

# Construction and Projects in Serbia: overview

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A Q&A guide to construction and projects law in Serbia.

The Q&A gives a high level overview of the main trends and significant deals; the main parties; procurement arrangements; transaction structures and corporate vehicles; financing projects; security and contractual protections that funders require; standard forms of contracts; risk allocation; excluding liability, including caps and force majeure; contractual provisions covering material delays and variations; appointing and paying contractors; subcontractors; licences and consents; projects insurance; labour laws; health and safety; environmental issues; corrupt business practices and bribery; bankruptcy/insolvency; public private partnerships (PPPs); dispute resolution; tax and mitigating tax liability; the main construction organisations; and proposals for reform.

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## Overview of the construction and projects sector

1. What are the main trends in the local construction and projects market? What are the most significant deals?

### Main trends

The real estate market in Serbia is again full of expectation. There has been remarkable growth in condominium residential developments led by Israeli and UAE investors. In addition, with the introduction into the market of international commercial real estate developers and managers with a wide range of premium industrial warehouse and office buildings, such as IKEA and CTP.

The Serbian real estate market traditionally revolved around five primary areas, including office space, the residential market, the retail segment, the industrial segment and the hotel market. New trends, such as the construction of retail parks and shopping malls are arriving every year. The development of retail parks has become very popular, primarily due to their lower initial investment, shorter construction period and ability to be developed

in phases. Key investors developing these types of developments are Aviv, Poseidon Group, Immofinanz, BIG, Nepi Rockcastle, RC Europe and MPC Properties.

Having in mind that the array of new regulations and several updates to existing legislation gave significant momentum to the construction of residential and commercial facilities, the same approach appears to be followed in inducing development of projects for the production of energy from renewable sources as well as infrastructure projects.

## Major projects

Traditionally, the public sector was one of the largest procurers of construction services.

One of the most important projects currently underway is the Vinča landfill project, which will rehabilitate the Vinča landfill and construct a waste management facility for the generation of heat and power as part of a Public Private Partnership (PPP). A binding offer was submitted from the French-Japanese consortium, Suez-Itochu, to the city of Belgrade, and the tender commission accepted the consortium's offer in late August 2017. The estimated project value is EUR330 million. However, the project is still on hold.

Construction of the Belgrade-Budapest railway is in the process, with an approximate project worth at EUR2 billion. Construction works on the part of the railway are performed by the reputable Chinese companies China Railways International and China Communications Construction Company.

Belgrade Nikola Tesla Airport will be further operated as a concession by Vinci Airports, for a period of 25 years. Agreement on concession was signed on 22 March 2018 and the total nominal value of this transaction is around EUR1.46 billion.

The biggest project in the Republic of Serbia is the Belgrade Waterfront (*Beograd na vodi*) project, which focuses on the construction of a EUR3.5 billion residential and business complex in Belgrade. The project is being conducted by the Republic of Serbia and an investor from the United Arab Emirates. Apart from the Belgrade Waterfront, a number of other large residential projects are being developed in Belgrade, such as K-district, Sakura, West65 Tower, BIG residences, Wellport, Savada and others. In addition, AFI Europe is investing EUR200 million in the project "Skyline Belgrade", which will have a total of 64,000 square metres of housing and office space with an office tower 28 stories high and residential towers of 16 to 17 floors and 22 floors.

It is worth of mentioning that in the office space sector, investors, such as Africa Israel and Tidhar Group, GTC, Delta Holding, Yossi Avrahami Limited, MPC Properties, AFI Europe and Shikun & Binui Group, have commenced a handful of projects across Belgrade with tenants who are primarily large multi-national companies.

Some of the most attractive office projects in Belgrade include:

- The development of USCE Tower II, an A+ class office building with 22,000 square metres GLA.
- The development of Navigator 2, an A+ class office building with 27,000 square metres GLA.
- II phase of Sirius project (Immorent), an A+ class office building with 25,000 square metres GLA.
- GTC's expansion of two projects: the expansion of the GTC Square, which will become Green Heart of total 46,000 square metres in five buildings, and the development of project GTC X, of a total of 30,000 square metres.

- Business Garden (Tidhar Group/AFI Europe), which is currently under construction. On completion, Business Garden will cover about 14,000 square metres of office space.

Although still rather underdeveloped, demand for modern logistics facilities in Serbia is increasing. However, as this market segment gains sophistication and new investors enter the Serbian market, the development of rental facilities is planned for construction. One example is the German discounter Lidl, which opened a distribution centre for the 20 supermarkets it opened during 2018. Additional growth in this sector is expected by the entrance of CTP, which is looking for opportunities to expand its business model and increase its already significant network of warehouses. Serbia is also expecting to see the construction of Nelt's new logistics building and the construction of the MIND Park industrial complex.

