

Foreign companies may obtain permits for construction activities in Ukraine

Starting from 16 August 2024, foreign companies may obtain permits for construction activities in Ukraine. The relevant amendments were made to Resolution of the Cabinet of Ministers of Ukraine No. 314 dated 18 March 2022.

According to the amendments, non-residents (foreign companies, organizations) operating in Ukraine exclusively through permanent representative offices may acquire the right to conduct business activities for the construction of facilities that are classified as having medium (CC2) and significant (CC3) consequences in terms of their consequences (liability), based on a declaration, without a construction license. Previously, only residents of Ukraine have had such rights.

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The declaration submitted by non-residents must contain:

- 1) information about a business entity (i.e., a permanent representative office);
- 2) information about the non-resident;
- 3) information on registration of the representative office and the non-resident with the tax authorities of Ukraine.

The following conditions should be mentioned:

1. Such a right is acquired by non-residents operating in Ukraine exclusively through permanent representative offices.

If a non-resident does not conduct any activities in Ukraine, such a non-resident is not entitled to carry out the relevant activities.

If a non-resident has a subsidiary in Ukraine that carries out business activities, such a subsidiary will be entitled to the simplified procedure for conducting construction activities (under the general rights as a resident of Ukraine).

2. These rules apply only for the period of martial law.

No later than within 3 months from the date martial law is lifted in Ukraine, permanent representative offices and subsidiaries will be required to apply for a license to carry out economic activities in the field of construction in accordance with the established procedure.

However, as of today, such licenses are not issued due to the lack of approved licensing requirements, which were cancelled back in 2020. Thus, the issue of obtaining licenses by non-residents after the end of martial law is not yet regulated.

3. These changes apply only to facilities with consequence class CC2 and CC3.

I.e., construction under the CC1 consequence class continues to follow a simplified procedure.

In addition, it should be noted that despite the simplified procedure for access to the works, other requirements remain unchanged.

In particular, contractors are obliged to comply with the law during construction works (among other things, legislation on labour, safety, etc.). The same applies to obtaining other permits required during construction, including permits for certain types of work.

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It should also be noted that not all types of work are allowed under the simplified procedure. For instance, the construction of a radioactive waste disposal facility still requires a license, and the construction of underground facilities not related to mining requires a special subsoil use permit.

To summarize, these changes do not abolish permits but simplify construction activities for the period of martial law. However, a number of issues still need to be clarified with appropriate amendments to the legislation.