



# The Legal 500 Country Comparative Guides

## Armenia: Construction

This country-specific Q&A provides an overview to construction laws and regulations that may occur in Armenia.

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

Regulation of relations having legal character are provided by codes, laws and other legal acts. Hence Armenia is civil law jurisdiction. However, the concept of juridical precedent is not entirely excluded. In particular, according to the Judicial Code (Article 10, p.4) of Republic of Armenia (RA or Armenia), provided that the factual circumstances of cases are similar, courts should act pursuant to the decision (if any) of the Cassation court of RA, or be able to explain their derivation.

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

Of course, each construction project can have certain features making some legal requirements may be applicable, which are not usually binding. However, the requirements of the following areas must be considered as, in principle, they will be required: planning, engineering and construction standards, sanitary standards, seismic resistance standards, fire-prevention rules awareness and involvement of community groups that may be affected by the project, protection of disabled, protection of historical and cultural monuments and the environment, etc. Another very important aspect to consider are the requirements of RA Land code as there are some categories of lands which are not subject to alienation or utilization for construction projects.

Since a number of services utilized during the construction and after it is final, are subject to licensing, employer should be observant to involve licensed companies.

The RA Law on Urban planning is the key legislative act governing the whole process of construction and engineering. According to this law, starting from the planning stage parties should apply for relevant permits (in detail see Question 4). For several mandatory rules applicable for construction projects as well, see Question 3.

## 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.

Health and safety considerations are not codified in a separate legal act. However, every sphere has some reference to public health or safety and or health of employees or parties involved. The RA Law on Urban planning, RA Labour code, RA Law on Assessment of environmental have some potential of prevention and control of public health and safety risks.

Besides, relatively large circle of relations are subject to the RA Law on Ensuring sanitary

and epidemiological safety defines sanitary rules and hygienic standards essential for environmental safety and non-harmfulness for the population and the requirements for ensuring favorable conditions for human life in any public or private organization.

The RA Law on State regulation of ensuring the technical security is applicable for certain projects having higher potential of industrial accidents.

(b) environmental issues;

The negative environmental impact of various activities may act as a ground their prohibition. RA Law on assessment of environmental impact lists those activities and describes the process how the environmental impact should be assessed. The environmental impact includes the influence on fauna, flora, on public health, etc. When issuing the planning permit, the environmental requirements are considered as well, relevant expertise is conducted, and the report plays a decisive role when issuing the construction permit. Hence, if environmental impact may be higher than authorized by law, the construction permit may be rejected.

(c) planning;

Planning and particularly issuance of the planning permit (also referred as architectural design task) by local authorities is the starting phase of a construction project. RA Law on Urban planning defines the mandatory requirements for the use of the territory, land and other real estate of the community or its separate parts, in accordance with their legal regime, purpose and functional significance, in accordance with the permitted uses. Further, every application for planning permit is considered in comparison with those requirements and hence a final decision is made. Thus, in this respect, much depends on the location of the planned construction.

(d) employment; and

Purely employment relations are subject to regulation by RA Labour Code. In this regard, the responsibility to consider several issues is up to the party acting as employer for with the meaning of RA Labour Code. Several protection mechanisms designed that may act as relevant for are the following.

The employers are obliged to have a system of coordination of accidents and cases of occupational diseases, capacity to provide first medical aid to employees, conduct an investigation to discover the causes etc. In short, the Labor Code protects the employees working under conditions having some level of dangerous for health. Secondly, several activities are recognized by law to be more dangerous and difficult.

In this case, several privileges apply (i.e. Besides the salary, supplements should be paid). The list of such activities is prescribed by Governmental decree N 1698. In addition, by governmental decree N 1089, the medical examination of special group of employees is mandatory. A list of other legal act gives a wide range of protections to employees, including the protection from noise, radiation, etc.

(e) anti-corruption and bribery.