The hotel market still lacks a significant presence of high-end hotels and hotel chains. This is a sector of the market that is gaining momentum and importance as it develops and as the tourism industry in Serbia gains popularity. For example, on 1 March 2018, the first Hilton and Mama Shelter hotels were opened for business in the centre of Belgrade and Hotel Sheraton was opened in Novi Sad. Starwood Hotels & Resort Worldwide announced another novelty in the Serbian market, launching its new brand Hotel W Belgrade within the Belgrade Waterfront complex. Marriot will open St Regis hotel within the building Belgrade Tower (Kula Beograd), also a part of the Belgrade Waterfront complex.

## Procurement arrangements

2. Which are the most common procurement arrangements if the main parties are local? Are these arrangements different if some or all of the main parties are international contractors or consultants?

There are no specific procurement arrangements that affect international contractors and consultants only.

Public construction projects are subject to a public tender procedure in accordance with the Law on Public Procurements. The public tender procedure should be conducted in a non-discriminatory manner to ensure transparency and competition.

Private projects are arranged by private investors using private resources. The procurement arrangements for these private projects are not specifically regulated by law. In practice this means that private parties can organise the procurement arrangements how they wish. However, a bank providing a loan for project finance may have certain specific requirements in terms of procurement arrangements.

If the main parties are international contractors, the procurement arrangements may be in accordance with the standard contract forms issued by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*) (FIDIC).

## Transaction structures

3. What transaction structures and corporate vehicles are most commonly used in both local and international projects?

### **Local projects**

For local private projects, the most commonly used corporate vehicles are special purpose vehicles (SPVs) and joint venture contracts. Smaller projects are usually based on joint venture contracts, whereas larger projects are conducted through SPVs.

A consortium can also be used as a form of association that brings together private parties to perform construction projects and to participate in public private partnerships.

### **International projects**

International projects are mostly conducted through a SPV, preferably a limited liability company.

### **Finance**

4. How are projects financed? How do arrangements differ for major international projects?

Public infrastructure projects are primarily self-financed or financed through a loan taken from an international financial institution, such as the European Investment Bank, World Bank, and European Bank for Reconstruction and Development.

There is also a trend in the Republic of Serbia towards private investment in public infrastructure projects, primarily through public private partnerships with foreign investors.

Classic forms of project financing are dominant in the financing of both local and international private projects. For example, a loan used to finance the project is paid back from the income generated by the project, and the project's assets, rights and interests are held as secondary security or collateral.

Other forms of financing, such as mezzanine finance and bond issues, are almost never used in either the public sector or the private sector, as trading in these kinds of structures is not developed in the Republic of Serbia.

When it comes to financing international projects, there are no major differences between these and local projects. Commonly, a foreign bank provides a loan to a borrower via the bank's local subsidiary.

## Security and contractual protections

5. What forms of security and contractual protections do funders typically require to protect their investments?

### Security

Common forms of security required by a lender include the:

- Mortgage over the real estate of a borrower or its affiliated companies.
- Pledge over assets of a borrower or its affiliated companies (for example, financial instruments such as money deposited on bank accounts and securities, vehicles, construction machines, receivables, shares).

### Contractual

Contractual mechanisms used to protect the lender include the following:

- Step-in rights (for example, a step-in agreement has been recently introduced in the projects pertaining to the renewable sources of energy).
- Property or works insurance.
- Bank or corporate guarantee.
- Warranties provided by third parties.
- Assignment of contractual rights, with the borrower's consent for the assignment given in advance.
- Contractual penalties.

### Standard forms of contracts

6. What standard forms of contracts are used for both local and international projects? Which organisations publish them?

## Local projects

For local private projects the basic form of construction contract commonly used is the contract provided under the Law on Contracts and Torts and provisions of the Special Construction Rules, with adjustments for the specific requirements of the contractor or employer. Exceptionally, if the funds for the project are borrowed from a foreign bank, a FIDIC contract may be required by the bank. FIDIC contracts are also increasingly being used for public infrastructure projects.

The reasons why FIDIC contracts are not widely used for local projects in the Republic of Serbia compared to the rest of the EU are the lack of compatibility between FIDIC contracts and local practice among contractors and the lack of experience of Serbian contractors in using this form of contract.

In general terms, FIDIC contracts diverge from local practice and regulations in terms of:

- Dynamic of works.
- Deadline for payment to a contractor by an investor.
- Supervision of works by an engineer.
- Amendment of the agreed price.
- Deadlines for notification of deficiencies.
- Project planning and documentation.
- Dispute resolution mechanisms.
- Claims.

## International projects

Local projects tend to use the basic local form of contract (*see above, Local projects*). International projects mostly use FIDIC contracts, for example, the red book is commonly used.

