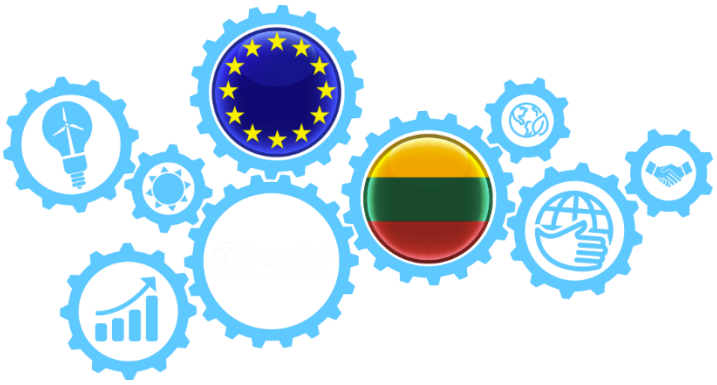
INCREASING THE EFFICIENCY OF THE LITHUANIAN CONSTRUCTION SUPERVISION SYSTEM

Output 1: Report on the role of liability and insurance requirements and other measures to support compliance and risk-management in construction through market mechanisms

Funded by the European Union



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Activity 1.1

Analysis of the current system and requirements for liability and insurance

1. Liability of the participants in construction process

Lithuanian legal regulation distinguishes three main subjects of liability for defects and collapse of a building in the construction process:

- a contractor
- a technical supervisor
- a designer

The main of them is considered the **contractor** as he directly by its actions creates the result of construction work. The influence of the contractor's actions on the occurrence of defects or collapse of a building is easier to recognize and he is therefore most often subject to liability (see Section 1.1 below).

The liability on the **technical supervisor** and the **designer** is applied less frequently as influence of their actions on the occurrence of defects or collapse of the building is not as obvious and usually less than the contractor's (see Section 1.2 and 1.3 below).

An **owner** of the building is also subject to liability for the damage caused by collapse of a building (structure). Such liability is applicable when the construction of the object is completed, and the building (structure) is accepted for use (see Section 1.5 below).

Public authorities also is subject to liability in the construction process. However, their liability is mostly related to the elimination of the consequences of illegal construction (see Section 1.6 below).

1.1. Liability of the contractor

According to the Construction Law and the Civil Code, the contractor is liable for:

- Any deviations from the CTR's and for the failure to achieve the construction works indicators specified in the CTR's or the contract.

- The collapse of a building (structure) and the resultant damage if the object collapsed due to the defects, as well due to unsuitable ground.

The Paragraph 3 of the Article 6.696 of the Civil Code provides that the contractor might be relieved from liability if he proves that the collapse of the object occurred through the fault of the designer, or the technical supervisor who were chosen by the client, or through faulty actions of the client. According to the court-law, however, the contractor's liability usually is only partially reduced if the fault of the designer or other person mentioned above is established. Also, is important to note that according to Lithuanian regulation, if it is not possible to determine whether contractor, designer, building design expertise contractor or technical supervisor is liable for the collapse of the building, they shall all be jointly and severally liable[1].

In the case of a collapse of a building, the contractor might be relieved from liability if the defects occurred due to the normal wear and tear of the building, its inappropriate use, or improper repair made by the client or third persons engaged by him, or any other faulty actions of the client or third persons engaged by him.

- The defects discovered within the guarantee period (see also Section 2).

[1] The Paragraph 4 of the Article 6.696 of the Civil Code

The term '**defects**' is not defined by the Construction Law or any other Lithuanian legal act. However, the Construction Law defines what is the normative quality of a structure[2]. The construction work that does not comply with the quality requirements is considered defective. The Civil Code complements the requirements of the quality of construction works[3]:

- quality of the works must conform to the conditions of the construction contract and, in the absence of any determination of quality in the contract, to the requirements ordinarily presented for work of the respective nature
- the result of construction work fulfilled must at the moment of transfer to the buyer possess the properties specified in the contract or usually required
- the result of construction works must be fit for use in accordance with its designation within the limits of a reasonable period.

Construction works that fail to comply with the abovementioned quality requirements should be treated as construction works having defects. Such a conclusion also follows from consistent case-law.

