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Construction Law 2022

Serbia: Law & Practice
Milan Dakić
BDK Advokati

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SERBIA

Law and Practice

Contributed by:
Milan Dakić
BDK Advokati see p.15

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1. GENERAL

1.1 Governing Law

The key piece of legislation governing the construction market is the Planning and Construction Act (*Zakon o planiranju i izgradnji*, "Sl glasnik RS", no 72/2009, as amended and supplemented, available in Serbian at www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2009/72/11/reg) and its by-laws. This law governs, among other things, the adoption of planning documents by competent authorities, as well as the construction permitting process.

In addition, the Obligations Act (*Zakon o obligacionim odnosima*, "Sl list SFRJ", no 29/78, as amended and supplemented, available in Serbian at www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/slsfrj/skupstina/zakon/1978/29/1/reg/20200311) sets, inter alia, the legal surroundings for construction contracts, service (designing) contracts, damage claims and other obligations that may be of relevance for players on the construction market.

Also, the Act on Basics of Property-Legal Relations (*Zakon o osnovama svojinskopravnih odnosa*, "Sl list SFRJ", no 6/80, as amended and supplemented, available in Serbian at www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/slsfrj/skupstina/zakon/1980/6/1/reg) sets some of the basic rules in respect to property rights, which are of relevance for employers, given that construction permitting requires the employer (investor) to hold certain title to property. Similarly important are the State Survey and Cadastre Act (*Zakon o državnom premeru i katastru*, "Sl glasnik RS", no 72/2009, as amended and supplemented, available in Serbian at www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2009/72/12/reg/20200212) and the Act on Procedure of Registration in the Cadastre of Real Estate and Lines (*Zakon o postupku upisa u katastar nepokretnosti i vodova*, "Sl glasnik RS", no 41/2018, as amended and supplemented, available in Serbian at www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2018/41/3/reg/20200303) and their by-laws, which regulate the surveying activities, as well as registration of title to property (including the land, as well as the newly constructed buildings) and encumbrances to them (eg, mortgages in favour of financiers of the construction projects).

Depending on the specificities of a construction project, other laws may also be of relevance (eg, Act on Special procedures for Implementing Projects for Construction and Reconstruction of Linear Infrastructural Facilities of Special Importance for the Republic of Serbia (*Zakon o posebnim postupcima radi realizacije projekata izgradnje i rekonstrukcije linijskih infrastrukturnih objekata od posebnog značaja za Republiku Srbiju*, "Sl glasnik RS", no 9/2020, available in Serbian at www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/9/7/reg)).

1.2 Standard Contracts

The FIDIC suite of contracts are widely used for large-scale construction projects, especially in cases where international financial institutions are financing the project. They are mostly used in relations between the employer and the contractor, but can also be seen in lower-tier contracts (with subcontractors), as well as in contracts with designers. However, in smaller-scale projects, use of standard contracts is much rarer. There is no standardised Serbian construction contract, nor is use of certain standard contracts mandatory in Serbia.

1.3 COVID-19

The Serbian construction market has suffered the consequences of the COVID-19 pandemic.

Measures introduced by the government to combat COVID-19 included, at the beginning of the pandemic, lockdowns, and then different restrictions in relation to travel, working environment etc. When the pandemic was peaking, workforce availability was also affected. Also, imports of materials and other goods required for the construction process were, to some extent, slowed down by measures introduced in the countries of origin.

Overall, the most common effect on the construction market was the invocation of force majeure due to COVID-19, resulting in extensions of time for completion of projects. In addition, at the start of the pandemic, certain hesitation with starting new projects was evident on the market. Nevertheless, as the situation changed, the market started recovering.

Naturally, COVID-19 raised awareness of the force majeure and similar provisions in construction contracts. Currently, many new contracts include additional wordings on COVID-19 impacts on contractual relations.

2. PARTIES

2.1 The Employer

Special purpose vehicles in the form of a limited liability company would typically act as employer in greenfield projects. In addition, state and public enterprises also play significant role in the market, especially in infrastructure projects.

Generally, in addition to the obligation to pay the contract price, the employer is usually obliged to hand over the designs to the contractor (or terms of reference, if the contractor is also responsible for designing), the construction permit and access to the construction site. It is entitled to supervise the works. The construction contracts are not heavily regulated by law, so the parties have a large margin to agree on the distribution of rights, obligations and risk allocation.