## Contractual issues

## Contractors' risks

7. What risks are typically allocated to the contractor? How are these risks offset or managed?

There are several types of contractors' liability.

The Law on Contracts and Torts and Special Construction Rules prescribe the following liabilities:

- Liability for performed works and related deficiencies.
- Liability for deficiencies of the facility resulting from an error in the project (if the error could have been noticed by the contractor).
- Liability for deficiencies in the material used for the work (the contractor must warn the employer about material deficiencies if it knew or ought to have known about them).
- Liability for solidity deficiencies in the work, if the deficiencies arise within ten years of the taking-over procedure (when the employer takes over the completed project).
- Liability for deficiencies in the ground on which the construction was built, for a period of ten years from the taking-over procedure (unless a professional agency provided an opinion that the ground was suitable for construction work, and during the work no suspicion about this appeared).

Unless otherwise agreed, a contractor has some protection against increases in the costs of the work. If the cost of elements on which the price of the works was based increases by more than 2% within the relevant period, the contractor can ask for the contract price to be increased. However, the employer can require a price decrease if, during the relevant period, a cost element decreases by at least 2%.

If the price of cost elements changes by 10% or more, either party can request a price adjustment, even when the contract states the price of works cannot be changed.

Even when the parties have agreed that the contract price cannot be increased, a contractor may have a right to request an increase in the contract price in the event of delay in performance, if this delay is caused by the employer.

### **Excluding liability**

8. How can liability be excluded or restricted under local law?

Generally, a contractor is liable for foreseeable damages (effective damage and loss of profit), unless otherwise agreed in the contract. Liability for damage can be excluded in advance, except for damage caused by wilful misconduct or gross negligence.

The following liabilities of the contractor cannot be limited or excluded:

- Liability for deficiencies in the solidity of a constructed facility that become apparent within ten years from the hand-over of the performed work.
- Liability for the deficiencies in the land on which the facility has been constructed, unless a professional agency provided an opinion that the ground was suitable for construction work, and during the construction works no suspicion about this appeared.
- Liability for deficiencies in the facility due to omissions in the concept design, if these omissions could have been noticed by the contractor.

## Caps on liability

9. Do the parties usually agree a cap on liability? If yes, how is this usually fixed? What liabilities, if any, are typically not capped?

Liability for damage can be limited, if allowed under the law and subject to exceptions (see [Question 8](#)).

Any cap on liability must not be obviously disproportionate with the actual amount of damage.

## Force majeure

10. Are force majeure exclusions available and enforceable?

Clauses excluding the liability of the contractor in a *force majeure* event are usually negotiated between the contract parties and enforceable. Force majeure clauses often relate to a contractor's liability for delay in construction works that has been caused by a force majeure event. Force majeure is not explicitly defined under Serbian regulations. This is in contrast to FIDIC contracts, which describe the term in detail.

According to the Special Construction Rules (see [Question 7](#)), a contractor can request an extension to a deadline for performance of works, if a delay is caused by changed circumstances or because the employer failed to fulfil its obligations. The following are considered to be changed circumstances:

- Natural events (for example, fire, flood, earthquake, extremely bad weather unusual for that time of year or region.).



- Measures imposed by the decisions of public authorities.
- Conditions relating to the ground or water, which were not predicted in the project documentation.
- Delay by the employer in enabling the contractor's site access.
- Delay in the delivery of materials, if the materials are acquired by the employer or delivered by a supplier designated by the employer.
- Unforeseeable works that the contractor did not know about or could not have known would need to be performed.
- Excess of works in the amount larger than 10%.

In addition to the above list, the Law on Contracts and Torts stipulates that if the fulfilment of a contractual party's obligations is not possible because of events for which for the contractual parties are not liable, all contractual obligations will cease to exist, provided that each party returns all relevant amounts received from the other parties. On the other hand, the Law on Contracts and Torts also envisages the institute of changed circumstances (hardship) - in case that upon conclusion of the agreement, circumstances change to the extent that the fulfilment of the agreement is hindered or the purpose of the agreement cannot be realized anymore for one party, such agreement can be ultimately terminated or amended in an equitable way.

The general rule is that all contract variations must be agreed in writing. However, a contractor does not need to ask for an employer's permission to perform urgent and unforeseeable works (for example, to avoid damage from earthquakes, floods and fire).

Force majeure is usually defined as an external event which could not have been foreseen, avoided or remedied by the contractual parties. If one party fails to fulfil its contractual obligations due to the force majeure event, it will not be liable for such failure. In addition, if a *force majeure* event occurs and extends the deadline by which an employer must give the contractor access to the site, this will also extend the contractor's deadline for performance of the contract.

In relation to the situation with the 2019 novel coronavirus disease (COVID-19), the public authorities in Serbia have not completely shut down construction sites. However, due to the other administrative measures (such as mandatory social distancing, a limitation on local and inter-city transport and policing hours), the working capacities of construction sites have been significantly reduced.

