

RECENT REFORMS IN THE CONSTRUCTION INDUSTRY

22 January 2018

The construction industry in Uzbekistan is undergoing significant changes following the enactment of **Presidential Decree from November 14, 2018 No. UP – 5577**¹ (“Decree”). The Decree introduces new procedures for project appraisal, construction and commissioning processes, and covers issues concerning licenses, certification, land allocation, tax benefits and modification principles of current norms. Some changes have been in force since December 1, 2018. Others will take effect in the nearest future.

Allocation of land

From January 1, 2019, expenses incurred as a result of tardy or undue allocation of land for construction are subject to reimbursement at the expense of local budgets, with subsequent recovery from the person responsible in recourse. Such responsible parties are relevant *khokims* (heads of local municipality offices). Their personal responsibility is being introduced for the timely and proper allocation of land for construction, as well as for the prevention of construction and installation of objects without reference to the approved master plans for districts (cities) or land allocation schemes (in the absence of master plans). These changes aim to eliminate the cases when objects are demolished and their owners are left with no compensation after the land is regarded as being unlawfully allocated by state organs.

Certification and Licenses

From January 1, 2019, certificates and licenses for engineering and construction activities issued by authorized agencies of member-states of the Organization for Economic Co-operation and Development (OECD) will be recognized in Uzbekistan.

From March 1, 2019, the Association of Consulting Engineers of Uzbekistan (the “Association”) will carry out the certification of specialists in the field of design and construction. For legal entities to render engineering services, they need to have at least two in-house certified engineers in their staff. This requirement does not apply to members of the Association. Moreover, author supervision, technical supervision and construction inspection of buildings will be carried out only by specialists certified in the prescribed manner.

¹Presidential Decree from November 14, 2018 No. UP – 5577 “On additional measures to improve state regulation in the field of construction”
<http://www.lex.uz/docs/4060068>

From July 1, 2019, the licensing procedure in the sphere of engineering and construction will exclude the need to sign a license agreement, as an effective mechanism for verifying the compliance of the licensee applicant with the license requirements and conditions prescribed in the law will be formed.

Tax benefits

After the enactment of the Decree, subcontractors, including foreign ones, and investors fall within the category of entities that are exempted from payment of value added tax on works (services) performed by non-residents (VAT) **until January 1, 2021**. They are eligible for tax benefits when (i) investors are involved in the implementation of “Business city” projects, including “Tashkent city” project and (ii) subcontractors implement “Business city” projects, including “Tashkent city” project, on EPC basis utilizing “fast-track” method. The Decree expands the existed list of entities enjoying VAT exemption and now, the exhaustive list comprises general contractor, general engineering organization, subcontractors, including foreign subcontractors, and investors.

“Fast-track” method

EPC-projects (Engineering Procurement Construction) may be implemented through “fast-track” method² **since December 1, 2018**. This method infers the creation of consortium³ of engineering and construction organizations (where each participant retains its separate legal status) that implements the project by simultaneous engineering, procurement and construction rather than splitting the named processes on subsequent steps. Consortium members share responsibility for the high standard and timely realization of projects. Shared responsibility allows creditors to claim all damages from any consortium member.

BIM technology

From July 1, 2019, the usage of BIM (Building Information Modeling) technology for all participants (customer, engineer, and general contractor/subcontractors) of the construction process will be obligatory. BIM is an intelligent 3D model-based process that gives architecture, engineering, and construction professionals the insight and tools to more efficiently plan, design, construct, and manage buildings and infrastructure.

²It is a technique where activities that would have been performed sequentially using the original schedule are performed in parallel. In other words, fast tracking a project means the activities are worked on simultaneously instead of waiting for each piece to be completed separately.

³Short-term arrangement in which several firms from the same or different industry sectors or countries pool their financial and human resources to undertake a large project that benefits all members of the group.

Expert appraisal

Since December 1, 2018, the cost estimates for construction projects involving objects being built at the expense of direct investments or foreign direct investments are no longer subject to mandatory expert appraisal.

Current legislation provides for two types of examination: comprehensive examination and examination of town-planning documentation. Comprehensive one is a more complex examination and mandatory only in particular cases of investment and infrastructure projects, while examination of town-planning documentation is the essential part of all construction projects. The Decree alters the examination process in the part of cost estimates expert appraisal. Now, the source of funding becomes the main criterion when deciding whether to apply expert appraisal of the cost estimates. If the construction is financed by the state budget or through a legal entity that has a state shareholding (centralized investments), then expert appraisal of cost estimates is required. On the other hand, the presence of direct private or foreign direct investments excludes such a requirement.

The comprehensive examination is mandatory to projects financed by direct investments or foreign direct investments when:

- The project is implemented on the basis of Presidential Decree of Uzbekistan that provides for certain tax benefits without the involvement of international financial institution or foreign state financial organization;
- The project includes the extraction and/or processing of strategic minerals (precious, non-ferrous, rare and rare earth metals, hydrocarbons, coal, uranium).

As the legislation does not explicitly specify the type of examination that shall adopt altered requirements for cost estimates expert appraisal, the supplementary regulations may clarify this issue. If the new regulation extends the application of these changes to the comprehensive examination, the above-mentioned projects will not be obliged to apply expert appraisal for cost estimates.

Commissioning

Prior to the December 1, 2018, the commissioning procedure was exercised in two steps: firstly, by working committee and then, by the state committee that comprised of a number of representatives. Starting with changes, the two-stage procedure is now transformed into single-step and the number of participants in the state committee has been significantly

reduced. Now, the following entities are the only participants of the state commissioning: construction verification inspection under the Ministry of Construction, cadaster authorities, the employer (customer) and general contractor.

The commissioning procedure of objects that are built at the expense of entities involved in public procurement is not subject to these changes.

From January 1, 2020, projects for residential objects must foresee the installation of energy-efficient and energy-saving equipment at the engineering (designing) stage. After the construction is complete and objects are equipped, an energy audit passport must be received prior to the commissioning. In order to acquire an energy audit passport, independent private company providing professional energy audit services must be hired. This requirement is not applied to the buildings certified by international BREEAM⁴ (Building Research Establishment Environmental Assessment Method) and LEED⁵ (The Leadership in Energy & Environmental Design) standards.

Delegation of Authority

From the beginning of 2019, some powers of the National Agency of Project Management (NAPM) have been transferred to other State authorities:

- Authority for regulating issues concerning the public procurement - to the Ministry of Finance;
- Authority for licensing the activities of the project organizations and for accreditation of individuals performing the examination of construction projects – to the Ministry of Construction;
- Authority for exercising state regulation of the valuation activities and standardization processes concerning property evaluation practice – to the State Competition Committee;
- Authority for implementing comprehensive type of examination – to the Ministry of Economy and Industry.

Further modification of legislation

The Decree also covers issues concerning modification of current norms and standards in the construction industry and stipulates that by 2028 the legislation will be fully changed and modified by the gradual adoption of the foreign experience.

⁴BREEAM is an assessment using scientifically based Sustainability metrics and indices that covers a range of environmental issues. Its categories evaluate energy and water use, health and wellbeing, pollution, transport, materials, waste, ecology and management processes.

⁵LEED is the most widely used green building rating system. Available for virtually all building, community and home project types, LEED provides a framework to create healthy, highly efficient and cost saving green buildings.

The local and foreign legal entities together with public and international organizations are encouraged to participate in the abovementioned processes. All newly adopted legislation will be published on the official web-site of Uzstandard Agency, which will be responsible for making all construction standards, technical regulations and norms available for public access.