

Procedure for Wind Energy Facilities Construction Simplified

On 4 October 2018, the Law On Amendments to Certain Laws of Ukraine regarding the Investment Attractiveness of the Renewable Energy Facilities Construction came into force. It was passed on 4 September 2018. Among other things, this Law introduces amendments to the Law On the Regulation of Urban Development Activities.

It is worth noting that the current legislation provides for the division of all structures into three consequence classes, from CC1 to CC3 (previously, buildings used to be categorized in five complexity classes).

The consequence classes of buildings and structures indicate the level of possible threat to the health and life of people who will permanently or periodically be in the building or outside the building, as well as material damage or social losses associated with a collapse or loss of integrity of the building or structure. The type of the consequence class determines the complexity and scope of the required documents and the procedure for construction.

The legislative amendments aim to prevent abuses in the field of construction and to improve the attractiveness of the renewable energy facilities construction, in particular, wind energy facilities.

Pursuant to Ukrainian laws, construction projects shall be assessed, inter alia, for compliance with the environmental legislation. In addition, such an assessment is mandatory for construction projects that are subject to an environmental impact assessment (in accordance with the Law of Ukraine On the Environmental Impact Assessment). Thus, it led to an overlapping of state approval procedures. Therefore, the entry into force of the Law of Ukraine On the Environmental Impact Assessment (which entered into force on 18 December 2017), highlighted the need to clarify the provisions of the Law On the Regulation of Urban Development Activities with regard to the scope of the mandatory assessment of construction projects for which an authorization has been granted by the competent environmental impact assessment body.

Moreover, it should be noted that renewable energy facilities, in particular wind energy facilities, by their nature are not considered buildings or structures. These are constructions, consisting of prefabricated elements whose quality is guaranteed and certified by the manufacturer. Therefore, for the purpose of ensuring a more transparent mechanism of classifying facilities into consequence classes that is understandable to investors, it was necessary to clarify the procedure for assessing the scope of material damage or social losses associated with a collapse or loss of integrity of structures, being constructed without public financing.

Pursuant to the new Law, damages incurred by contractors, constructing facilities without using funds raised from the state or local budgets, loans granted against state guarantees, funds of state and municipal enterprises and state-funded institutions shall not be included in the damage calculation while determining the

scope of material damage or social losses.

In addition, in the list of structures characteristics, in the presence of which a building cannot be assigned to consequence class CC1, an exception has been made for wind energy facilities (provided that an authorization has been granted by the competent environmental impact assessment body). Besides, wind energy facilities whose construction started before the entry into force of the new Law and which were assigned to the third category of complexity no longer belong to consequence class CC2. Wind energy facilities now fall into consequence class CC1.

The Law will greatly simplify the process of obtaining permits required for starting the construction of wind energy facilities and create favorable conditions for financing and developing wind energy in Ukraine.