In practice, there are two main problems:

- The applicable laws do not specifically regulate *force majeure* and do not offer clear guidelines in relation to the influence of COVID-19 on contractual relations;
- The usual force majeure clauses used in construction contracts did not appropriately address all the consequences of the breach of the agreement inherent in situations such as COVID-19.

Therefore, the present situation requires compromise and understanding from both sides, with parties annexing their construction agreements by extending the deadlines for the time period during which the COVID-19 measures are in force.

## Material delays

11. What contractual provisions are typically negotiated to cover material delays to the project?

Liquidated damages to cover material delays to a project are typically included in construction contracts.

### **Material variations**

12. What contractual provisions are typically negotiated to cover variations to the works?

For every divergence from the project, a contractor must ask for written permission from the employer. A contractor cannot ask for reimbursement for works performed without the employer's permission. However, unlike a contractor, an employer does not need the consent of the contractor to make changes to the project.

If an employer does seek changes to a project, the contractor can ask for a change of the agreed price and the timeframe for performance of works.

In a lump sum contract the agreed price covers all unpredictable work and excess work but the contract price cannot be reduced to reflect any decrease in the of value of the work to be performed.

As international projects are usually performed under a FIDIC contract, the main difference is the existence of the contractor's right to claims that are not explicitly prescribed under the Serbian law. According to a FIDIC contract, the contractor is entitled to an extension of time to perform additional works and to increased payment, provided the reasons for the additional works are envisaged in the contract and the contractor has given the project engineer timely notification of the need for the work.

### **Other negotiated provisions**

13. What other contractual provisions are usually heavily negotiated by the parties?

The issues raised in *Questions 8 to 13* tend to be heavily negotiated between the parties. In addition, another heavily negotiated element is responsibility for the provision of materials for the work. In practice, however, the contractor is normally responsible for providing the materials.

## Architects, engineers and construction professionals

14. How are construction professionals usually selected? Following selection, how are they formally appointed?

On public construction projects the professionals involved are selected and appointed through a public tender procedure. For private projects, the selection of construction professionals is conducted through private procedures, which are not subject to strict formal legal requirements.

Employers tend to be led by the reputation of a contractor as a company, rather than by the reputation of an individual construction professional the contractor has retained. Construction companies are usually selected based on the following elements:

- Price offered for performance of the work.
- Timeframe within which the works should be done.
- Contractor's references (previous works, number of skilled professionals and equipment possessed).
- Method of payment (especially if advanced payment is excluded).

Construction professionals are appointed by contract, which must be in a written form.

The same applies to international projects.

15. What provisions of construction professionals' appointments are most heavily negotiated? Are liabilities commonly limited or capped in construction professionals' appointments?

## Negotiated provisions

The issues raised in *Questions 8 to 13* tend to be heavily negotiated between the parties. In addition, the procedure for project alterations also tends to be heavily negotiated. This includes the number of times a project can be returned and the reasons for return.

## Liability

During the procedure for obtaining a construction permit the competent authority inspects only whether the formal conditions for construction are met. It does not inspect technical aspects of the project documentation.

If a construction permit has been issued and damage is incurred as a consequence of implementing the project documentation, the responsible architect (that is, the professional that performed the technical inspection of the project documentation) and the investor will be jointly and severally liable.

The same applies to international projects.

## Payment for construction work

16. What are the usual methods of payment for construction work? Are there ways for the contractor and consultants to secure payment or mitigate risks of non-payment under local law?

## Methods of payment

Contractors are paid based on the contract, and in accordance with any interim payment certificate and final payment certificate.

## Securing payment

To protect itself against non-payment by the employer, a contractor may seek contractual entitlement to a parent company guarantee, a bank guarantee, or a promissory note, or similar.

A person to whom the whole or a part of some property is transferred is liable for debts relating to part or all of the property, jointly alongside the former owner, but only up to the value of its assets (*Article 452, Law on Contracts and Torts*). This offers a contractor some additional protection against non-payment.

## Subcontractors

17. How do the parties typically manage their relationships with subcontractors?

A contractor can employ a subcontractor. If this is done generally, all duties arising from an employer-contractor relationship transfer to a contractor-subcontractor relationship. The contractor is responsible for the subcontractor's errors.

Relationships between contractors and subcontractors are regulated under a subcontractor agreement. Under local law, an employer may become liable to pay a subcontractor directly, under certain conditions.

## Licensing

18. What licences and other consents must contractors and construction professionals have to carry out local construction work? Are there any specific licensing requirements for international contractors and construction professionals?

A contractor must be appropriately registered to undertake a project activity. In addition, all relevant employees of the contractor must hold the necessary professional qualifications and licences.

International contractors must establish a company or branch office in Serbia before they can perform construction activity.