By law, the employer has to, inter alia, appoint an expert supervisor and health and safety coordinator, as well as to engage a technical acceptance committee to check whether the completed works are suitable to receive a use permit.

Generally, employers do not have direct contracts with subcontractors, although it is not uncommon that they reserve the right to approve subcontractors. However, lately the market has seen the appearance of direct contracts with subcontractors in case of large-scale contracts, as means of additional security and stability for the project. Similarly, relations with financiers typically involve employers, and, in certain cases, pledges in favour of financiers over receivables under construction contracts.

Recently, collateral warranty agreements between financiers and contractors are appearing on the market, allowing eg, step-in rights or assignments. Given that collateral warranty agreements are a novelty on the market, there is no case law available or robust feedback from market players to show how effective they are. Additionally, on large-scale projects, financiers sometimes reserve certain rights in respect to approval of major contractors.

2.2 The Contractor

Only a handful of construction companies dating back from the socialist era are still active on the market. In the meantime, a lot of new contractors have emerged, dominantly in the form of limited liability companies. There are, in addition, a number of foreign construction companies who operate via branch offices in Serbia.

Besides its general obligations to perform the works (and prepare the design, if the designing is part of the contract) and remedy defects (if any),

the contractors are typically required to provide securities (usually in the form of on-demand bank guarantees (or bills of exchange, in case of small-scale projects) and/or deposit (usually retained by the employers from payments to the contractors)). They are naturally required to secure staff and subcontractors, as well as materials, plant, equipment, temporary utilities supplies and other items required to perform the works. As stated before, the construction contracts are not heavily regulated by law, so the parties have room to agree on the distribution of rights, obligations and risk allocation.

There are, however, certain statutory duties the contractors must fulfil. These include possessing of licences for the relevant kind of works, tending to health and safety in relation to the works, reporting to authorities completion of foundations and completion of structural elements of the building, nominating a responsible engineer, etc.

The responsible engineer is under duty to, inter alia:

- secure that the works are performed based on the relevant designs, standards and regulations;
- organise the construction site so as to secure access to it, with no interruption of traffic, and environmental protection;
- secure safety of buildings and persons on the site and its surroundings;
- secure that the works are performed so as to fulfil the basic requirements for the building, requirements of energy features and other requirements and conditions applicable to the building;
- secure evidence on performance of installed construction products, evidence on conformity, evidence on quality, etc;
- manage construction waste in accordance with the law;
- maintain a construction log, construction book and book of inspection; and
- secure measuring and geodetic surveying during the construction process, etc.

By nature of their role, contractors are between the employer and the subcontractors, so they have evident interest to ensure that subcontracts are at least back-to-back with the main construction contracts. This task may be challenging, especially in relation to payments, given the challenges posed on back-to-back payments in regulations on payment deadlines. Traditionally, contractors are not directly related to financiers, although lately, the trend of having collateral warranty agreements between contractors and financiers is picking up.

2.3 The Subcontractors

The same companies that appear as contractors can be seen as subcontractors on other projects. This is less common for branches of foreign companies. In addition, in cases where the project requires certain specific supplies or fabrication of elements that are not available in Serbia, foreign companies also appear as subcontractors (suppliers).

Given that the subcontracts are in their essence construction contracts where the contractor assumes the role of employer and subcontractors the role of contractors, what was said in relation to obligations of the contractors applies also to subcontractors in the context of subcontracts. It is usual to see time buffers in subcontracts (compared to main contracts) and undertakings of subcontractors to ensure that the main contract is performed (in part related to the subcontracted works).

As for statutory duties of contractors, these would, at least formally, stay with the contractors, although contractually, many of them would be flown down onto the subcontractors.

For relations between subcontractors and employers, please see **2.1 The Employer**. Direct relations between subcontractors and financiers are not common on the market.

2.4 The Financiers

Banks and international financial institutions are the typical financiers in construction projects. It is fair to say that most of the financing comes in form of loans. In loan agreements, the financiers tend to reserve certain discretions in relation to the construction process, such as choice of major contractors, material changes of the works, price changes, time extensions, etc. Mortgages over buildings to be constructed and assignments/pledges of the contractor's security instruments and pledges over receivables from contractors are typically foreseen as collaterals under loan agreements. As noted in **2.2 The Contractor**, collateral warranty agreements with contractors have been recently introduced to the market (so far, they are seen only on large-scale projects).

