

Legal 500

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Slovenia

Construction

Contributor



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This country-specific Q&A provides an overview of construction laws and regulations applicable in Slovenia.

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Slovenia: Construction

1. Is your jurisdiction a common law or civil law jurisdiction?

Slovenia operates under a civil law jurisdiction, with its legal tradition rooted in Roman law and significantly shaped by the legal frameworks of Yugoslavia and of Austria-Hungary.

The key feature of the Slovenian civil law system is the enactment of laws by the parliament, such as the Obligations Code. While the primary source of law remains statutory legislation, the case law of the Supreme Court of Slovenia has gained increasing importance. As a result, Slovenian courts often follow the rulings of the Supreme Court, drawing the system closer to common law jurisdictions.

2. What are the key statutory/legislative obligations relevant to construction and engineering projects?

The parties involved in construction and engineering projects generally have the contractual freedom to regulate their relationships according to the specific circumstances of each case. However, there are certain statutory obligations that cannot be overridden by the will of the contractual parties. The primary obligations of the parties in construction and engineering projects are governed by the Slovenian Obligations Code, particularly in Title XI: Contract for Work and Title XII: Building Contract.

Provisions outlined in these titles, such as the liability of the contractor and project designer for the structural integrity of the work as defined in Article 662, cannot be excluded or limited by contract.

In addition to the Slovenian Obligations Code, there are numerous other laws in Slovenia that regulate the relationships among parties involved in construction and engineering projects, including the Spatial Planning Act, the Building Act, and others.

3. Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c)

Planning; (d) Employment; and (e) Anti-corruption and bribery.

(a) health and safety

The primary legislation governing health and safety in the workplace is the Health and Safety at Work Act. This Act outlines the rights and responsibilities of both employers and employees.

Specifically, under Article 17 of the Act, employers are required to conduct a written risk assessment to identify potential hazards to which workers may be exposed. Furthermore, in accordance with other provisions of the Act, employers must ensure a safe and healthy work environment by adhering to the safety statement and risk assessment.

In addition to the Health and Safety at Work Act, other sector-specific regulations, such as the Building Act, set forth additional requirements. For instance, the Building Act specifies the criteria that must be met to ensure that buildings comply with health and safety standards.

(b) environmental issues;

Environmental issues have increasingly become a global challenge, and as a result, European Union regulations are having a greater impact across the entire EU, including Slovenia. Slovenia has long enforced stringent environmental standards, primarily outlined in laws such as the Environment Protection Act, Nature Conservation Act and the Water Act. Specifically, the Environment Protection Act details the situations in which an environmental consent or permit must be obtained.

(c) planning;

In terms of planning, the primary actors responsible for regulating the field and setting the required standards are both the national government and local communities. According to Article 49 of the Spatial Management Act, spatial planning documents must be harmonized with one another, considering their hierarchy and legal nature. Spatial implementation documents must align with, and not contradict, strategic spatial planning documents.

The Strategy serves as the fundamental strategic spatial document guiding spatial development at the national level, and its implementation is the responsibility of the

national government. At the national level, the country has jurisdiction over the implementation of the Strategy.

On the other hand, the Municipal Spatial Plan, as stipulated in Article 104 of the Spatial Management Act, applies at the local level. It is used to plan development projects of local significance in accordance with regional and municipal spatial plans. It also establishes the planned land use and spatial implementation conditions for the siting of planned developments.

Given this framework, it is clear that the specific requirements for planning differ between the national-level Strategy and each individual Municipal Spatial Plan.

(d) employment;

The Slovenian Employment Relationships Act serves as the primary legislation governing employment law. However, with the growing demand for foreign workers, employers must also consider other relevant regulations, such as the Employment, Self-employment, and Work of Foreigners Act, as well as the Foreigners Act. These laws outline specific provisions for workers coming from outside the European Union and the European Economic Area.

(e) anti-corruption and bribery.

The primary authority responsible for overseeing anti-corruption and anti-bribery regulations is the Commission for the Prevention of Corruption. Its key responsibilities and jurisdiction, as well as the obligations of other persons (such as financial institutions, notaries and lawyers) are outlined in the Integrity and Prevention of Corruption Act.

4. What permits, licences and/or other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?

The requirements to be fulfilled before and after the completion of a project are specified in the Building Act. The key permit an investor must obtain before starting the project is the building permit. After construction is completed, an operating permit is required, except for less complex structures. Buildings must be used in accordance with both the operating and building permits.

Additionally, depending on the type of project, other approvals, such as environmental permits, may be necessary.

Penalties for non-compliance are outlined in the Criminal

Code. Article 315 of the Criminal Code specifies the penalties for endangering safety during construction activities.