19. What licences and other consents must a project obtain?

## Before

Before a project starts, an investor must have the necessary location information, concept design, and information about location conditions to apply for a construction permit (technical control).

An investor also requires clarification of property relations and resolution of any issues, along with a plan for performance of the building work.

Before actual work can commence a construction permit must be obtained and the necessary land development fee paid.

## During

Once construction of a facility's foundations has been completed, a contractor must submit a statement of completion of the foundations to the competent body that issued the construction permit. The body will then inspect the

completed foundation works and, assuming the work is found to comply with the required standard, approve further construction.

## On completion

On completion of the project the following are required:

- Utility connections.
- Technical inspection and confirmation that the project is built according to the design.
- Permit for approved use.
- Registration of the building as a newly constructed building.

## Projects insurance

20. What types of insurance must be maintained by law? Are other non-compulsory types of insurance maintained under contract?

### Compulsory insurance

The following compulsory insurances are required:

- Collective accident and injury insurance for employees to cover compensation for injuries at work, occupational diseases and diseases related to work.
- Professional liability insurance, for a company or person providing professional services, such as preparation and inspection of the technical documentation, or a contractor, or other person performing professional supervision and technical inspection.

### Non-compulsory insurance

Parties can take out other non-compulsory insurance to cover a variety of risks. The chosen scope depends on the insured entity.

Typical primary hazards covered by non-compulsory insurance include fire, lightning, explosion, storm, hail, public demonstration, snow avalanche, unforeseen construction accident, clumsiness, carelessness or malevolence of workers or other persons, and burglary and ordinary theft. A special agreement may be made to cover the risk of damage caused by earthquake, flood, and underground water.

## Employment laws

21. What are the main requirements for hiring local and foreign workers?

### Local workers

An employment relationship can only be established with a person of at least 15 years of age, who fulfils the legal conditions for work on a particular job or the rules on organisation and systematisation of work posts *The Labor Law (Zakon o radu)* (*Official Gazette of the Republic of Serbia Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 and 95/2018 – auth. interpretation*).

### Foreign workers

In addition to the requirement that applies to local workers (*see above, Local workers*), a foreign worker must obtain a temporary residence permit and respective work permit. The complete procedure can take up to two months and its costs range from about EUR200 to EUR300. The work permit can be issued either on an individual basis at the foreign worker's request (for example, for self-employment or a particular purpose) or at the employer's request as a work permit linked to employment.

22. Which employment laws are relevant to projects?

The employment laws of most relevance to construction projects are:

- The Labour Law.
- The Law on Employment of Foreign Nationals (*Zakon o zapošljavanju stranaca*) (*Official Gazette of the Republic of Serbia Nos. 128/2014, 113/2017, 5020/18 and 31/2019*)

23. Must an employer pay statutory redundancy or other payments at the end of a project? Are all employees eligible?

An employer must make a statutory redundancy payment in the event of termination of employment due to redundancy.

The amount paid must be at least one-third of the employee's salary for each full year of employment with the particular employer. Payment is a prerequisite for termination of employment and a mandatory pre-condition for the validity of the decision to terminate.

No mandatory statutory redundancy payment is required in other cases of termination.

## Health and safety

24. Which health and safety laws apply to projects?

The following health and safety laws apply to construction projects:

- Law on Fire Protection (*Official Gazette of Republic of Serbia, Nos. 111/2009, 20/2015, 87/2018 and 87/2018 – other law*).
- Rules on the content of the study on the organization of site (*Official Gazette of Republic of Serbia, Nos. 121/2012 and 102/2015*).
- Law on Safety and Health at Work (*Official Gazette of Republic of Serbia, Nos. 101/2005, 113/2017, 91/2015, 113/2017 – other law*).
- Labour Law (*Official Gazette of Republic of Serbia, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 and 95/2018 – auth. interpretation*).

## Environmental issues

25. Which local laws regulate projects' effects on the environment?

### Air



The Law on the Protection of Air (*Zakon o zaštiti vazduha*) (*Official Gazette of the RS, Nos. 36/2009 and 10/2013*) is the primary piece of legislation regulating air. It includes provisions on managing air quality and on determining measures to protect and improve air quality.

## **Water**

The Law on Waters (*Zakon o vodama*) (*Official Gazette of the RS, Nos. 30/2010, 93/2012, 101/2016 95/2018 and 95/2018 – other law*) regulates water. This piece of legislation prescribes measures for maintaining necessary water quality levels and protecting water from contamination. The measures are determined and applied in accordance with a detailed plan for protection of water from contamination, provided by the competent authorities.

## **Waste**

The Law on Waste Management (*Zakon o upravljanju otpadom*) (*Official Gazette of the RS, No. 36/2009, 88/2010, 14/2016 and 95/2018 - dr. zakon*) regulates waste.

