

Construction/Installation Works by Foreign Companies in Ukraine

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Before importing their equipment and sending their specialists to Ukraine, foreign companies planning to perform installation or construction works in its territory should first make a detailed analysis, taking into account the requirements of Ukrainian legislation.

This article highlights the main provisions of Ukrainian legislation on receiving necessary licenses, certificates, permits and conformity declarations, tax issues, as well as on the necessity to receive work permits in Ukraine for foreign workers and temporary residence permits for them.

Receiving license/certificate

The Law of Ukraine "On Licensing of Economic Activities" requires a license for construction (construction and installation works) of CC2 and CC3 facilities (consequences classes). The construction of CC1 facilities doesn't require a license. CC2 and CC3 facilities include, but are not limited to, hotels, multi-storey apartment buildings, shopping malls, gas pipelines, gas stations, and other facilities.

Amendments to Ukrainian legislation abolishing architecture and construction licensing came into force on 18 March 2020. Instead of licensing amendments introduced certification of an assigned contractor who now must be involved in the construction of CC2 and CC3 facilities.

A certificate is issued to a specific person by the Ministry of Communities and Territories Development. An assigned contractor will be liable for improper performance of works (provision of services) and violation of the legislation requirements, building codes, state building standards, and regulations.

Revoking new licenses does not mean revoking existing ones. During the transition period, licenses and certificates will coexist.

Receiving a permit or conformity declaration

The legislation of Ukraine provides for a list of works, machines, mechanisms, high-risk equipment types for which the employer, manufacturer or supplier must receive a permit from the State Labour Service of Ukraine.

The State Labour Service of Ukraine issues permits free of charge based on an expert opinion on the state of labour protection and safety of the business entity industrial production.

The permit is valid for:

- 5 years (with possible further extension) – in case of works performance or machines, mechanisms, and high-risk equipment operation (machines, mechanisms, high-risk equipment operation – long period of use of machines, mechanisms, high-risk equipment during production process due to their operational characteristics);
- indefinitely – in case of machines, mechanisms, and high-risk equipment use (machines, mechanisms, high-risk equipment use – intended use of machines, mechanisms, high-risk equipment according to the assessment results of their compliance with labour protection and industrial safety legislation).

The list of works, machines, mechanisms, high-risk equipment types that require a permit includes, in particular:

- production, use, processing, storage, transportation, utilization and disposal of explosive and hazardous substances, flammable liquids and related machines, mechanisms, equipment;
- blasting works and works related to the explosion energy use and appropriate technical means;
- disposal of weapons, conventional ammunition and missile products and technological equipment for this purpose;
- gas-hazardous works and works in explosion-hazardous zones;
- construction of main gas pipelines, oil pipelines and product pipelines, natural gas, and liquefied gas supply systems;
- underground and open-pit mining, material mining, and mine rescue equipment.

In other cases, high-risk works and operation (use) of machines, mechanisms, high-risk equipment may be performed based on a declaration of material and technical base compliance with the requirements of Ukrainian labour protection legislation.

Related article: Certificate of conformity vs. declaration of conformity in Ukraine: what to choose?

The list of works, machines, mechanisms, and high-risk equipment types allowed to be performed or used based on such declaration is defined by the Cabinet of Ministers of Ukraine. Amongst others, it includes:

- repair of hydraulic facilities;
- works at heights of more than 1.3 meters;
- works in pipelines;
- earthworks at more than 2 meters deep or in the area of underground communications or under water;
- works in live electrical installations with a voltage of more than 1000 V and in

- areas of high-frequency voltage;
- welding works;
- technical inspection, testing, expert examination (technical diagnostics) of machines, mechanisms, high-risk equipment;
- installation, dismantling, improvement, repair, maintenance, reconstruction of machines, mechanisms, high-risk equipment;
- works performed using mechanical lifts and construction hoists;
- erection, installation, and dismantling of buildings, constructions, fortification of their emergency parts, etc.

Permits for high-risk works and/or operation (use) of machines, mechanisms, high-risk equipment, and declarations of material and technical base compliance with the requirements of labour protection legislation are subject to state registration.

Tax issues

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

Non-residents operating in Ukraine through separate divisions, including permanent representations, must register with regulatory authorities. The registration of a separate unit of a non-resident is performed simultaneously with the registration of a non-resident.

Read more on the topic: Permanent representations of non-residents in Ukraine: tax aspects

The income of non-residents operating in Ukraine through a permanent representation is generally taxable. Thus, a permanent representation is equated for tax purposes to a taxpayer performing its activities independently of a non-resident.

Receiving a work permit for foreigners

It is necessary to receive a work permit for a foreigner in Ukraine before she/he will perform construction and installation works (including management, providing consultations, etc.) staying on the territory of a Ukrainian enterprise (contractor).

To receive a work permit for foreigners (seconded foreign workers), a Ukrainian company (contractor) files the following documents to the local employment center:

- 1) application in the prescribed form with an employer's confirmation that the position a foreigner will fill is not related to citizenship of Ukraine and does not require access to state secrets under the laws of Ukraine;
- 2) copies of the foreigner's passport pages with personal data together with duly certified Ukrainian translation;
- 3) foreigner's color photo size 3.5 x 4.5 cm;
- 4) copy of an agreement (contract) for the use of foreign labour concluded between Ukrainian

and foreign business entities and sent by a foreign company to Ukraine to perform a certain amount of work (provision of services).

Residence permit in Ukraine

Based on an employment permit, a foreigner may receive a long-term visa, a temporary residence permit, and resident registration in Ukraine.

Upon receiving a residence permit, a foreigner may stay in Ukraine (enter or depart without restrictions) within the validity term of a permit, has the same rights as citizens of Ukraine, except as provided by law, for instance, suffrage or acquisition of agricultural land.

The following documents are required for a temporary residence permit:

- 4 color photos size 3.5 x 4.5 cm;
- Foreigner's passport with D type visa (upon presentation the originals are returned, copy attached);
- duly certified Ukrainian translation of a foreigner's passport page with personal data;
- valid health insurance policy;
- document confirming payment of administrative service fee;
- foreigner's work permit;
- the obligation of the employer to notify the State Migration Service of Ukraine and the Ministry of Economy on the early termination or dissolution of the employment agreement (contract) with a foreigner.

The validity of the temporary residence permit for foreigners equals the validity of the work permit for foreigners (up to 3 years).