According to the Article 6.695 of the Civil Code, the contractor shall be liable to the client for any deviations from the requirements of the technical construction regulations (CTRs) and for the failure to achieve the indicators of the construction works specified in CTRs or the contract also. However, liability to the contractor should not be applied if:

- deviations from the technical construction regulations are minor
- made with the consent of the client
- the contractor proves that these deviations have not influenced the quality of the construction and will not cause negative consequences.

Generally, the contractor's liability is contractual (i.e., he is liable to the client with whom concluded a contract) and can be imposed until the end of the guarantee period. Thus, the contractor can be held liable if the following conditions necessary for the application of civil liability are established:

- illegal actions (i.e., improper performance of the legal obligations or improper performance or non-performance of the contract)
- damage (loss)
- the causal link between the illegal actions and the damage
- the fourth condition – constructor's fault - is presumed if the illegal actions are established[4] (i.e., the constructor has to prove his innocence).

It is important to note, that the courts developed the rule that a constructor, as well as a designer or technical supervisor, generally acts as a professional in the construction process, therefore, his liability is strict (without fault). In a dispute concerning construction defects within the guarantee period, the client must prove only the fact of the defects and is not required to prove the contractor's illegal actions and the causal link between the illegal actions and the

[2] Normative quality of a structure - the quality of a structure design, construction works and a constructed structure that complies with the requirements established by the normative construction technical documents and the normative safety and purpose documents of the structure (the Paragraph 57 of the Article 2 of the Construction Law).
[3] Article 6.663 of the Construction Law
[4] Ruling of Lithuanian Court of Appeal of 12 February 2014 in civil case No. 2A-135/2014

damage. To avoid liability, the contractor must prove the causes of defects eliminating his liability[5].

According to the case law, the contractor's liability to the client (builder) for defects may be reduced depending on the contribution of the other construction participants to the occurrence of the defects (see also Section 1.2). For example:

- The construction works were supervised by the technical supervisor appointed by the client. Within the construction process the contractor deviated from the project. However, the owner also initiated some deviations from the project. The construction was completed. The construction defects became apparent within the construction guarantee period. The client claimed damages from the contractor for the repair of the defects. The court decided that the contractor's liability for defects (the amount of losses to be compensated to the client) should be reduced by 40% as the owner (the builder) initiated deviations from the project and had a technical supervisor who had a duty to supervise the contractor, i.e. the court ruled that the contractor could not be fully relieved of liability, but his liability had to be reduced because of the actions of the other construction participants[6]. Such a rule on the reduction of contractor liability continues to be applied consistently in case law.

- In disputes concerning damages for the repair of defects, the courts follow the rule that the contractor, designer, and construction supervisor shall be liable for defects found during the guarantee period, unless they prove that the defects were caused by normal wear and tear, misuse or due to improper repairs performed by the client or due to other guilty actions of the client[7]. The courts determine the causal link between the occurrence of defects and the actions of the construction participants (client, contractor, technical supervisor)[8] and assess whether and to what extent the participant concerned is responsible for the defects[9]. Accordingly, the contractor's liability for defects might be reduced up to 15 % if it is established that the designer and / or the technical supervisor contributed to the occurrence of defects, i.e., the technical supervisor or designer has to compensate 15 % of defect repair costs[10].

The contractor's tort liability to the third parties for the damage to their property, health, or life, may arise if the contractor is considered a possessor of the unfinished structure and such structure collapse cause damage to the third parties. Generally, the owner of the structure (building) is liable to the third parties for the damage due to the structure (building) collapse. However, the owner shall have the right to reclaim from the contractor, technical supervisor and / or designer the sums paid to third parties for damages if the collapse occurred during the guarantee period and was the result of their works defects.