Hazardous and non-hazardous waste from demolition, preparatory site work, and construction all comes within the category of construction waste and must be managed accordingly.

## **Environmental impact assessments (EIAs)**

The rules on energy efficiency of buildings determine whether an EIA must be performed.

## **Sustainable development**

Serbia still has not yet fully developed its sustainable development policy. For example, renewable energy projects are in the initial phase.

26. Do new buildings need to meet carbon emissions or climate change targets?

An energy performance certificate is required as part of the technical documentation that must be submitted with an application for a building use permit.

## **Prohibiting corrupt practices**

27. Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

## Rules

There is no specific national anti-corruption legislation in Serbia. The relevant legal framework is comprised of various laws. The primary piece of anti-corruption legislation is the Criminal Code, which defines the following activities as crimes:

- Trading in influence.
- Passive bribery (that is, the offence committed by the person who receives the bribe).
- Active bribery (that is, the offence committed by the person who promises or gives the bribe).

Another relevant piece of legislation is the Law on the Liability of Legal Entities for Criminal Offences. This states that a legal entity is liable for a criminal offence committed for its benefit by a responsible person acting within the scope of their work and powers. A legal entity is also liable where a lack of supervision or control by the responsible person for a natural person allowed the commission of a crime by that natural person for the benefit of the legal entity.

## Penalties

The sanctions for the crimes mentioned above (*see above, Rules*) are between six months and 12 years' imprisonment. The legal entity may also be liable for fines between RSD100,000 and RSD5 million.

## Bankruptcy insolvency

28. What rights do the client and funder have on the contractor's bankruptcy or insolvency?

In general, at the date of bankruptcy proceedings all creditors' claims in relation to the bankruptcy debtor will be deemed as immediately due.

In relation to existing contracts that remain unfulfilled by a contractor and a counterparty at the date of the bankruptcy, the bankruptcy administrator can, on behalf of the contractor, execute the contract and demand that the counterparty also fulfils its obligations.

If the bankruptcy administrator refuses to fulfil a contractual obligation to a counterparty then the counterparty can pursue a claim as a bankruptcy creditor, within the bankruptcy procedure.

Where the counterparty to a contract requests the bankruptcy administrator to state its position on fulfilling the contract, the bankruptcy administrator must inform the counterparty in writing, within 15 days of receiving the request, whether it intends to fulfil the contract. If a bankruptcy administrator upholds the contract but ceases fulfilment in the course of the bankruptcy proceedings, any claims arising from the contract will be considered as a liability of the bankruptcy estate.

## Public private partnerships

29. Are public private partnerships (PPPs) common in local construction projects? If so, which sectors commonly use PPPs?

The concept of PPP has been introduced to the Serbian jurisdiction only fairly recently. Therefore, in practice these partnerships are not numerous and the methods for application are still not completely clear and developed.

So far, PPPs have been used in the following sectors:

- Construction.
- Transport.
- Infrastructure.
- Public services.
- Utilities.
- Energy.

30. What local laws apply to public private partnerships (PPPs)?

The following legislation represents the main regulatory framework for PPPs in Serbia:

- The Law on Public Private Partnership (*Official Gazette of RS, No. 88/2011, 15/2016 and 104/2016*).
- The Law on Public Procurement (*Official Gazette of RS, No. 124/2012, 14/2015 and 68/2015*).
- The Rulebook of the Commission for Public Private Partnership.

- The Decree on the Oversight of Enforcement of Public Private Partnership Contracts (*Official Gazette of RS, No. 47/2013*).
- The Rulebook on the Keeping and Content of the Register of Public Contracts (*Official Gazette of RS, No. 57/2013 and 110/2013*).

31. What is the typical procurement or tender process in a public private partnership (PPP) transaction? Does the government or another body publish standard forms of PPP project agreements and related contracts?

There are three different stages of PPP procurement. Each involves different steps, discussed below.

### **Stage one**

Stage one involves an assessment of the justification for using a PPP model. A public body (defined in the Law on Public-Private Partnership) makes a decision about whether to launch a PPP project. This stage can be prompted by a self-initiated proposal from an interested party.

### **Stage two**

Stage two involves the preparation and approval of a project proposal, and includes both the following:

- The public body creates a project proposal and submits it to the relevant body for approval (that is, to the Government of Serbia, the Government of the Autonomous Province of Vojvodina, or a municipal assembly, depending on the type of the project and the type of public partner).
- A detailed project proposal, including all relevant and necessary information, must be submitted to the Commission for Public Private Partnership. The Commission for Public Private Partnership then evaluates whether the given project can be realised in the form of a PPP and gives its opinion.