All the parties to a bribery (the bribe-giver, the recipient, third party who supports, promises, or organizes, the provocateur) are subject to criminal liability according to the RA Criminal Code. Imprisonment may also be selected as punishment. The type and size of the punishment will depend on many factors, such as whether the bribe was received for provision of legal or legally prohibited services.

RA Criminal Code recognizes the commercial bribery as well. The criminal in this case will be an employee of a commercial or other organization who permanently, temporarily or with special authority performs executive or other administrative functions or holds any other position in commercial organizations, regardless of the type of ownership.

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

As indicated in Question 1, the entire process of construction is regulated by the RA Law on Urban planning. According to the core logic adopted by this law, every next stage should be

allowed only after confirmation that legal requirements have been respected previously. The following permits (with given sequence) are applicable:

- planning permit (or architectural design task),
- construction permit,
- certificate of completion,
- operation permit.

The relevant body to issue the enumerated permits, are the local self-governmental authorities. Concerning the licensing relations, the RA Law on Licensing applies listing those activities which conduct is legal if licensed. Hence, the employer should either be fully licensed or be in contract with licensed company.

The non-compliance with urban planning or licensing requirements is ground for penalties according to the RA Code of administrative offences. Though, in certain circumstances the RA Criminal Code may be applied.

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

Yes. The RA Civil Code, with separate chapter, regulates extra-contractual obligations for caused damage.

**6. Who are the typical parties to a construction and engineering project?**

Not considering the exceptions prescribed by law for projects with less strict requirements, the classic construction will include the constructor (landowner or the person entitled to use), the designer of construction documents, the design expert, the construction quality control technician, the engineering inspector, the building technical inspector. Involvement of other experts is possible as every project may have specialties requiring individual approach and consideration of legal rules.

**7. What are the most popular methods of procurement?**

Procurement statistics will vary depending on whether the customer is in the public or private sector. The RA Law on Procurement establishes detailed regulations for contracts where the state, local self-government bodies or their participating companies act as customers. And in practice, the most common of the options allowed by law is to sign a contract through a tender as a more transparent process and where corruption risks are easier to control. Moreover, the established measures may be applied solely in accordance with the procedure established by law and under the established conditions. And from a purely legal point of view, tender is the most encouraged.

The picture is different in the private sector. The parties are free to choose their counterparty by any legal means and no restriction applies.

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

Use of certain standard contracts in this case is more possible in the case of contracts involving public organizations. Equally is possible approval by legal acts the form of a certain type of contract. Coming to contracts concluded in the private sector, the application of any standard forms is not a principle. Each contract is drafted by lawyers taking into account the agreement and intentions of the parties.

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

A number of restrictions and rules apply only for public procurement. The RA Law on Procurement regulates the process of procurement, the rights and obligations of the parties, the requirements applicable for any document drafted, etc.

For private procurement no special restriction or regime applies. However, the non-

compliance with general legally binding rules will affect the process.

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

Depending on the project type the inclement to engage any consultants differs. In all cases, parties are free engage any consultant.

**11. Is subcontracting permitted?**

Yes. Pursuant to the Civil Code of RA, general contractor may engage a subcontractor unless otherwise prescribed by a law or the contractor agreement.

**12. How are projects typically financed?**

In most cases it is typical for all type of projects to be financed through credit facilities issued by either local or international financial institutions. Yet, much depends on the volume and specificities of the project, as well as the availability of personal financial resources of the client. However, any legally accessible measure can be selected.

**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 RA Civil code lists several securities which can be selected by parties. However, the given list is not exhaustive, and any security structure can be applied provided it is not in contradiction with legislation. However, local companies will opt for any regulated security rather than design any special means: bank guarantees, parent and/or affiliated company guarantee, pledge, etc.

The selected security will typically exist with the same terms as the main contract.

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

The general rule of freedom of contract allows parties to decide all issues related to payment (methods, terms etc.). Parties, in all cases, will be obliged to follow certain regulations. For instance, sales transaction of real estate which value exceeds AMD 50.000.000 (app. USD 103.000) cannot be made by cash.