Moreover, if a contractor carries out an unauthorized construction or otherwise violates the legislation regulating construction and this results in an accident to the building which causes death of a person or serious damage to human health, or significant damage to the

[5] Ruling of the Supreme Court of Lithuania of 7 February 2014 in civil case No. 3K-3-20 / 2014; Ruling of Supreme Court of Lithuania of 14 September 2016 civil case No. 3K-3-389-915/2016
[6] Ruling of the Lithuanian Court of Appeal of 3 July 2008 in civil case No. 2A-69/2008; Ruling of the Supreme Court of Lithuania of 9 December 2008 in civil case No. 3K-3-585 / 2008
[7] Paragraph 3 of the Article 6.697 of the Civil Code
[8] Ruling of the Supreme Court of Lithuania of 5 November 2008 in civil case No. 3K-3-3/2014; of 7 February 2014 in civil case No 3K-3-20/2014)
[9] Article 6.266 of the Civil Code
[10] Ruling of the Lithuanian Court of Appeal of 10 April 2018 civil case No. E2A-201-516/2018

environment or property, he may be subject to criminal liability[11]. The same liability might be applied to any other construction participant (client, owner, designer, etc.) if they commit the above-mentioned violations and the said consequences occur.

1.2. Liability of the technical supervisor of construction

According to the Construction Law, technical supervision of the construction is mandatory with certain exceptions for residential houses, auxiliary farm buildings, simple structures, simple repair works, etc.

An architect or construction engineer (natural person) having relevant certificate of qualification, i.e., certified in accordance with the Construction Technical Regulation STR 1.02.01: 2017 'Description of the Procedure for Attestation and Recognition of the Right of Construction Participants" might be a technical supervisor of construction. The technical supervisor should be appointed by the builder (client) and should represent his interest during all construction process. The main his statutory duties are as follows[12]:

- inspecting that the construction is carried out in accordance with the design documentation of a construction works
- checking the quality of construction products and equipment used during the construction, and prevent them from being used in case they do not comply with the requirement
- checking the quality of construction operations and the scope thereof
- informing the builder (client) about the carried-out construction works which do not meet the requirements
- checking and accepting hidden construction works[13] and hidden elements of a structure [14], etc.

The technical supervisor of construction, in the same way as contractor, is liable for the collapse of a building (structure) and the resultant damage, also for the defects discovered within the guarantee period[15].

The conditions for the liability of the technical supervisor, the exceptions to his liability are in principle the same as for the contractor (e.g., the technical supervisor can be held liable for the collapse of the building or its defects if he has not carried out the technical supervision and related duties properly).

One of the first rulings by the Supreme Court of Lithuania regarding technical supervisor's liability was issued in 2006[16]. The court established a rule that when defects in a building are identified, it is important to identify the causes of the defects and link them to the actions not

[11] Article 271-1 of the Criminal Code
[12] Article 19 of the Construction Law
[13] Hidden construction works - the result of construction works concealed by subsequent works (including construction works by which concealed structures are installed) (the Paragraph 35 of the Article 2 of the Construction Law)
[14] Hidden elements of a structure - elements hidden by other structures or the top layer of finishing installed later (the Paragraph 36 of the Article 2 of the Construction Law)
[15] Article 6.696 and 6.697 of the Civil Code
[16] Ruling of the Supreme Court of Lithuania of 22 February 2006 in civil case no. 3K-3-135

performed or performed improperly by the persons responsible for the defects. The contractor's liability for defects may be reduced if the client (builder) deviated from the project on its own initiative, and the technical supervision of the construction was improperly performed by his representative (technical supervisor). Because of these two reasons the contractor's liability was reduced by 40 %.

The rule of 40 % reduction of the contractor's liability if the construction was supervised by the technical supervision and the client deviated from the project on its own initiative was applied in the subsequent court rulings[17].

In 2015 the Supreme Court of Lithuania explained that the client's failure to comply with the statutory and contractual obligation to carry out technical supervision of the construction contributed to the loss due to the defects, as a result, the contractor's liability was reduced by 10%[18]. In 2016 the Supreme Court of Lithuania increased the reduction percentage to 15%[19].

An analysis of the subsequent case law shows that the courts, in line with above-mentioned rulings of the Supreme Court, also apply 10-15% reduction of liability for contractors if the client fails to organize technical supervision of the construction or technical supervision is performed improperly[20].

Based on research by S. Mitkus and N. J. White in 2018, in Lithuanian case law the technical supervisor has been found liable for non-performance or improper performance of a construction project in about 10 to 15 % of the cases[21].

