

NEW 2009 CONSTRUCTION LAW



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On 28 October 2009 the Macedonian Parliament passed the new Construction Law. The Law came into force on 5 November 2009.

The first among the amendments was the alteration in the area of licenses and authorizations for the participants in the construction process, in general making stricter the conditions to receive the appropriate license. At the same time, the licensing fee is only vaguely determined, in the range of EUR500 and EUR3000, and the actual provision is left to the Ministry of Transport and Communications, whereas the authorization fee is determined by the Chamber of Architects and Engineers' Assembly.

Another new addition is the possibility to contract a legal entity - subcontractor to perform certain construction works, provided that it meets the conditions for implementing works provided in the Law.

Licenses to legal entities which perform planning, construction and supervision are issued by the Ministry of Transport and Communications of the Republic of Macedonia for a period of 7 years.

Authorizations to individuals (planners, supervision engineers and construction engineers) are issued and withdrawn by the Chamber of Authorized Architects and Engineers for a period of 5 years.

The second significant alteration is the possibility for foreign individuals and legal entities to engage in construction within the Republic of Macedonia. However, the possibility for foreign legal entities to take part in construction of facilities is brought into question, since foreign legal entities cannot engage in construction unless they have registered legal entities within the Republic of Macedonia (which have the status of domestic legal entities, even though the founder is foreign).

Foreign individuals with authorization from a different country can perform planning, reviews, construction and supervision of construction provided that this authorization is confirmed by the Chamber of Authorized Architects and Engineers, and only as part of a legal entity registered for this type of work with the Central Register.

As an exception to the above, foreign individuals and legal entities can perform all the mentioned works provided there is an intergovernmental agreement for reciprocity, in accordance with the conditions provided.

Another important development is the newly introduced possibility for Municipal Councils to determine the look of the buildings in a certain area if they consider it to be of municipal importance, in which case the Municipality is responsible to relieve the investor of the duty to pay a fee for landscaping. Related to the look of buildings, the Municipal Council passes a separate Program containing data and instructions on the look of building/s and a graphic representation of the determined look.



Similarly, a possibility is envisioned for Municipal Councils to determine by decision the time period during the year when construction is not allowed in a certain tourist area.

building which is noted in public blueprints, and the mortgage rights to the site and the construction, or to parts of the construction are reverted to the Republic of Macedonia (for category 1 and 2 buildings), or the Municipality (for category 3, 4a and 5 buildings). This decision simultaneously requires the investor to pay penalties in the amount of 3% per month of the market value of the same or similar real estate. The noting of the mortgage rights and the meting out of penalties will delay the enforcement of the decision for three years starting from the date of passing of the decision. The mortgage rights in favor of the Republic of Macedonia or the Municipality cease if the obligations for removal prescribed in the decision are met and the penalties are paid.

This provision instigated many public reactions and debates, and the Constitutional Court of RM is expected to state its position on the constitutionality of this provision.

Lastly, fines for violations by participants in construction have been increased.

An interesting development is the newly introduced offence sanction - a fine amounting from EUR2000 to EUR3000 for the responsible personnel and officials, not only if they do not issue the construction approval in the above period, but also if the responsible bodies do not make a decision based on the proposal by the responsible inspector for annulment of administrative acts, determined by the inspection to be unlawfully issued.

The new law prescribes smaller alterations in the procedure for issuing construction permits. Presently the constructor is required to submit a proof of ownership of the site - property list or another proof of obtained construction rights, which was not the case in the past.

An important development is the newly introduced requirement to complete the construction in a given period of time: category 1 and 2 buildings should be completed within 10 years from the enforcement of the construction approval; category 3 buildings should be completed within 6 years; whereas category 4 and 5 buildings should be completed within 4 years.

It also stipulates a requirement for owners of existent facilities without a façade to complete it within 2 years of enforcement of the law.

The most controversial provision of the new Law is laid out in Article 138, which regulates the sale, liabilities on property, and disposition of the land and the building, when the building is constructed without or contrary to the construction approval.

Namely, based on this provision, the responsible construction inspector, upon determining that the building is under construction or has been constructed without a construction approval or contrary to the issued approval, can issue a ban on sales, liabilities on property and disposition of the land and

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A fine of EUR1000 to EUR2000 is envisioned for the responsible inspectors in case they do not perform supervision in line with the law.

Contrary to the previous law, which included the settlement procedure only as an option, the new law stipulates a compulsory implementation of this procedure before initiating an offense procedure before the responsible court.