Moreover, the eighth part of the Building Act includes provisions regarding penalties for failing to comply with its regulations. Material liability may also apply, particularly if the provisions of the Building Act are not followed.

5. Is tort law or a law of extra-contractual obligations recognised in your jurisdiction?

Tort law is recognized in our jurisdiction and is generally defined in Article 131 of the Obligations Code, which states that any person who causes damage to another is obligated to compensate for it, unless it is proven that the damage occurred without the fault of the former.

Under Slovenian law, damages recognized include: direct damage (ordinary damage), loss of potential property value (lost profits), physical or mental distress or fear inflicted on another person, and harm to the reputation of a legal entity (non-material damage).

6. Who are the typical parties involved in a construction and engineering project?

Typical parties involved in a construction and engineering project include the investor, supervisor, contractor, building designer, and architect. Usually, the contractor shall also engage subcontractors to complete specific tasks or parts of the project.

7. What are the most popular methods of procurement?

The most popular procurement methods depend on the parties involved and can generally be divided into two categories: public procurement, regulated by the Public Procurement Act, which is partly influenced by European Union law, and private procurement, which is primarily governed by general laws such as the Obligations Code, with a strong emphasis on contractual freedom, provided it does not conflict with mandatory legal provisions.

8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?

The content of standard contract forms depends on the parties' contractual freedom. Private procurement

generally involves standard civil contracts, but depending on the subject of the procurement, the parties may also opt into national Special Construction Usages or apply internationally recognized standards, such as rules of FIDIC, particularly in large-scale construction and engineering projects. On the other hand, public procurement contracts and their content are strictly regulated by law, particularly by the Public Procurement Act, leaving little room for contractual freedom.

9. Are there any restrictions or legislative regimes affecting procurement?

As mentioned above, private procurements generally involve standard civil contracts, which must, of course, comply with statutory regulations. In contrast, public procurements are more heavily regulated, with various restrictions in place.

10. Do parties typically engage consultants? What forms are used?

Consultants are typically hired for their specialized expertise, such as architects. Typically, an architect may act as designer, revise a design or supervise the construction process. However, legal professionals also play a vital role in ensuring that projects and documents comply with relevant laws and regulations. The forms used are usually standard civil contracts, but they are often tailored to the specific consultant and the nature of the project for which they are engaged.

11. Is subcontracting permitted?

Subcontracting is permitted, and contractors typically hire subcontractors to perform specific tasks that require specialized knowledge, machinery, or expertise in a particular part of the project. Subcontractors are especially common in more complex projects. Slovenian law contains an important provision entitling a supervisor to turn for payment directly to the employer, provided that certain prescribed conditions are fulfilled.

12. How are projects typically financed?

The method of securing financing for specific projects typically depends on the parties involved. Public entities, such as the state, generally obtain financing from public funds, which are derived from various taxes, and may also include international bank loans. In contrast, private entities typically finance their projects through bank loans, equity, private lenders or bond issuance.

13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?

The contracting parties are free to agree on specific forms of security available to an employer, such as bank guarantees (i.e. for orderly performance, advance repayment or guarantee period), bonds, private sureties or other types of insurance. The form, contents and the duration of such securities depend on their purpose, and it is typically defined in accordance with the other conditions set out in the contract.

14. Is there any specific legislation relating to payment in the industry?

In this respect, it is to be emphasized that the invoicing within the construction industry is subject to reverse charge system, meaning that the VAT rate shall amount to 0%.

Further, the Slovenian law contains a provision enabling the subcontractors to turn directly to the employers in cases when they do not receive due payment from the contractors.

15. Are pay-when-paid clauses (i.e. clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?

Generally speaking, such clauses may be included, but Article 631 of the Obligations Code stipulates that subcontractors can directly approach the client to claim payment for amounts owed by the contractor. Subcontractors can request that these claims be settled from the amount the client currently owes the contractor, provided the claims are recognized.

16. Do your contracts contain retention provisions and, if so, how do they operate?

As a background rule of Slovenian law, the contractors are entitled to a pledge on their products securing their payment claims towards the employer. However, since the contractual parties have the contractual freedom, they can (and usually do) derogate from such a rule or include additional retention provisions, which are commonly used to ensure the successful completion of projects without defects. Alternatively, these provisions

may be replaced by contractual guarantees.

17. Do contracts commonly contain liquidated delay damages provisions and are these upheld by the courts?

Contracts typically include liquidated damages for delays, which are generally upheld by the courts. However, the courts are entitled to mitigate liquidated damages, if they are found to be excessive.