1.3. Liability of the designer

A certified architect, construction engineer (natural persons) and legal entity having certified architect or construction engineer (as an employee or on another contractual basis) have a right to be a designer of construction.

The main statutory duties of the designer (such as to prepare construction design in line with legal requirements; to correct it according to the comments by the client, institutions, etc.) are set out by the Construction Law.

According to the Civil Code, the designer as well as the contractor or the technical supervisor might be found liable for the collapse of a building (structure) and the resultant damage, also for the defects discovered within the guarantee period of the construction works.

Liability on the designer might be imposed, in the same way (i.e., applying the same rules for application of civil liability) as on the contractor or technical supervisor[22]. In case of collapse of a building or defects, to avoid liability, the designer has to prove that the collapse or defects are not due to his fault (i.e., that the project (projects documentation) of the structure complies with the construction technical regulation STR1.04.04: 2017 'Building design, project expertise' CTR's, the Construction Law, other CTR's and legal acts).

Generally, the designer shall be liable to the client according to the contract with him. However, in practice, a situation is quite common when the designer is a subcontractor of the contractor.

[17] E.g., ruling of the Supreme Court of Lithuania of 9 December 2008 in civil case no. 3K-3-585 / 2008
[18] Ruling of the Supreme Court of Lithuania of 12 June 2015 in civil case no. 3K-3-389-969 / 2015
[19] Ruling of the Supreme Court of Lithuania of 14 September 2016 in civil case no. 3K-3-389-915 / 2016
[20] E. g., ruling of the Klaipėda Regional Court of 11 October 2018 in civil case no. e2A-751-459 / 2018
[21] Liability of the entity capable of detecting a defect of constructions works: a comparative study of the U.S. and the Republic of Lithuania. Business, Management and Education. 2018 Volume 16 Issue 1:174-189. Published by VGTU Press (https://doi.org/10.3846/bme.2018.2000)
[22] Article 6.696 and 6.697 of the Civil Code

In 2019 the Supreme Court of Lithuania examined the designer's-subcontractor's liability issue and formed the rule that the designer-subcontractor cannot be held liable to the client if he has no a direct contractual relation with a client. In such situation, the client should claim the contractor's liability and the contractor – subcontractor's[23].

It is important to note that the designer together with the public authorities that issued construction permit might be held liable for the illegal construction permit (if the deficiencies of the project led to the issuance of an illegal construction permit) and the elimination of the consequences of construction under such permit. However, according to the case law, the main responsibility and liability lies with the public authorities for the issuance of the illegal construction permit and elimination of construction under such permit consequences.[24]

1.4. Joint and several liability[25]

The Civil Code or any other legal law does not specify what part of the responsibility in case of the collapse of a building (structure) and the resultant damage if the object collapsed due to the defects lies with each of the above-mentioned construction participants (i.e., the contractor, the designer, and the technical supervisor).

The Civil Code[26] only provides that if it is not possible to establish which of them is at fault, they shall all be jointly and severally liable. This means that in case of the building (structure) collapse and the resultant damage the client has a right to demand damage both from all the construction participants (i.e., contractor, technical supervisor, designer) jointly or from several of them, or from a single participant personally, either for the whole or a part of the damage[27]. A construction participant who fulfilled a joint and several obligation has a right to reclaim amounts paid from other participants.

The courts interpreting provisions related to joint and several liability established criteria that should be met while applying the joint and several liability (at least one of the following)[28]:

- the persons are bound by joint actions regarding the consequences
- the persons are bound by joint actions in relation to illegal actions, i.e., solidary liability is possible even if the person who acted unlawfully does not directly cause damage but is aware of the illegality of the actions of the person who directly caused the damage
- the persons, although not directly cause damage, but contribute to its incitement, initiation, or provocation, i.e., they are, in principle, bound by a joint fault
- the persons are not bound by illegal actions and do not know about each other but cause damage, and it is impossible to determine the extent to which one or the other contributed to the damage, or the damage caused by the actions of both.