3. WORKS

3.1 Scope

Parties enjoy a lot of freedom in defining the scope of works. Most commonly, a contract would contain a more generalised description of works, with a few supporting notions (eg, fitness for purpose requirements) and key deadlines, while the scope of works would be defined via specification, which is attached as an enclosure to the contract.

3.2 Variations

Variation would generally be regarded as amendment of the scope of works, and thus an amendment of the contract. Unless the contract has foreseen a procedure to deal with variation, in principle, both parties would need to agree to the change of scope and the price in order for it to be binding. In contracts that include the mechanism of variations, the determination and limitation of a variation will heavily depend on the provisions of the contract – for instance, in FIDIC-based contracts, engineers can order variations, which are generally binding, but there are exceptions when the contractor would not be bound. FIDIC also provides the mechanism for the parties to resolve their differences if they cannot agree on the payments or extension of time resulting from variation. On the other hand, FIDIC-based contracts would typically not allow for a contractor's variation request to be binding unless the employer accepts it.

3.3 Design

The default provision of Serbian law starts from the premise that the employer will procure the design from a designing company, and that the contractor will construct the project based on such design. However, this is not a mandatory rule, and in practice it can often be seen that the contractors undertake to do both designing and construction.

In the default scenario, obviously there would be less liability of the contractor for flaws in the design; however, the law still requires the contractor to notify in writing the employer about defects in the design documentation.

In cases where the contractor is also acting as a designer, naturally the liability of the contractor for the design is much greater. It is often seen that contractors in such cases subcontract the designing part (in some cases because designing may require licences that the contractor itself does not possess), but rarely would one see that a contract has limited liability of the contractor in case of such outsourcing.

3.4 Construction

The contractor is usually the key figure responsible for the construction process. It may hap-

pen, however, that, due to specificities of the project, the employer or employer's other contractors need to perform works on the same site in parallel or consecutively with the contractor. Construction contracts would usually contain provisions on facilitating such interfaces, and on liability for coordinating the overall process (usually one of the contractors would assume this role).

Contractors often rely on subcontractors to perform portions of the works. The law does not condition the engagement of subcontractors with e employer's consent, although many contracts contain such conditions, especially in the case of major subcontractors. In either case, the contractor remains liable for the acts and omissions of its subcontractors.

3.5 Site Access

Parties would usually contractually distribute the risks in relation to site conditions, pollutions, geotechnical conditions, or archaeological finds. Employers would typically want to have the contractors liable for such risks; however, the distribution of risks will also depend on various surrounding factors, such as whether the contractor was able to perform relevant investigations before entering into the contract, whether there is some historical pollution on the site, etc.

In general, such distribution of liabilities and risks would have a contractual nature, so if eg, a third party sustains damages from pollution related to construction activities, it would be able to sue either the employer or contractor (or both of them) for damages, whereas later on the employer or the contractor, as the case may be, would be able to claim reimbursement from its counterparty, who contractually bears the relevant risk.

In respect of archaeological finds, regardless of the contractual distribution of risks, in the case that archaeological findings or items are found in the course of construction, the Act on Cultural Assets requires the contractor to immediately stop the works and notify the relevant monument protection authority, as well as to take measures so that the findings/items are not destroyed and that they are preserved at the place and in the position in which they were discovered.

3.6 Permits

The permitting process is quite complex and depends on various factors. Most projects require a construction permit before the development can commence. Those projects that may have an environmental impact require that the environmental impact assessment process be completed before the development can commence. Depending on the specificities of project, an energy permit, water permit, etc may be needed. By law, all these permits are the employer's responsibility, but sometimes the parties may agree that the contractor will procure them on behalf of the employer, based on power of attorney.

When it comes to permits that are required during the construction process (eg, a permit to temporarily block traffic), contracts would usually make the contractor liable for such permits. As for the use permit, by law, the employer is the one who needs to obtain it; however, it is not rare that the employers make the contractors liable for use permit contractually (via power of attorney), given that use permits heavily depend on how the contractor performed its works.

3.7 Maintenance

Maintenance of works during the construction process is typically on the contractor. Once the use permit for the works is issued, by law, the owner (employer) is obliged to procure capital and regular maintenance of the building, and (if applicable) ordinary, extraordinary and special inspections of the building. Owners tend to con-

tract operation and maintenance companies to perform these tasks on their behalf, and this is usually done outside the construction contract regime (although it may happen sometimes that the contractor appears also as operation and maintenance provider).

