

Design contracts belong to the wide range of production contracts. Like most contracts of this type, design contracts have some specific features which are the subject-matter of this article. Although they are very common and have diverse legal aspects, design contracts are not covered by any specific detailed legal framework. Their main features are set out or implied in several pieces of primary and secondary legislation, including the Territorial Planning and Development Act (TPDA), the Chambers of Architects and Investment Design Engineers Act (CAIDEA), the Copyright and Neighbouring Rights Act (CNRA), Regulation No 4 of 21 May 2011 on the scope and content of investment projects, and others.

The Chamber of Architects in Bulgaria (CAB) has introduced further rules that regulate the conduct of its members in the implementation of design contracts, as set out in detail in its Statutes and Code of Conduct (CoC) of the professional organization and linked to disciplinary penalties for violation of these rules.

Parties to a design contract are the principal and the designer. The principal is a natural or legal person who is the property owner or the holder of the right to build on another person's property or a person entitled to build on another person's property by virtue of the law. The designer is a natural or legal person incorporating natural persons who have full designer's capacity and are entered into the registers of the CAB or the Chamber of Investment Design Engineers. Most generally, under a design contract the principal will assign and the designer will accept the preparation of a design for investment purposes in accordance with the existing legislation and the detailed development plan (DDP), the design visa and the terms of reference.

To ensure a stable design contract that is successful for both parties, its conclusion should be preceded by preliminary (pre-investment) and spatial research of the location of the property, its legal admissibility, and the reasonableness of the investment idea, and also by preparation of the relevant terms of reference. The terms of reference could be presented as an annex to the contract or they could be incorporated into the main body of the text, making reference to the outcome of the preliminary research in accordance with Article 13(5) of Regulation No 4 of 2001. The minimum required content of the terms and reference and the contract covers the description of the requirements to the design work, the phases of the design process and the subject-matter of the design. The scope and content may cover the

main technical, economic, technological, functional and spatial requirements to the investment and the main functional and spatial parameters of the design.

The written form of design contracts should be a form *ad solemnitatem* (for validity) in accordance with the provisions of Article 160(2) SPDA and Article 29(1) CAIDEA which require design contracts to be given in writing. The wording of paragraph 15 of the CAB Code of Conduct is in the same spirit, reading that designers are required to keep record of their professional assignments in the provision of architectural services through written contracts. Moreover, it introduces requirements to the content of the contract which must cover: (i) a description of the type and volume of work; (ii) the remuneration for the work and the method of its calculation; (iii) the allocation and scope of responsibilities, and (iv) the terms for its termination. Insofar as design contracts often envisage the exclusive right to use architectural works, this should be explicitly put into the contract in accordance with Article 36(2) in conjunction with paragraph 4 of the Copyright and Neighbouring Rights Act. The right to use the architectural work is not a non-binding element of design contracts but, in the absence of such clause, the contract is considered to have granted a non-exclusive right to use the works. If no time limits are established, it is assumed that the right to use the works is granted for five years. It should be noted that in spite of these statutory requirements for a written form of design contracts, the case law is rather inconsistent and there exist court judgments that accept the written form as *ad probationem* (for strict proof) rather than *ad solemnitatem* (for validity) of the contract.

Last but not least, design contracts specify the remuneration of designers for the design services they provide. In accordance with Article 29(1) CAIDEA, the remuneration is fixed on the basis of free negotiations and it may not be lower than the prime cost of the design service. Exceptions are envisaged for the design of religious buildings and for disadvantaged persons, where the remuneration may be lower than the thresholds specified in the Methodology for the Calculation of Remuneration for the Provision of Design Services which has been adopted in accordance with Article 6(7) CADIEA.

There exist provisions that envisage specific obligations of the designer before and after the conclusion of the design contract. Prior to the conclusion of the contract, in accordance with paragraph 24 of the CAB Code of Conduct in conjunction with Article 35 of the Copyright and

Neighbouring Rights Act, the designer has to give a written notification of the new assignment to the holder of the rights to the same design or architectural work. After the conclusion of the contract, in accordance with Article 29(3) CADIDEA, designers of facilities of categories one to four under Article 137(1) to (4) TPDA are required to register them at the Chamber within a month of the date of conclusion of the contract. The information to be provided for registration purposes has to include details of the name and location of the property, the technical parameters and the details of the principal and the contractor (designer). The registration is carried out at the regional chapter of the CAB of which the relevant architect (contractor) is a member who is to fill in, sign and submit a registration statement featuring details of the name and location of the property, the technical parameters and the details of the principal, as well as a declaration signed to certify that the remuneration for the provision of design services is compliant with the Methodology. Although the failure to register the design contract in due course is a disciplinary violation on part of the designer, it is a common practice. Measures have been taken and the trend is likely to change in the light of the recent judgment of the Supreme Administrative Court which confirms the disciplinary penalty imposed on a designer for a similar violation.