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[23] Ruling of the Supreme Court of Lithuania of 2 December 2019 in civil case no. e3K-3-357-313 / 2019
[24] Rulings of the Supreme Court of Lithuania of 3 April 2013 in civil case No. 3K-3-196 / 2013 and of 2 May 2014 in civil case No. 3K-3-251 / 2014
[25] Joint and several liability is a type of legal liability that applies when there is more than one person responsible for the damage and when the obligation to compensate for the damage caused is not divided.
[26] Article 6.696 of the Civil Code
[27] Article 6.6 of the Civil Code
[28] Ruling of the Supreme Court of Lithuania of 26 March 2008 in civil case No. 3K-7-59/2008. Case law. 2008, 29

- the obligation to compensate damage arises on different legal grounds (i.e., on ground of contractual and non-contractual liability)

- the damage is caused by a person and the other person is responsible for that person's actions (e.g., a contractor is liable for the work of subcontractors, suppliers, or employees).

Moreover, in the case of joint and several liability, the court must provide arguments as to why partial liability is not applied. This is because joint and several liability can only be applied in exceptional cases and, as a general rule, where more than one person is liable, partial liability must be applied. In case of partial liability, the client may claim loss from construction participant only to the degree to which his wrongdoing contributed to the causing of the loss. Accordingly, due to partial liability the construction participant is liable only for his part of the damage (i.e., not for all damage caused to the contractor). In order to apply partial liability, it is necessary to determine to what extent one or another construction participant has contributed to the loss of the customer.

The construction participant seeking to avoid joint and several liability should prove that the collapse of a building and damage thereof or defects occurred due to other construction participants illegal actions.

The case law shows that in court disputes concerning the collapse of a building or the damage occurred the plaintiffs seek to involve as co-defendants some or even all the private parties who participated in the construction process (i.e., the contractor, technical supervisor, or designer, etc.). Generally, this is because:

- it is difficult to identify the parts of liability of each party and these parts often become clear only after technical expertise in court

- the courts are forming practice[29] that all persons who may be liable must be included in the case. Otherwise, the court will not be able to properly examine all the circumstances affecting the determination and allocation of liability to the construction participants.

1.5. Liability of the owner (or possessor)

The owner is liable for damage caused to third parties or their property due to the collapse of the building, equipment, structures, including roads, or defects thereof[30]. The owner shall be liable for such damage in all cases, except when the possession of the object is transferred to another person - the possessor.

Liability to the owner is applicable when the construction is completed, and the construction result is accepted for use. According to the Lithuanian regulation, the owner has statutory duty to manage and take proper care of a building, repair, not to use and enclose dangerous and unsafe buildings to avoid damage to third parties, etc. Therefore, in case of collapse of the building that is in use, the owner is liable toward third parties despite causes of the collapse. However, the owner has a right to reclaim from the contractor, technical supervisor and / or designer the sums paid to third parties for damages if the collapse occurred during the guarantee period and was the result of their works defects. According to the court practice, the

[29] Ruling of Kaunas Regional Court of 27 April 2015 in civil case No. 2A-609-230/2015
[30] Article 6.266 of the Civil Code

owner's strict liability rises only if the damage was caused by a defect of a building (structure). If the damage occurred due to other reasons, strict non-contractual liability of the owner does not arise. The concept of defects of a building (structure) or its collapse for which strict liability might be imposed on the owner is not defined by laws. Thus, these concepts are formulated by court practice. For example, the courts recognize as defects of the building (structure) for which is strictly liable the owner: improper quality of roof; broken plastic water pipe connection; leaky bathroom equipment; broken water supply pipe, etc.[31].

1.6. Liability of public authorities

The liability of public authorities in the construction process is mostly related to the elimination of the consequences of illegal construction. Generally, the courts oblige the owner of the building to eliminate the consequences of illegal construction on the expenses of persons who are found guilty of such construction. The court also decides to what extent every guilty person is liable, i.e., determines the percentage of expenses to be compensated.

According to the court law, the public authority who issued illegal construction permit is the main subject for liability for the compensating costs of elimination of the consequences of illegal construction[32]. Liability of the public authority which issued illegal construction permit generally lays on the institution (i.e., legal entity not its employees). In cases where corruption of the employees related to the issuance of the construction permit is proven in criminal proceedings, damage may be claimed from the employees also.