**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?**

Neither a special prescription of pay-when-paid clauses nor a restriction is provided. Hence parties are allowed to opt for such payment order.

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

The inclusion of such provision is legal and the codified logic (though subject to modification) is that payment (or the last tranche of payment) is made after the quality of the work is tested and employer accepts the result. Besides the quality and standard check conducted upon acceptance of the result, a warranty period also applies unless otherwise agreed by parties.

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

The liability measure for delay in a contract is the penalty: either contractual or prescribed by law in absence of the former. Plus, the RA Civil Code allows to claim for damages as well if the penalties don't cover the real loss caused. The penalty clauses are mostly upheld by courts. However, same is not applicable to damages. In this case, there should be reasonable calculation and proof which adds certain complication to the process. In addition, there are two types of damages recognized in Armenia: the real or actual loss caused and the unearned income that this person would have received under the usual conditions of civil practices had the right thereof not been violated (lost benefit). For the latter, the courts are mostly inclined not to uphold. Foreign investors may also claim for moral damage relying on The RA Law on foreign investments.

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

Yes. Parties can freely opt for an entire or partial exclusion of liability. The principle codified in RA Civil Code releases the parties conducting business activity from liability only in case of force majeure events. And if the liability applies, no general limitation is prescribed for construction contract.

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

Parties may terminate the contract by mutual agreement at any point of its existence. In this regard, no restriction applies.

As for force majeure, such events will release parties from the liability for non-fulfillment or improper fulfillment of the obligations but will not result in termination unless decided so by parties. Worth to mention, that no event is recognized as force majeure by law, hence parties should be very attentive to definitions applied by contract. As a rule, contracts will give the right of unilateral termination in case force majeure events continue for a certain period.

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

Contracts with third parties are concluded, as a rule, separately from the main contract.

Hence, the contracting parties thereto may determine their relations independently. The usage of tripartite contracts is another alternative utilized.

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

The concept of conditions precedents is recognized by RA Code of Civil procedure. Such conditions may be determined either by law or by contract.

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

Considering purely the contractual relations between the contractor and the employer, no general obligation for any type of insurance exist. In respect to term, most probably the contract will conclude for a certain period and be extended every year, for instance.

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

Though, systematic progress can be seen in applying to alternative dispute resolution tools, court continues to be the most preferable forum. Several private companies offer both arbitration and mediation services. Plus, every method of mediation existing worldwide may be applied. Though, parties should either in the contract or after the dispute arises, opt for such alternative in written form.

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

RA Code of Civil Procedure has a chapter regulating the courts' support to arbitration tribunals and prescribing the procedure of applying to courts for such support. The chapter refers to RA law on commercial arbitration and those questions include the appointment of arbitrators, the jurisdiction of the tribunal, the enforcement of the award, etc.

A number of factors may appear decisive for the terms of enforcement of the given award. The discussion of the request on enforcement of local arbitral awards may get no longer than one months and for awards made by international arbitral tribunals, reasonability of terms apply. In practice, these terms are mostly respected with rare exceptions still possible.

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

Yes. Terms of statute of limitation concept applies with general term of three years. However, the specific term differs for a number of claims starting from one month till ten years. In addition, the statute of limitation terms will prevent from commencing the dispute only if the



opposing party brings such objection. Otherwise, courts will proceed.

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

Currently, in consequence of the Covid-19 the whole economy is facing many challenges and consequently afterwards many changes will appear and the whole image will be different.

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

Construction of residential buildings and road construction are the most active spheres in the total volume of construction. In particular, the construction of apartment buildings by private construction companies has grown significantly in recent years. The power unit is also relatively active, but mostly at the expense of repairs. This data is evidenced by official statistics.

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

The high-tech sector and its development are in the spotlight of the state starting even from 2000 when the sector was recognized priority sector in economy. Nowadays various measures are being taken to encourage their utilization and study. Thus, gradual progress and impact on all sectors of economy is envisaged.