3.8 Other Functions

By law, the employer has to engage a supervisory body (to supervise the construction works), a health and safety coordinator, and commission for technical inspection of the building (to inspect whether the completed works have been done properly so that the use permit can be issued). Build-operate-transfer and similar arrangements are not common in private projects, but can be seen in large infrastructure projects involving state or other public entities.

Further, if the financial arrangements of the employer require that the financier's advisers participate in the process (eg, to attend testing, to approve variations, etc), construction contracts would typically reserve such entitlements of the financiers in the construction process.

3.9 Tests

The law leaves to the parties to agree on who will procure the testing, but usually it will be the contractor who is liable if the tests are not passed. Under the law, once the construction is completed (and in some cases, in parallel with the construction), the employer has to ensure technical acceptance of the works from the technical acceptance committee, which the employer engages. This committee will check whether the performed works comply with the construction permit and the relevant design documentation, as well as with the applicable technical regulations and standards. If prior testing and checks of installations, equipment, appliances, stability or safety of buildings, environmental appliances and facilities, firefighting appliances are needed (or some other testing), or if the designs stipulate so, the technical acceptance committee may order a trial run for up to one year – during this period, the employer has to monitor the results of the trial run.

3.10 Completion, Takeover, Delivery

In principle, the parties can agree freely on the mechanism of takeover. The law does not use terms such as "takeover" or "delivery"; instead it uses the term "acceptance". From the moment of acceptance, the contractor's liability for hidden defects starts to count. It is the latest moment when the employer can reserve its entitlement to contractual penalties (if applicable).

3.11 Defects and Defects Liability Period

The defects liability period can in principle be modified via contract; however, there are some cases where mandatory defects liability rules apply – these are the cases of decennial liability for the solidity of the works, and cases where the law has set the minimum warranty periods for certain types of buildings.

Default provisions of law state that after inspection and acceptance of works the contractor ceases to be liable for defects that could have been discovered by ordinary inspection (unless it knew of them, and failed to point them out to the employer). As for hidden defects, the employer has to notify the contractor of them immediately, or latest within one month. Default provisions of law stipulate that two years after the acceptance of works, liability for hidden defects ceases to exist (note that his does not refer to decennial liability). In any event, the employer will not be able to judicially enforce its claim if it fails to initiate the litigation within one year following the notification of the defect to the contractor (although, if it has still not paid out the contractor and has timely notified the defect, it may contest the contractor's entitlement to be paid with its entitlement to have the fee reduced

and damages compensated due to the defects). The contractor is not entitled to benefit from the aforementioned rules if the defects refer to facts that it knew or had to know, but failed to notify to the employer.

If the employer has timely notified the contractor on the defect, it may require the contractor to remedy the defect in the reasonable period set by the employer. The employer may also claim damages sustained. If the works are defective to the extent that it is useless or is non-compliant with explicit contractual terms, the employer may terminate the contract and claim damages (without being obliged to first request the contractor to remedy the defects). In other cases, the employer has to give to the contractor the opportunity to remedy the defects, and if the contractor does not remedy it within the reasonable deadline, the employer may, at its discretion, remedy the defects at the contractor's cost, or reduce the contract price, or (except in case of insignificant defects) terminate the contract, and in any event, the employer is entitled to damages.

4. PRICE

4.1 Contract Price

Serbian law gives a wide margin of discretion to the parties to agree on contract price, including what is to be considered to be covered by the price (eg, which costs are considered to be covered, and for which the contractor can be reimbursed). Lump-sum fixed prices are frequently used; unit price prices less so. Both milestone payments and monthly interim payments can be seen in construction contracts.

4.2 Payment

Serbian law does not allow delay damages to be applied to late payments. Instead, statutory default interest applies. The rate of this interest is mandatory, so the parties cannot modify it via contract.

Advance payments are quite often agreed upon, although they typically require the contractor to provide some sort of security instrument (usually bank guarantee, or, in small-scale projects, bills of exchange).

Interim payments are quite often stipulated in the contract as a means to boost the contractor's cash flow and enable smoother implementation of the project.

4.3 Invoicing

Invoices in construction have to comply with the requirements of general VAT regulations, so that the parties can properly manage their VAT obligations. Usually, payments are made on an interim monthly basis or based on milestones, with the contractor being obliged to issue a proper VAT invoice to the employer.

5. TIME

5.1 Planning, Programme

The notion of planning in Serbia would primarily be associated with enactment of planning documents, which are a prerequisite for development of an area (such documents would, inter alia, include the conditions and limitation of construction).