The liability of the institution for the damage caused by the unlawful acts (i.e., issuance of illegal construction permit) shall be governed by the general principles of tort liability.

2. Guarantee period of the building

The guarantee periods during which the contractor, construction designer, expertise contractor or technical supervisor is liable for the collapse and defects of the building are established by the Civil Code.

The Civil Code[33] sets out three minimum periods of guarantee:

- a five-year guarantee x
- a ten-year guarantee for hidden elements of the construction works (structures, pipelines, etc.)
- a twenty-year guarantee if defects have been deliberately hidden.

The time-limits mentioned above start from the day when the result of the work is handed over to the builder (in cases of the construction works carried out by the construction contract) or from the day of construction completion. The construction contract may foresee longer guarantee time-limits than required by law. x

[31] The Supreme Court of Lithuania, 16 November 2018. ATSKIRI GRIEŽTOSIOS DELIKTINĖS ATSAKOMYBĖS ATVEJAI LIETUVOS KASACINĖJE JURISPRUDENCIJOJE Nr. AC-48-1. Teismų praktika. 2018, 48, p. 409-454

[32] Ruling of the Supreme Court of Lithuania of 16 December 2020 in civil case No. e3K-3-331-1075/2020

[33] Article 6.698 of the Civil Code

Lithuanian legal acts do not provide a more detailed list of defects covered by the above-mentioned guarantee. The guarantee does not cover defects due to natural wear and tear of the building[34]. However, the fact of natural wear and tear is often subject of expertise.

2.1. A document ensuring the fulfilment of the obligations of the guarantee period

Amendments to the Construction Law that came into force in 2017 imposed on the contractor an obligation to issue a document ensuring the fulfilment of the obligations of the guarantee period in the event of its insolvency or bankruptcy. Such document should ensure that the builder's (client's) costs for elimination of defects detected within the first 3-year guarantee period shall be compensated if the contractor becomes insolvent or bankrupt. The amount of defect elimination guarantee must be at least 5 % of the total construction costs.

According to the Construction Law, a developer also has the same obligations related to issuance of the abovementioned document. He is liable to a subsequent owner of the building for non-performance or improper performance of the obligations of the contractor during the guarantee period. Thus, he should issue to the subsequent owner a defect elimination security for the first 3-year guarantee period in case of the contractor's insolvency or bankruptcy as well.

After analysing the above-mentioned legal regulation, the court concluded that the document issued by the contractor to the client (the developer), which ensures the fulfilment of the obligations of the guarantee period, does not eliminate the obligation of the developer to issue such a document to the subsequent owner of the real estate. Accordingly, the court obliged the developer (i.e., the company that created the real estate through construction process and sold that real estate) to issue document which ensures the fulfilment of the obligations of the guarantee period to the buyer (subsequent owner)[35].

In 2020 the Lithuanian Supreme Court issued an important ruling[36] explaining that the fundamental and essential public interest is that buildings be designed and constructed in such a way as not to endanger the safety of persons, domestic animals, or property and to avoid harm to the environment. The court emphasized that this means that not only the rights of the owner of the building (the builder (client) of the building) but also the rights of third parties (i.e., subsequent owners of the building) must be protected. Therefore, the contractor has an obligation to guarantee the quality of a building within the statutory guarantee period and such obligation applies regardless of who owns the building. This Court ruling enabled the subsequent building owners (third party) to contact the contractor directly for the defects, rather than first contacting the builder or developer.

As the legislation does not specify a type of document to ensure the fulfilment of guarantee period obligations, the contractor or developer may provide a document that may be difficult to use in practice, it will give rise to legal disputes.

[34] According to the explanations provided in the case law, natural wear and tear of an object - the change (deterioration) in the condition of the object over a period of time due to its intended use which do not cause object to lose part of its functionality and values
[35] Ruling of Vilnius District Court of 12 October 2021 in civil case No e2A-2156-779/2021
[36] Ruling of the Supreme Court of Lithuania of 16 January 2020 in civil case No 3K-3-129-1075/2020

Moreover, the document ensuring the fulfilment of guarantee period obligations covers only the first 3-year guarantee period and the minimum amount of defect elimination guarantee (i.e., at least 5 % of the total construction costs) in practice can often be insufficient).

