

Construction and installation works in Ukraine by foreign companies

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Foreign companies intending to carry out installation or construction works in Ukraine should carefully review the requirements of Ukrainian legislation before importing their own equipment and deploying their specialists to Ukraine. Non-residents may carry out business activities in the construction sector through subsidiaries or representative offices established by them in Ukraine. They may also send their employees to Ukraine to perform work under foreign economic contracts with Ukrainian partners.

This article covers the main aspects of Ukrainian legislation related to obtaining the necessary licences, certificates, permits, and declarations of conformity. The article also addresses issues related to obtaining work permits for foreign employees in Ukraine and issuing temporary residence permits for them, as well as some tax implications.

The specific algorithm of actions to be taken by a business entity to perform construction and installation works at a particular facility depends on various factors, such as the type and scope of works, their duration, the equipment and machinery used, and the composition of the contractors. This algorithm may be subject to changes due to other factors, in particular, under martial law.

1. Permits of the architectural and construction control

1.1. Obtaining a licence/certificate

Under current Ukrainian legislation, when creating an architectural object, customers and contractors are obliged, in particular to:

- entrust the construction of objects that are classified as objects with medium (CC2) and significant (CC3) consequences to business entities that have the appropriate licences. The objects with medium and significant consequences include, in particular, hotels, residential multi-storey buildings, shopping centres, gas pipelines, petrol stations, etc. If a facility belongs to a minor class of consequences, a licence is not required;
- entrust certain types of works (services) related to the creation of architectural objects to persons holding a relevant qualification certificate or having received a certificate in the field of professional certification from personnel certification bodies accredited in line with Ukrainian legislation and having been entered into the Unified State Electronic System in the construction sector.

Accordingly, as a general rule, along with licensing of business activities in the construction sector, it is necessary to engage a responsible contractor who shall be liable for improper performance of works (services) and violation of the requirements of the law, building codes, state construction standards, and regulations.

Related article: Engineering by foreign companies in Ukraine

To carry out design works for the creation of architectural objects, no qualification certificate is required for specialists in the following cases:

- design work is carried out under the supervision of an architect or other specialist holding a qualification certificate for the performance of relevant works;
- development of design materials that are not intended for implementation (draft, exploratory, conceptual, etc.), proposals for the possibility and conditions of development for any land plot;

- performing work related to participation in urban planning and architectural competitions, unless otherwise provided by their terms and conditions;
- designing objects that, in accordance with the law, do not require obtaining documents authorising construction work.

In Ukraine, foreigners who have not obtained the relevant qualification certificate may:

- carry out the above-mentioned works on the creation of architectural objects that do not require a relevant qualification certificate, as well as
- participate in the development of urban planning documentation, design architectural objects, and develop working documentation for construction only on the basis of contracts with specialists holding a qualification certificate.

Prior to the full-scale invasion of Ukraine by Russia, reforms in the field of architecture and urban planning began with the aim of eliminating existing bureaucratic procedures by gradually abandoning licensing and strengthening the role of responsible contractors (architects, design engineers, technical supervision engineers, experts) with relevant certificates.

Related article: Participation of consortia in public tenders in Ukraine

As part of the reform, the Procedure for Licensing of Economic Activities Related to the Creation of Architectural Objects was cancelled in 2020, but the licensing requirement remained, which did not simplify the procedure but rather limited the access of new business entities to the construction industry.

1.2. Declaration as a temporary alternative to a licence

Currently, during the martial law in Ukraine, a construction licence is not required, except in cases expressly provided for by law, such as for the construction of a radioactive waste disposal facility, construction and commissioning of a nuclear facility.

This is due to the introduction by the Ukrainian Government on 18 March 2022 of the possibility of submitting a declaration as a temporary alternative to a licence to obtain the right to carry out licensed business activities of business entities under martial law.

The validity of existing fixed-term licences and permits will be automatically extended for the period of martial law and 3 months from the date of its termination or cancellation, with periodic regular payments thereunder deferred for the same period.