### **Stage three**

Stage three includes the following procedure for tender and award of a public contract:

- The public body makes a decision about the commencement of the public procurement procedure.
- The public body prepares tender documentation together with a draft public contract. The tender documentation consists of different elements, depending on what is relevant to the type of project.
- The public body must publicly announce an invitation to tender for the PPP.
- The tenders are evaluated by the public body and a decision on awarding the contract is made.

- The PPP contract is signed.

## Dispute resolution

32. Which are the most common formal dispute resolution methods used? Which courts and arbitration organisations deal with construction disputes?

### Formal dispute resolution methods

In Serbia, there are no specific dispute resolution methods preferred in construction disputes, and no specific courts designated to hear the construction disputes.

Serbian arbitration awards are not available as public record, and this impedes an evaluation of recent practice. Therefore, the following is a summary of court litigation and arbitration, as these methods are used for construction disputes as well as general matters.

**Litigation.** Serbian parties tend to favour traditional litigation proceedings before the courts over methods of alternative dispute resolution. Litigation proceedings are governed by the Law on Civil Procedure (*Zakon o parničnom postupku*, *Official Gazette of RS*, nos. 72/2011, 49/2013 - CC decision, 74/2013 - CC decision 55/2014, 87/2018 and 18/2020). The principles and provisions of the Law on Civil procedure clearly indicate that litigation proceedings are an adversarial type of procedure.

The court is bound by the claims and defences filed in the proceedings and cannot make decisions beyond the bounds of the claims and defences submitted by the parties. A court has only limited capacity to take evidence and determine facts on its own initiative. Therefore, the burden of enquiry lies on the parties.

Disputes with a foreign element are governed by the Law on Resolving Conflicts of Laws with Regulations of Other Countries (*Zakon o rešavanju sukoba zakona sa propisima drugih zemalja*) (*Official Gazette of SFRY*, Nos. 43/82 and 72/82 – Amend. *Official Gazette of FRY*, No. 46/96 and *Official Gazette of RS*, No.46/2006). This generally envisages that the parties can choose the forum and applicable law to govern their relationship. However, the Law on Resolving Conflicts of Laws reserves jurisdiction to the Serbian courts for certain types of dispute.

Common criticisms of the litigation procedure include the length of the processes and the fact that court practice is not consistent, which leads to legal uncertainty, and undermines public trust in the traditional legal system.

**Arbitration.** In 2006, the Serbian parliament adopted the Arbitration Law (*Zakon o arbitraži*) (*Official Gazette of RS*, No. 46/2006), which regulates arbitration and arbitration procedure when the arbitration is based in Serbia. This law is based on the UNCITRAL Model Law on International Commercial Arbitration 1985 and applies to both international and domestic arbitration.

An arbitration agreement must be in writing. It can take the form of a clause in a contract or a separate agreement. The subject matter of the dispute must be arbitrable. Therefore, it must pertain to rights that can be freely disposed of by the parties and cannot be within the exclusive jurisdiction of State courts.

Ad hoc arbitration, organised in accordance with the parties' agreement and the Arbitration Law, tend to use UNCITRAL arbitration rules. Parties may also refer to the procedural rules adopted by the existing arbitral institutions in Serbia.

For disputes arising from large investments, for example infrastructure transactions and those involving investment in public sector, foreign institutional arbitration is usually preferable.

Lately, there have been more arbitration clauses agreeing ad hoc arbitration under UNCITRAL rules where the parties are actors in smaller and private transactions. The perceived benefit is cost-effectiveness arising from case management procedures.

## Courts and arbitration organisations

Most construction disputes arise between commercial legal entities, (including foreign ones), so the relevant courts designated to hear such matters in Serbia are the commercial courts (for first instance decisions) and the Commercial Appellate Court (for appeals).

In Serbia, there are two permanent arbitral institutions:

- Permanent Arbitration at the Chamber of Commerce and Industry in Serbia (an arbitral institution attached to the Serbian Chamber of Commerce).
- Belgrade Arbitration Center (an independent arbitral institution founded in 2013 by several arbitration experts).

Disputes involving foreign entities and large transactions may be referred to the foreign institutions, such as the International Chamber of Commerce, the Vienna International Arbitral Centre, or the Swiss Chambers Arbitration Institution.

33. What are the most commonly used alternative dispute resolution (ADR) methods?

Besides arbitration (*see Question 32*), mediation is another ADR method used in Serbia.

In 2014 the Serbian parliament adopted the Law on Mediation in Resolving Disputes (*Zakon o posredovanju u rešavanju sporova*) (*Official Gazette of RS, No. 55/2014*), which came into force on 1 January 2015. As this is relatively recent, it is not yet possible to evaluate its application and results in practice.

The Law on Mediation in Resolving Disputes applies to mediation pertaining to disputes that contain a foreign element, if the mediation is conducted in Serbia. Parties are free to use mediation to resolve disputes between them if the subject matter is not the exclusive jurisdiction of State courts or other State bodies.