In the context of planning and time management within a specific project, this matter is left for the parties to agree upon. Usually, the contract would set the deadlines and would require the contractor to provide a programme and method statement, which the employer needs to approve. Amendments to these documents usually require the employer's approval. In the course of construction, the contractor would usually be required to prepare reports,

containing, inter alia, details as to compliance with the programme. The employer can have different measures to control the planning and time management, such as tying payments to achievement of deadlines, or delaying damages for breaches of deadlines.

5.2 Delays

Generally, construction contracts would require the contractor to perform the works expeditiously and to take measures in case it is behind schedule. Often the contracts require the contractors to prepare mitigation plans that demonstrate it will be able to recuperate the delay. The employer, through expert supervision and its other staff, can monitor the progress of works and take the necessary actions if the contractor breaches or is to breach a deadline.

5.3 Remedies in the Event of Delays

The parties can agree that the deadlines under a construction contract are essential, in which case the contract would automatically terminate in case the contractor breaches the deadline. Given that this may be a too severe consequence in most cases, the parties rarely resort to such solutions.

Instead, most of the construction contracts stipulate for contractual penalties for delay. These are usually capped at a certain percentage of the contract price.

In addition, contracts would also include the right of the employer to terminate in case of delays (eg, in case the delay would be such that the cap on delay contractual penalties is reached).

Some contracts include also other contractual remedies, such as the right to bring in additional contractors who would work alongside the defaulting contractor in order to regain the necessary rate of progress. Costs of such additional contractors would be on the defaulting contractor.

5.4 Extension of Time

Simpler contracts rarely regulate the procedure for time extension. In more complex contracts, mechanisms such as those present in FIDIC conditions of contract would be installed: the contractor would usually be required to notify the events causing the delay as soon as it becomes aware of them (or shortly thereafter) and would need to demonstrate how they affect the timeline.

5.5 Force Majeure

Serbian law does not define force majeure, thus the parties have a large space to agree on it. The law stipulates that a debtor is exonerated from liability for damages if it could not fulfil its obligation, or was in delay with the fulfilment, due to circumstances it could not have prevented, eliminated or avoided, and that have appeared after the contract conclusion. Thus, contracts tend to define force majeure along these lines, but often enough they enlist examples of force majeure (similar to the examples used in FIDIC contracts).

The law allows the parties to extend the liability of a party even to the cases for which it would generally not be liable (force majeure being one of them); however, such contractual extension of liability would not be enforceable if it is contrary to good faith requirements.

5.6 Unforeseen Circumstances

Parties have a large space to agree on the risks and obligations related to unforeseen circumstances. Employers would typically want to have the contractors liable for as many unforeseeable events; however, the distribution of risks will also depend on various surrounding factors, such as whether the contractor was able to perform relevant investigations before entering into

the contract. Typically, more complex contracts would include a definition of what is considered unforeseeable, and under what conditions the contractor can have rights or remedies in relation to the unforeseeable circumstances.

There is also a statutory remedy in cases of material change of circumstances (similar to common law concept of hardship) – by law, if, following the conclusion of the contract, the circumstances appear that make the fulfilment of one party's obligations harder, or due to which the purpose of contract cannot be fulfilled, and in either case, to the extent that it is obvious that the contract no longer meets the expectations of the parties and that in general view it would not be fair to keep it in force as it is, the affected party may request the court to terminate the contract (such entitlement does not exist if the party had to have taken such circumstances into account at the time of contract conclusion, or could have avoided them or overcome them, nor does it exist if the circumstances appeared when the party was already in delay with fulfilment of its obligations).

If the contract gets to be terminated on this basis, the counterparty may ask the court to order the affected party to pay fair compensation for damages it sustains due to termination. In any event, if the counterparty offers or agrees to a fair adjustment of the contract, the contract will not be terminated.

The law does not allow for general waiver of entitlement to terminate on the basis of material change of circumstances, but it is possible to exclude certain changes of circumstances (and many construction contracts utilise this possibility), to the extent such exclusion would not be contrary to good faith requirements.

6. LIABILITY

6.1 Exclusion of Liability

Liability for damages caused by intended or gross negligence cannot be excluded or limited by contract. Further, even a contractually agreed exclusion of liability for plain negligence can be annulled by the court (upon request of the affected party) if it results from a monopolistic position of the counterparty or from a generally unequal position of the parties.