Business entities that have acquired the right to conduct business on the basis of a declaration, in the absence of licences, must immediately

and no later than three months after the termination or cancellation of martial law apply to the relevant licensing authorities to obtain the relevant permits under the terms and conditions prescribed by law, without suspending (terminating) their activities.

1.3. Other ACC permits

However, for certain types of activities, a licence or declaration is not sufficient. Ukrainian legislation additionally defines the types of architectural and construction control (hereinafter – ACC) permits that give the right to conduct business activities in the construction sector:

- for preparatory works determined by the construction standards – a notice of commencement of preparatory works;
- to perform construction works on construction objects that are classified as objects with minor consequences (CC1) according to the class of consequences (liability) – a notification on the commencement of construction works;
- for commissioning of completed construction objects that are classified as objects with minor consequences (CC1) – a declaration of readiness of the object for operation;
- to perform preparatory works (if they have not been performed earlier in accordance with the notification on the commencement of preparatory works) and construction works on construction objects that are classified as objects with medium (CC2) and significant (CC3) consequences according to the class of consequences (liability) – a permit for construction works;
- commissioning of completed facilities that are classified as having medium (CC2) and significant (CC3) consequences according to the class of consequences (liability) – a certificate of commissioning of a completed facility.

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Other permits may be required for specific types of work, e.g.:

- construction of underground facilities not related to the extraction of minerals, including underground oil or gas storage facilities and facilities for disposal of oil and gas production waste and associated waters, underground geothermal energy (subsoil heat) facilities, requires a special permit for the use of subsoil in Ukraine;
- placement, construction of structures, road service facilities, petrol stations, laying of engineering networks and other works within the road right-of-way requires a respective permit;
- urban planning, architectural and landscape transformations, construction, land improvement, road and earthworks on monuments, their territories, in protection zones, protected archaeological areas, in historical areas of settlements, and other works that may affect cultural heritage sites require appropriate approval.

1.4. Works that do not require ACC permits

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Certain types of construction works in Ukraine do not require permits, and upon their completion the object is not subject to commissioning (this does not apply to objects belonging to cultural heritage monuments), in particular:

- major repairs of public roads;
- replacement of roofs of buildings and structures in accordance with building regulations without interfering with the load-bearing structures;
- replacement of existing window, balcony, and door openings.

During martial law, this list of works was expanded to include the following:

- dismantling of facilities damaged or destroyed as a result of emergencies, hostilities or terrorist acts;
- construction of military engineering and fortifications for defence purposes;
- works performed during the implementation of a pilot 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.

2. Labour protection permits

2.1. Permits from the State Labour Service

Ukrainian legislation provides for a list of types of work and a list of high-risk machinery, mechanisms, and equipment for which a permit from the State Labour Service of Ukraine is required.

The State Labour Service issues permits free of charge based on an expert opinion on the state of occupational health and safety of a business entity's industrial production.

The permit is valid for:

- 5 years (with the possibility of further extension) – for the performance of works or operation of high-risk machinery, mechanisms, and equipment. Operation of high-risk machines, mechanisms, and equipment implies a long-term period of use of high-risk machines, mechanisms, and equipment during the production process, taking into account their operational characteristics;
- indefinitely – for the use of high-risk machines, mechanisms, and equipment. Use of high-risk machines, mechanisms, and equipment refers to the use of high-risk machines, mechanisms, and equipment for their intended purpose in accordance with the results of an assessment of their compliance with the requirements of the legislation on labour protection and industrial safety.

The list of types of work and the list of high-risk machinery, mechanisms, and equipment that require a permit include, in particular:

- equipment and protective systems intended for use in potentially explosive environments;
- blasting works and works related to the use of explosive energy;
- gas hazardous works and works in explosive and/or fire hazardous areas;
- technical inspection, testing, expert examination (technical diagnostics) of machines, mechanisms, high-risk equipment, etc.

2.2. Submission of a declaration of conformity

In some cases, the right to perform hazardous work and operate (use) hazardous machinery, mechanisms, and equipment may be granted under a declaration of compliance of the material and technical base with the requirements of Ukrainian labour protection legislation.

