after a construction permit has been issued for them.

V.5.1. Required documents. Procedure.

Validity

Construction permits are issued to the investor on the basis of the approved project designs in all their phases (except for projects for which no such approvals required).

With its latest amendment of July 2003, TDA allowed a construction permit to be issued on the basis of an approved conceptual design only, provided that a preliminary compliance evaluation thereof has been made by a consultant. In such an event the detailed designs of the works (technical and/or execution) must be approved in the course of their execution.

With its request, the investor must present evidence of its ownership title/construction right, the visa (if available), three copies of the project design, the compliance evaluation report, as well as an environmental report, where such is required under the Protection of the Environment Act.

As per TDA, the permit should be issued within 7 days after the request. The approved project design is an integral part of the construction permit.

A construction permit is issued for the works in their entirety, or for parts thereof (including separate floors of buildings), provided that they can be executed and used separately.

The permit expires if construction works have not commenced within 3 years or if the rough construction has not been completed within 5 years of its issuance, but can be revalidated within 1 year against payment of 50 % of the fee due for a newly issued permit.

V.5.2. Appeals

The issuance of, or the refusal to issue, a construction permit can be appealed only on the grounds of breach of the law, and only by the investor, the holders of the ownership title or the construction right in the land plot, and the regional branch of NCSD, within 14 days after they have been notified thereof, which is made ex officio. Construction permits that have entered into force cannot be repealed.

V.5.3. Changes in the project design after the issuance of the construction permit

Such changes are allowed only if they are not substantial, and are reflected in the “as-made” documentation. Substantial changes such as changes in the type of structure, structural elements and/or loads, in the purpose of separate parts of the works, the type and location of installations in buildings or the type, level or location of technical infrastructure or

transportation networks, can be made only after the design thereof has been approved and attached to the construction permit.

V.6. Commencement and execution of construction works

V.6.1. Acts and protocols executed during construction works

The date of commencement of the construction works is deemed to be the date on which the protocols of opening of the construction site (Protocol 2) and of determining the construction line and level (Protocol 3) are signed by the supervisor. Protocol 3 is one of the most important records to be compiled during construction: in it, the supervisor enters the results of all inspections it has made upon reaching the major levels of construction, before authorizing the contractor to proceed with the next level. It is mandatory for all categories of works except VI. Within 3 days of commencing the works, the supervisor must present the paginated order book of the works to the body that has issued the construction permit for certification. The book will contain all orders and instructions of the competent persons and authorities concerning the works, and is mandatory for all constructions of I to IV category.

In addition to the above protocols and order book, a number of other standard-form acts and protocols have to be compiled during the execution of the works for the purpose of certifying the various circumstances concerning the construction process, such as acceptance of the executed works before covering, interim and final acts of acceptance of the various stages of works, etc. Ordinance No. 3 determines in detail the 17 standard types of acts and protocols, their contents, the persons to compile and sign them, as well as those of them which are mandatory for the various categories of works. The acts and protocols serve as evidence for the circumstances recorded therein and concerning the commencement, execution and completion of the works.

V.6.2. Legal requirements concerning construction works

Construction works must be executed in compliance with the legal requirements contained in various laws and regulations concerning: the bearing capacity, stability and durability of structures and the foundation base under operational and seismic loads; fire safety; protection of people's lives, health and property; safety of operation; preservation of the environment during the time of construction and of using the completed works; economy of heat energy and heat insulation; accessible environment. The responsibility for the compliance with these requirements is borne jointly by the contractor and the supervisor.

V.7. Completion

V.7.1. "As-made" documentation

Upon completing the works the contractor (or another person appointed by the investor) must prepare the "as-made" documentation which contains

a full set of drawings of the works as they were actually executed. The "as-made" documentation is countersigned by the investor, the contractor, the supervisor and the structural engineer, and is submitted to the administrative body that has issued the construction permit, which must stamp it on each page.

If it is evident from the "as-made" documentation that the works were executed in substantial deviation from the approved design, the respective administrative body notifies NCS D.

Acceptance of the completed works by the investor and the supervisor.

The completion of construction is certified by executing a protocol (the so called "Act 15") which is signed by the investor, the designer, the contractor and the supervisor. Act 15 is the document evidencing the delivery and acceptance of the completed works between the contractor and the investor. With it, they certify that the works have been executed in compliance with the approved design, the "as-made" drawings, the legal requirements to construction works and the terms of the construction contract.

Based on Act 15, the supervisor prepares a final report on the execution of the works.

V.8. Permitting the use of completed works.

Warranty periods

Completed works or parts thereof can only be used after having been put into operation in the manner prescribed by TDA.

Works of I to III category are put into operation on the basis of an operation permit issued by NCS D following the procedure established in Ordinance No. 2. For the purpose of its issuance, a special committee is appointed by the Director of NCS D upon request of the investor, supplemented with:

- (i) the final report of the supervisor;
- (ii) the major acts and protocols signed during the construction;
- (iii) certificate of registration of the works in the Cadastral Agency;

(iv) signed contracts with the utility companies for connecting the completed works to the technical infrastructure networks. All costs related to the committee's work are borne by the investor.

The committee includes the investor, the supervisor and representatives of NCS D and the special supervisory authorities. Upon inspection of the completed works and the relevant documents, the committee issues Protocol 16 for accepting or rejecting the works (the so called "Act 16"). Based on it, the Director of NCS D issues the operation permit.

The maximum term for completing the procedure, as prescribed by TDA, is about 1 month.

Note should be taken that an operation permit for a part of the works can be issued only if the construction permit was issued, or has been subsequently amended so as to allow for them to be executed in parts (phases).

The procedure regarding works of IV and V category is simplified and involves just a desktop review of

documents concerning the works (which are substantially the same as those necessary for Act 16) and registration of their putting into operation. It is performed by the body that has issued the construction permit, and ends with the issuance of a certificate of putting into operation, which as per TDA should be done within 7 days after all necessary documents have been submitted by the investor. Works of VI category can be used without any special procedure of putting into operation. The contractor remains responsible for the works executed by him for a certain period after their completion. The minimum periods are prescribed by the law and vary from 1 to 10 years, depending on the type of work. Longer periods can be determined contractually.

VI.9. Incentives

Where the project has been recognized as any class of investment under the Encouraging of Investments Act, the respective administrative bodies shall be obliged to issue the acts requested from them in shorter terms than the ones prescribed by TDA.

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