6.2 Wilful Misconduct and Gross Negligence

Wilful misconduct (intent – *namera* in Serbian) and gross negligence (*krajnja nepažnja* in Serbian) are concepts set by the Serbian Obligations Act, although the law does not define them. Thus, legal theory and judicial practice can help in understanding better the meaning of these concepts.

6.3 Limitation of Liability

In principle, the parties can exclude or limit their liability, but the law sets the limits to such contractual exclusions or limitations – see **6.1 Exclusion of Liability**. Construction contracts would usually contain provisions that limit or exclude liability (subject to limitations described in **6.1 Exclusion of Liability**) – often the liability for loss of profits is excluded, and also the contractors tend to ask for a cap on their liability, ranging from 100% to a few times the contract price.

7. RISK, INSURANCE AND SECURITIES

7.1 Indemnities

Serbian law stipulates for compensation of damages as a means to deal with situations where one's assets are reduced, or profit lost. It does not deal with the concept of indemnities, at

least not in the manner this concept would be construed under common law systems. However, due to the influence of common law legal practice, one may often see indemnity clauses in Serbian contracts, even though these clauses would, if the contract is governed by Serbian law, typically be interpreted as entitlements to damage compensation.

7.2 Guarantees

Parties are free to agree on the guarantees, although it is less common to see that employers provide guarantees. Usually, the contractor would be required to provide a performance bank guarantee before works commence, and the employer would be entitled to withhold a certain percentage (eg, 5%) as retention money from each payment to the contractor (usually retained until the expiry of defects notification period). If there would be an advance payment, the employer would typically condition it with delivery of advance payment guarantee.

Bank guarantees are almost always required to be unconditional, irrevocable on-demand guarantees. Performance guarantee would be limited to a certain percentage of the contract price (eg, 10%) and could be used to cover any amount owed by the contractor under the contract. Advance payment would be in the amount of the advance payment and would usually be reduced to the extent the advance payment is repaid.

In smaller projects, depending on the standing of the contractors, the employers sometimes accept promissory notes instead of bank guarantees.

7.3 Insurance

Contractors would usually be required to take out and maintain liability insurance (covering liability for damages originating from the contractor's business and/or its assets), insurance of its staff (covering liability for accidents) and insurance of its property. Details of the risks to be covered, insured amounts, and other details of the insurance requirements differ from case to case.

Contractors are often required to take out and maintain a contractor's all-risk policy, although it also happens that the employers take out such insurance (in some cases, the contractors are required to participate in costs of such insurance).

7.4 Insolvency

Contracts on the Serbian market rarely deal extensively with insolvency, except that this is usually stipulated as one of the termination grounds, usually in favour of both parties (the utilisation of such termination ground is limited by mandatory provisions of bankruptcy law). This is understandable, given that if formal insolvency is opened against a party, mandatory provisions of bankruptcy law would apply.

7.5 Risk Sharing

Risk sharing is not common practice. The majority of contracts are employer-friendly, which in turn results in employers trying to shift as much risk as possible onto the contractor.

8. CONTRACT ADMINISTRATION AND CLAIMS

8.1 Personnel

The contractor is usually in charge of securing adequate personnel for the construction process. Exceptionally, employers need to secure expert supervision personnel, the health and safety coordinator and the technical inspection team. In addition, employers sometimes reserve the right to sign off the key personnel of the contractor and/or to request removal of incompetent or misbehaving persons.

8.2 Subcontracting

Default provisions of law allow the contractor to subcontract works, whereby the contractor remains liable for the subcontractors as if the contractor performed the subcontracted works itself. In practice, however, it is quite common to see some limits to subcontracting, eg, subcontracting being subject to the employer's consent (sometimes this consent is required only for key subcontractors), limiting the percentage of works that can be subcontracted, etc.

8.3 Intellectual Property

Large-scale projects include contractual provisions on IP along the line of FIDIC IP principles – contractually, the employer retains copyright and other IP rights to tie designs and other documents made by or on behalf of the contractor. The contracts usually stipulate for a non-terminable, transferable, non-exclusive and royalty free licence in favour of the employer. As for the employer's designs and other documents, the contracts usually allow the contractors to use these only for the purpose of performing the works.