The list of types of work, as well as the list of high-risk machinery, mechanisms, and equipment, the performance or operation (use) of which may be carried out under such a declaration, is established by the Ukrainian government and includes, inter alia:

- work at a height of over 1.3 metres;
- installation, dismantling, operation, repair, and relocation of pumping and dredging units, dredges, and dredgers;
- operation and repair of water catchment facilities;
- climbing and industrial alpinism;
- application of paint and varnish coatings, primers and putties based on nitro paints and polymer compositions;
- other machines, lifting equipment, removable mechanical transmission devices;
- forging and pressing equipment;
- machines of specialised transshipment complexes, etc.

Declarations are submitted by employers. The territorial body of the State Labour Service registers such declarations free of charge within 5 working days from the date of their receipt.

Certain high-risk works are performed, and high-risk machinery, mechanisms and equipment are operated (used) under a declaration of compliance of the material and technical base with the requirements of the labour protection legislation only for the period of martial law (until the day of its termination or cancellation and within one month thereafter). After that, they will again require a permit from the State Labour Service.

In particular, this applies to the following works:

- installation, dismantling, adjustment, repair, maintenance, reconstruction of machines, mechanisms, and high-risk equipment;
- installation, dismantling, and overhaul of buildings and structures, as well as restoration and strengthening of their damaged parts;
- excavation works performed at a depth of more than 2 metres, in the area of underground utilities or underwater;
- installation, operation, and dismantling of drilling rigs;
- loading and unloading operations using machines and mechanisms;
- lifting cranes and machines, elevators, lifts for hoisting workers, suspended passenger ropeways, funiculars, escalators and passenger conveyors, motorised cradles for hoisting workers;
- construction of main gas pipelines, oil pipelines and product pipelines, natural and liquid gas supply systems, etc.

3. Tax issues

It should be noted that Ukrainian legislation defines a construction site, a construction, assembly or installation facility or related supervisory activities as a "permanent representative office" for tax purposes. At the same time, the total duration of works related to such a site, facility, or activity (within the same project/related projects) performed by a non-resident through employees or other personnel hired by him/her for such purposes must exceed 12 months.

Non-residents operating in Ukraine through separate subdivisions, including permanent representative offices, are required to register with the regulatory authorities. Simultaneously with the registration of a non-resident company, a separate subdivision of such a non-resident is registered.

Related article: Permanent representations of non-residents in Ukraine: tax aspects

Income of non-residents operating in Ukraine through a permanent representative office is taxed under the general rules. At the same time, such a permanent representative office is equated for tax purposes with a taxpayer operating independently of such a non-resident.

Accordingly, when determining the term of construction and installation works in Ukraine under foreign economic contracts, the tax implications mentioned above should be taken into account.

4. Work permit for foreigners

If a foreign citizen is to stay on the premises of a Ukrainian company (contractor) for the purpose of performing construction or installation works (including supervising work, providing consultations, etc.), it is necessary to first obtain a work permit for such a foreign citizen in Ukraine.

To obtain a work permit for foreigners (transferred foreign employees), a Ukrainian company (contractor) shall submit the following documents to the territorial employment centre:

- a copy of a foreign economic agreement (contract) concluded between a Ukrainian business entity and a foreign one, which provides for the employment of foreigners and stateless persons transferred to Ukraine by a foreign employer to perform a certain amount of work (provide services), and
- a copy of the document confirming the existence of labour relations between the foreign employee and the foreign employer who sent him/her.

For transferred foreign employees, the permit is issued for the duration of the foreign economic agreement (contract) concluded between a Ukrainian business entity and a foreign one, but not for more than 3 years.

5. Residence permit in Ukraine

Obtaining a work permit serves as a basis for obtaining a long-term visa, a temporary residence permit, and registration of a place of residence in Ukraine.

When a foreigner obtains a residence permit, he or she is granted the right to stay in Ukraine (enter or leave the country without restriction) for the entire period of validity of the permit. Such a foreign citizen enjoys equal rights to Ukrainian citizens, except for issues specifically provided for by law, such as voting rights or the acquisition of agricultural land.

The residence permit is issued for the period of work in Ukraine specified in the work permit (up to 3 years).