3. Mandatory Insurance System

Mandatory insurance requirements for the construction participants for the first time in Lithuania were established in 2003. Initially, mandatory insurance was compulsory only to contractors and designers of construction works. They were obliged to have insurance covering property and health damage, as well as compensation for death caused by the contractor or designer.

Range of actors involved in the building process who should have a mandatory insurance has been expanded gradually. Legal requirements related to mandatory insurance have become more detailed and stricter.

Currently, the legal obligation to have mandatory insurance in Lithuania is introduced on:

- the owner / builder
- the contractor
- the construction designer
- the expertise contractor
- the technical supervisor

This obligation applies regardless the sources of construction financing, legal status of the person involved in the building process or ownership form of the building. Exemptions are applied to design, construction, reconstruction, major repair, expertise of uncomplicated buildings, also simple repair of all buildings.

The Construction Law establishes two types of mandatory insurance:

civil liability insurance of the construction designer, expertise contractor, technical supervisor[37] . the construction, reconstruction, repair, renewal (modernization), demolition or maintenance of a cultural heritage building works and civil liability insurance. The period of civil liability of the construction participants insurance coverage may not be less than two years from the date of construction works transfer for use. The period of mandatory construction works insurance lasts until the date of transfer of the result of all construction work performed by the contractor to the builder (client).

More detail requirements for mandatory insurance are provided in the Rules on Mandatory Insurance for Construction Works, Reconstruction, Repair, Renovation (Modernization), Demolition[38] (hereinafter referred to as "**Insurance Rules**").

The Insurance Rules specifies what events are considered incurred and non-insured events. According to the Rules, in the case of construction works insurance, the insured event is a sudden and unexpected damage, destruction or loss of the insured property, occurring during the insurance period and at the place of insurance for any reason, except for non-insured

[37] The period of insurance coverage may not be less than two years from the date of construction works transfer for use

[38] Resolution of the Board of the Bank of Lithuania No 03-207 adopted on 22 December 2016 (with the latest amendments)

events specified in the Rules. A list of non-insured events that are not covered by the mandatory construction works insurance, is rather broad and covers such events as follows:

- any loss or damage due to design defects
- performance, repair, or re-performance of improperly performed insured works and replacement of bad quality materials
- costs of replacement, repair, or disposal of defective insured property, i.e., property that was defective prior to sudden and unexpected damage, etc.
- construction works without construction permit
- non-compliance of the insured property with the requirements (incorrect colour, incorrect size, object does not comply with the project, etc.), but in the absence of physical damage (not destroyed, collapsed etc.)
- losses resulting from any suspension of the insured works for 30 days or more
- any losses related to crimes (theft, vandalism, etc.)
- etc.

The insurer and the policyholder may additionally agree on the extended insurance coverage.

The Insurance Rules also provide that depending on the insurance risk, the insurer and the policyholder should agree on an unconditional deduction, which may not exceed 0,1 % of the insured works sum, but not less than EUR 500 (five hundred euros).

According to the legal regulation, the insurer has no right to refuse to conclude the insurance contract, except in cases when the insured fails:

- to provide all known information about the circumstances that may have a material effect on the probability of the occurrence of the insured event and the amount of possible losses
- to provide possibility to inspect the objects or risks to be insured.

The insurer's refusal to conclude the insurance contract might be challenge at court.

The Construction Law sets out minimum amounts of the mandatory insurance.

> ***Example,*** the construction designer has a right to choose between two types of insurance: to insure for each construction project separately or depending on the scope of design work during the year.
>
> The civil liability for one construction project must be insured in the amount of at least 43 400 Eur for one insured event. Minimum amount for the insurance depending on the scope of design work during the year – at least 289 600 Eur.
>
> The same minimum insurance amounts for one insured event apply to other construction participants that are subject to mandatory insurance.

The amount of the insurance premium is determined by the insurer, considering the degree of insurance risk.

The Insurance Rules[39] requires that the insurance contract should be concluded for a term that covers the construction period from the beginning of the insured works to the day of transfer of the result of all works performed by the contractor to the builder (customer). The beginning and end of the term of the insurance contract should be indicated in the insurance policy.