18. Are the parties able to exclude or limit liability?

The parties may exclude or limit liabilities, but not for those for which they may be held accountable as defined by regulations. For example, as stipulated in Article 80 of the Building Act, the building designer, supervisor, and contractor are criminally and materially liable for the accuracy of the statements required to obtain the operating permit. Further, the legally prescribed 10-year guarantee period of contractors and/or designers for the solidity of a building and effective vis-à-vis the employer or other subsequent purchasers of a building cannot be derogated from.

19. Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?

The restrictions may be further specified in the contract itself. Termination due to a force majeure issue is in principle not allowed. However, Article 112 of the Obligations Code provides that if, after the conclusion of a contract, circumstances arise that significantly impede one party's ability to perform its obligations or prevent the purpose of the contract from being achieved, to such an extent that the contract no longer aligns with the expectations of the parties involved and would be deemed unjust to enforce in its current form, the party facing difficulty in fulfilling its obligations or unable to achieve the contract's intended purpose may judicially request the rescission of the contract. Termination for convenience is possible, however in such case the employer shall have to compensate the contractor for the works already performed and its opportunity loss.

20. What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?

Due to the relativity of contractual obligations, third parties are in principle excluded from the bilateral contractual obligations entered into by the contractor participants. However, it is becoming increasingly common to assign claims of contractors towards the employers in favour of the funders of the contractors.

21. Do contracts typically contain strict provisions governing notification of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?

In contrary: due to quite strong bargaining position of the contractors and the principle-agent contractual constellations, the contracts tend to include limits to the contractors' entitlement to claim additional time and money, by way of including strict time-plans and turnkey-clauses.

22. What insurances are the parties required to hold? And how long for?

In principle, the designers and contractors are obliged to permanently hold an insurance policy covering their professional liability. The coverage amounts under such insurance policies will be increased on an ad-hoc principle in more complex construction projects.

23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?

Construction and engineering disputes can be resolved through various methods, such as arbitration (which is often preferred by larger market players due to its confidentiality and expeditiousness), litigation, or even mediation.

24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?

Since court procedures tend to take longer than arbitration and due to the added benefit of confidentiality and flexibility, arbitration is often preferred. The courts tend to refuse their jurisdiction, provided, however, that the arbitration clause in question explicitly derogate the

jurisdiction of national courts. The enforcement of an arbitral award depends on meeting the criteria outlined in the Slovenian Arbitration Act, which typically depends on the law of the country under which the arbitration was conducted. However, an enforcement of an arbitral award typically does not take more than a few months.

25. Are there any limitation periods for commencing disputes in your jurisdiction?

Yes, the general prescription period amounts to 5 years, while the employer shall be obliged to judicially exercise its rights stemming from defects within one year after a notification in this respect was submitted to the contractor.

26. How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a "fair and reasonable" proportion of the innocent party's losses), and are these commonly used?

Multi-party disputes are possible. In terms of procedural law, this is limited to either multiple persons on the active or passive side of a dispute. Further, third parties are allowed to intervene taking side with one of the parties. The liabilities on one procedural side, where multiple persons take part, are usually joint. Any distribution of their liabilities between themselves forms subject of a separate court procedure. The net contribution clauses are often agreed and form subject of the latter type of procedures.

27. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?

The biggest challenges currently facing the construction sector are the impact of international conflicts on the economic situation both in the country and across the European Union. On the other hand, the biggest opportunity lies in the increased investment from private entities in the real estate market. As a result, the demand

for new buildings and projects is rising, with private investors viewing property investment as a reliable way to grow their wealth. Nevertheless, the construction is still predominantly financed by the banks, leaving considerable headroom for potential future financing through private lenders.

28. What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?

Currently, the main investments concern the extension and the upgrade of the national traffic system, mostly of the highway and railway network. A major national investment to be expected in the coming years is the extension of the existing nuclear power plant through an additional block. Beside this, the majority of investments are focused on the construction of new residential buildings, as well as structures for tourism purposes.

29. How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?

It is not to be expected that within the coming five-year period, there will be significant changes in the construction and engineering industry. In the meantime, the advancing technology, especially AI, is expected to primarily facilitate the designing of new projects. On the other hand, the developing technologies is causing the lack of personal proficiency of the participants in the construction industry.

30. What do you anticipate to be the impact from ongoing supply chain issues and the escalation of material costs over the coming year?

Considering the increasing demand for new projects and buildings, despite ongoing supply chain issues and rising material costs, it is unlikely that the implementation of new projects will stop, though the process may slow down and the prices are expected to increase significantly. The European Union's plan to become more self-sufficient is expected to have a positive impact on this issue, which will likely benefit the Slovenian market as well.

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