## Tax

34. What are the main tax issues arising on projects?

The main taxes arising on projects are:

- A property transfer tax of 2.5% levied on either the purchase price or the market value of a property, whichever is higher. However, on first transfer of a newly constructed facility VAT at 10% applies instead of the property transfer tax.
- An annual real estate property tax, which is generally paid by the owner of the real estate. The tax rate depends on:
  - whether a tax payer is a business; and
  - the value of the real estate.
- Performance of construction work is also subject to VAT at 20%. Distinctions are made between the construction of a new property, the extension of existing property, or renovation or refurbishment. For the construction of a new property or the extension of an existing property, the payer of VAT will be the employer, which means that the contractor will not account for the VAT on its services as explained below (see [Question 35](#)). For renovation or refurbishment the payer of VAT will be the contractor.
- All income generated through provision of construction services, and sale or lease of facilities are included in the tax base on which corporate income tax is payable, at a rate of 15%.

35. Are any methods commonly used to mitigate tax liability on projects? Are there any tax incentives to carry out regeneration projects?

## Mitigating tax

There are no methods commonly used to mitigate tax liability on construction projects.

## Tax incentives

If both the contractor providing construction services and the employer are registered as VAT payers, the contractor will not account for the VAT on its services. Instead, the employer will calculate the VAT due on the contractor's services and offset this as input VAT against its own liability for output VAT.

## Other requirements for international contractors

36. Are there any specific requirements that international contractors or construction professionals must comply with?

See [Question 18](#).

## Reform

37. Are there any proposals to reform construction and projects law?

New amendments to the Law on Planning and Construction entered into force in 2020. It is expected that the adopted amendments will enable the integrated procedure for procurement of a construction and use permit to be implemented much more efficiently and will accelerate the process of adoption and application of the planning documents (which was one of the main hindrances for commencement of construction in the recent past).

The Law on Construction Products (adopted in 2018):

- Regulates the conditions for placing construction products on the market.
- Ensures that construction products conform with Serbian technical standards.
- Regulates the import of construction products.
- Recognises when foreign conformity certificates are required for construction products.

### Contributor profiles

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**Non-professional qualifications.** LLB, University of Belgrade; LLM Central European University

**Recent transactions**

- Delta Real Estate Group. Advising on the largest commercial syndicated loan in Serbia at this moment (EUR65 million loan).
- China Railways International. Ongoing real estate advice on the contractual matters with regards to the performance of construction works on the Belgrade-Budapest railway.
- CWPR Services. In the process of designing a future windfarm in Serbia (about EUR80 million).
- Elias Eco. Project development of a plant for the destruction of industrial and medical waste (EUR5 million).
- Poseidon Group. Full legal support on development of retail park chain across Serbia worth around EUR30 million. Legal services pertaining to construction contracts, leases, property issues, conversion of right of use on the land into ownership, demolition, due diligence, and purchase contracts.
- QS Investments Limited. Real estate legal advice for a development project to convert the Hotel Jugoslavija (a famous old hotel in Belgrade) into a Kempinski hotel, including a residential and business complex with a value of EUR227 million.
- Our Endowment – Civil Society House. Legal support in the acquisition of a material real estate asset to be converted into a space for joint work of citizens and organizations of civil society, for developing new ideas, initiatives and actions.
- Adidas Serbia. Ongoing real estate legal support to Adidas Serbia. This includes the negotiation of the leases, construction contracts and assessment of real estate collateral.
- **Languages.** English, Serbian

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**Non-professional qualifications.** LLB, University of Belgrade; current post-graduate student at University of Belgrade, studying law and economics.

**Recent transactions**

- China Communications Construction Company. Ongoing real estate advice on the contractual matters with regards to the performance of construction works on the Belgrade-Budapest railway.
- Delta Real Estate Group. Advising on the largest commercial syndicated loan in Serbia (EUR65 million loan).
- CWPR Services. In the process of designing a future wind farm in Serbia (about EUR80 million).
- Elias Eco. Project development of a plant for the destruction of industrial and medical waste (EUR5 million).
- Feka Automotive. Advising regarding the construction of a factory worth more than EUR11 million.
- Poseidon Group. Full legal support on development of retail park chain across Serbia worth around EUR30 million. Legal services pertaining to construction contracts, leases, property issues, conversion of right of use on the land into ownership, demolition, due diligence, and purchase contracts.
- Tenth Planet. Sophisticated real estate advice for a UK investment fund, regarding development of a luxury tourism complex in Montenegro on the Adriatic coast.
- Halkbank. Ongoing real estate legal advice on various properties and mortgages, including assessment of real estate collateral.

**Languages.** English, Serbian

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**Professional associations/memberships.** Serbian Bar Association

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