If the insurance contract terminates or expires earlier than specified in the insurance policy, the policyholder must conclude a new insurance contract within 10 working days. Non-compliance with this requirement not only entails a fine but is also considered performance of construction activity without having right to carry out such activity.

Example, the Inspectorate imposed 2896 Eur fine on the contractor (the construction company) as the contractor had no valid insurance policy from the 1 of January 2019 until the 11 of June 2019.

The contractor argued that on the 12 of June 2019 he extended the insurance policy, and the extended policy covered the period from the 1 of January 2019. So, the Inspectorate unreasonably accused him of committing a violation.

However, the court stated that the fact that from the 12 of June 2019 the contractor had insurance covering the period from the 1 of January 2019 does not mean that the contractor has not violated the requirement to have mandatory insurance as provided by the Construction Law.

Considering the legal regulation on the mandatory insurance in the construction process seems that person who has insurance should be protected from the direct claims for damage from the suffered parties. However, according to the case law, a builder who has suffered damage because of the contractor's actions may, at his own discretion, claim for damages from the contractor or his insurance company, i.e., the suffered party has not duty to first apply to the insurance company for damage[40]. Consequently, the contractor or any other participant of the construction process even if it has a mandatory insurance could not be calm that it will not be sued for damage.

[39] Article 29 of the Insurance Rules
[40] Ruling of Lithuanian Appeal Court of 31 December 2020 in civil case No. e2A-883-881/2020

4. Main finding and recommendations

Issue	Main findings	Possibilities / recommendation
Construction works guarantee	Lithuanian legislation establishes three minimum periods of guarantee (i.e., a five-year guarantee, a ten-year guarantee for hidden elements of the construction works, and a twenty-year guarantee if defects have been deliberately hidden). However legal acts do not provide a more detailed list of defects covered by the above-mentioned guarantee and leaves it to the courts to decide which defects must be repaired during the guarantee period.	It is recommended to analyse the necessity to provide a more detailed list of defects covered by the guarantee periods
Document ensuring the fulfilment of the obligations of the guarantee period in the event of contractor's insolvency or bankruptcy	Contractor has an obligation to issue a document ensuring the fulfilment of the obligations of the guarantee period in the event of its insolvency or bankruptcy. Such document should ensure that the builder's (client's) costs for elimination of defects detected within the first 3-year guarantee period shall be compensated if the contractor becomes insolvent or bankrupt. The amount of defect elimination guarantee must be at least 5 % of the total construction costs. The developer has to issue to the subsequent owner a defect elimination security for the first 3-year guarantee period in case of the contractor's insolvency or bankruptcy as well. *Weaknesses:* - as the legislation does not specify a type of document ensuring the fulfilment of guarantee period obligations, the contractor or developer may provide a document that may be difficult to use in practice, such document will give rise to unnecessary legal disputes - the term of the document ensuring the fulfilment of guarantee period obligations is shorter than the guarantee period (i.e., 5, 10 and 20 years) - the minimum amount of defect elimination guarantee (i.e., at least 5 % of the total construction costs) in practice can often be insufficient).	Recommendations: • clearly define the type of document ensuring the fulfilment of the obligations of the guarantee period in the event of contractor's insolvency or bankruptcy • extend the minimum period of validity of such a document • assess the possibility of setting a higher minimum amount of defect elimination guarantee

The period of mandatory insurance	The period of civil liability of the construction participants insurance coverage may not be less than two years from the date of construction works transfer for use. The period of mandatory construction works insurance lasts until the date of transfer of the result of all construction work performed by the contractor to the builder (client). Thus, the mandatory insurance does not cover all the period of the guarantee of construction works.	For information
Minimum amounts of the mandatory insurance	The Construction Law sets out minimum amounts of the mandatory insurance. These amounts are not differentiated depending on construction type, importance of the object designed and constructed, etc. Therefore, minimum amount of the mandatory insurance may not be sufficient to cover the damage.	It is recommended to analyse the necessity to increase and differentiate minimum amounts of the mandatory insurance depending on the construction type, importance of the object designed, constructed, etc.