9. REMEDIES AND DAMAGES

9.1 Remedies

Parties have a lot of room to be creative when it comes to remedies in case of contract breach. The usual suspects are contractual penalties (in case of delay in fulfilling non-monetary obligations), statutory default interest (in case of delay with monetary obligations), suspension rights (eg, in case the employer is late with payments) and, of course, right to terminate (this remedy is usually reserved for material breaches).

9.2 Restricting Remedies

It is not common to see express limitation of remedies in general, although some particular remedies do sometimes get limited or excluded. Limitations would in principle be allowed for as long as they do not touch mandatory provisions of law, or are not contrary to public order or good customs. For instance, the law allows the exclusion of right to terminate in case of hardship, but only for cases of hardship specified in the contract, and not in general.

9.3 Sole Remedy Clauses

Sole remedy clauses are not common, but under the influence of common law practice, they can be seen more and more often in practice. Case law on sole remedy clauses is not developed, but arguably, such clauses would be enforceable in all cases except where an exclusion of particular remedies would be contrary to mandatory provisions of law, public order or good customs.

9.4 Excluded Damages

Serbian law generally recognises only three types of damages – plain damages (reduction of assets), loss of profit and immaterial damages (inflicting physical or mental pain or causing fear). Loss of profit is the most usual form of damages excluded in construction contracts. Sometimes, under the influence of common law practice or FIDIC forms, consequential damages, indirect damages, loss of contracts and similar notions also get excluded, although, strictly speaking, these forms would have to be interpreted as one of the three forms of damages recognised by Serbian law.

9.5 Retention and Suspension Rights

Exclusion of the contractor's retention rights can often be seen in practice; exclusion of contractor's suspension rights less so. Usually, the contracts would contain a stipulation that the contractor waives its retention rights to the fullest extent permitted by law.

10. DISPUTE RESOLUTION

10.1 Regular Dispute Resolution

Typically, disputes between commercial entities, as well as disputes between commercial entities and other legal entities in case the dispute is in respect of commercial entities' business, are handled by commercial courts in the first instance, and commercial appellate court in the second instance. Most of the disputes on the construction market would qualify here (unless the parties have opted for arbitration).

10.2 Alternative Dispute Resolution

Arbitration and mediation are the most common venues of alternative dispute resolution in Serbia, albeit in the construction field, mediation is quite rare. Arbitration is more frequent, and in cases where FIDIC contracts are applied, it is used almost always, although it is fair to say that still many contracts, especially those between domestic players and/or those involving small-scale projects, opt for courts. Both arbitration and mediation are regulated by law (Arbitration Act, (*Zakon o arbitraži*, "Sl glasnik RS", no 46/2006, available in Serbian at www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2006/46/9/reg) and Mediation Act (*Zakon o posredovanju u rešavanju sporova*, "Sl. glasnik RS", no 55/2014, available in Serbian at www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2014/55/6/reg)), although in principle, the parties can also agree to other forms of alternative dispute resolution methods that are not specifically regulated. For instance, dispute adjudication boards are commonly used in FIDIC-governed construction contracts.

BDK Advokati is a full-service commercial law firm for corporate, institutional and HNW clients with multiple specialisations. It has offices in Serbia, Montenegro and Bosnia and Herzegovina. The firm advises clients on deals, supporting and representing them in contentious situations and to provide legal advice in support of their businesses. The firm's focus is on prime expert work and complex cross-border deals, but it is also able to work on bread-and-butter matters in an efficient manner due to institutionalised know-how and organised processes. BDK Advokati's extensive knowledge of the regional construction industry and real estate market, FIDIC-skilled lawyers on partner level and admirable track record of construction-related arbitrations have proven to successfully aid clients with both negotiating their construction and real estate documentation, managing it throughout the project cycle, and effectively protecting their rights and interests in case of disputes.

AUTHOR

Milan Dakić is a specialist in real estate, construction law, environmental law and aviation law. He contributes more than 12 years of post-qualification experience at BDK Advokati. He has particularly strong experience with FIDIC contracts and construction arbitration. Milan holds an LLM in International Business Law from Central European University, Budapest. He is also a member of the Belgrade Bar Association. He represents the firm in the Environmental and Real Estate Committees of the American Chamber of Commerce (AmCham) as well as in the Infrastructure & Real Estate Committee of the Foreign Investors Council (FIC). Milan is fluent in English.

BDK Advokati

Bulevar kralja Aleksandra 28
11000
Belgrade
Serbia

Tel: +381 11 3284 212
Email: office@bdkadvokati.com
Web: www.bdkadvokati.com

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