

## Rebuilding Ukraine: construction projects

### Introduction

1. Current state of affairs
2. Obtaining permits
3. Implementing experimental projects
4. Acquisition of a Ukrainian construction company

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Significant global financial efforts will be required to rebuild Ukraine after the war. At the same time, special attention will be paid to the restoration of the destroyed Ukrainian infrastructure, energy facilities, including renewable energy facilities, entire residential areas, cities, hospitals, schools, etc.

Foreign construction companies are already actively exploring their entry into the Ukrainian market to participate in infrastructure projects, construction of roads, certain industrial and energy facilities, grain storage silos, residential complexes, and shopping malls. However, it is necessary to take into account the requirements of Ukrainian legislation and the current situation with the issuance of the necessary licences.

### 1. Current state of affairs

Currently, the permitting system in the Ukrainian construction industry is underregulated. This is due to the fact that in 2020 Ukraine launched a large-scale construction system reform to bring it in line with European best practices. However, due to a number of circumstances (the main one being Russia's full-scale invasion), the reform has not been fully completed.

In particular, the procedure for issuing licences for construction activities was cancelled.

Instead, construction companies are required to have certified specialists (engineers and architects) who are responsible for construction projects and oversee construction.

This practice is generally aligned with the European Union's best practices in the construction industry. The idea is that it is such specialists who are in charge of developing documentation, designs, and are responsible for their implementation. Accordingly, specialists with the relevant certificates should be a prerequisite for the construction of the appropriate level of complexity and/or class of consequences. And any liability or sanctions should be imposed on the specialists (through the company or personally).

The relevant permits for the creation of architectural objects or other works are issued based on the documentation developed by such specialists. Thus, there is no

point in licensing a separate company under such a system. This only creates unnecessary bureaucratic procedures and opens the way to various schemes and abuses.

Therefore, licensing of construction companies should be replaced by certification of relevant specialists: with state exams, a commission, and a determination of the complexity level of the construction project that the specialist is authorised to develop. This would also help develop the institution of reputation, which means that during construction, the customer (investor, other stakeholders) would primarily assess the responsible persons, rather than the developer.

However, the necessary legislative acts have not yet been adopted, which is why the current situation is as follows:

- under Ukrainian law, a Ukrainian company must have a licence to carry out construction. However, it is currently impossible to obtain such a licence as there is no procedure for its issuance. Therefore, only companies that already have a licence can conduct construction;
- the new orders for certifying specialists have been adopted only partially (while the old ones have already been cancelled), which makes it extremely difficult to obtain proper certificates.

## 2. Temporary procedure for obtaining permits

To address the gaps in Ukrainian legislation, the Ukrainian Government, in its Resolution No. 314 of 18 March 2022, approved a temporary (for the period of martial law) order for obtaining permits, in particular in the construction sector. However, this order only partially and temporarily resolves the existing problems.

In particular, within 3 months after the end of martial law (or earlier, if relevant regulations are adopted), the developer must obtain the necessary permits to properly formalise its activities. It is not yet known what the relevant procedures will look like, but based on preliminary assessments of Ukraine's needs, it can be assumed that the legislation will move towards certified professionals and the recognition of professionals whose certificates are issued by other states (in particular, European ones). Thus, there is a possibility that certain facilities will be deemed to have been constructed without complying with the relevant standards, leading to the relevant consequences.

This procedure also does not tackle the problems with other permits, such as construction permits and acceptance of completed facilities into operation. There is a particularly acute problem with compliance with the deadlines for issuing permits by government agencies (e.g., the State Inspectorate of Architecture and Urban Development of Ukraine, a body formed in 2021 to replace the State Architectural and Construction Inspectorate). Simplifying the procedures for submitting documents and submitting them electronically through a specially created portal has only partially addressed the problem.

To bridge these gaps, during the martial law period, the Ukrainian Government amended its Resolution No. 406 of 07 June 2017 "On Approval of the List of Construction Works that Do Not Require Documents Entitling to Perform Them and After Which the Object May Not Be Commissioned". The list of works under this Resolution was extended for the period of martial law.

The list expansion and changes in the order of works in accordance with the Resolution are primarily aimed at repairing and/or rebuilding critical infrastructure facilities, as well as protecting such facilities.

### **3. Implementing experimental projects**

By its Resolution No. 1482 of 27 December 2022, the Ukrainian Government approved the Order of Implementation of an Experimental Project for the Construction, Repair and Other Engineering and Technical Measures to Protect Critical Infrastructure Facilities of the Fuel and Energy Sector of Critical Infrastructure.

According to this Resolution, for the period of martial law in Ukraine or its separate localities, construction, repair and other engineering and technical measures to protect critical infrastructure facilities of the fuel and energy sector of critical infrastructure are carried out without allocating a land plot, complying with urban planning documentation, obtaining urban planning conditions and restrictions on land development, obtaining an expert opinion on the design documentation for the construction of facilities, obtaining the right to perform construction work, as well as without using the Unified State Electronic System in the field of construction and formalising proprietary rights to land plots.

So, as of February 2022, only companies holding licences obtained before 2020 could carry out construction works in Ukraine.

### **4. Acquisition of a Ukrainian construction company**

As an alternative to entering the Ukrainian market, foreign investors can acquire a Ukrainian construction company with a relevant construction licence. In this case, it is recommended to conduct a legal due diligence of such a Ukrainian company in order to identify possible risks and debts of the Ukrainian company to third parties.

It is not yet known whether foreign certified construction professionals will be recognised in Ukraine and what the procedure for such recognition will be. However, it is possible to predict that Ukraine will be interested in the participation of such specialists and foreign companies in the reconstruction of the damaged infrastructure, residential, commercial and industrial buildings. Accordingly, it is possible to predict either the recognition of EU specialists/companies or a simplified procedure for obtaining permits/certificates for such specialists and companies.