

THE FUTURE OBLIGATIONS OF “PROJECT MANAGER” AS CONSTRUCTION INTEGRAL DIRECTOR (DIPE) IN THE LAW OF BUILDINGS CONSTRUCTION IN SPAIN (LOE)

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Abstract

In the year 1999 approves the Law of Construction Building (LOE, in Spanish) to regulate a sector such as construction, which contained some shortcomings from the legal point of view. Currently, the LOE has been in force 12 years, changing the spanish world of the construction, due to influenced by internationalization.

Within the LOE, there regulating the different actors involved in the construction building, as the Projects design, the Director of Construction, the developer, The builder, Director of execution of the construction (actor only in Spain, similar as construcion engineer and abroad in), control entities and the users, but lacks figure Project manager will assume the delegation of the promoter helping and you organize, direct and management the process.

This figure assumes that the market and contracts are not legally regulated in Spain, then should define and establish its regulation in the LOE. (Spain Construction Law)

The translation in spanish of the words "Project Manager is owed to Professor Rafael de Heredia in his book Integrated Project Management, as agent acting on behalf of the organization and promoter assuming control of the project, ie Integrated Project Management .

Already exist in Spain, AEDIP (Spanish Association Integrated of Project Construction management) which comprises the major companies in “Project Management” in Spain, and MeDIP (Master in

Integrated Construction Project) the largest and most advanced studies at the Polytechnic University of Madrid, in "Construction Project Management" they teach which is also in Argentina.

The Integrated Project ("Project Management") applied to the construction process is a methodological technique that helps to organize, control and manage the resources of the promoters in the building process. When resources are limited (which is usually most situations) to manage them efficiently becomes very important.

Well, we find that in this situation, the resources are not only limited, but it is limited, so a comprehensive control and monitoring of them becomes not only important if not crucial.

The alternative of starting from scratch with a team that specializes in developing these follow directly intervening to ensure that scarce resources are used in the best possible way requires the use of a specific methodology (Manual DIP, Matrix Foreign EDR breakdown structure EDP Project, Risk Management and Control, Design Management, et ..), that is the methodology used by "Projects managers" to ensure that the initial objectives of the promoters or investors are met and all actors in process, from design to construction company have the mind aim of the project will do, trying to get their interests do not prevail over the interests of the project.

Among the agents listed in the building process, "Project Management" or DIPE (Director Comprehensive building process, a proposed name for possible incorporation into the LOE,) currently not listed as such in the LOE (Act on Construction Planning), one of the agents that exist within the building process is not regulated from the legal point of view, no obligations, ie, as is required by law to have a project, a builder, a construction management, etc. DIPE only one who wants to hire you as have been advanced knowledge of their services by the clients they have been hiring these agents, there being no legal obligation as mentioned above, then the market is dictating its ruling on this new figure, as if it were necessary, he was not hired and eventually disappeared from the building process.

As the aim of this article is regular the process and implement the name of DIPE in the Spanish Law of buildings construction (LOE)

1 / Introduction

A comprehensive analysis of the figure of the "Project Manager" within the building sector, shows sustained growth of the quoted figure, with many legal definitions contained in the different standards in the virtually non-existent majority, it is estimated that you incorporation of independently, with obligations and guarantees as other agents which exert its role in this sector.

Since 1990, the methodology of the integrated management of project has been in constant evolution. According to data collected jointly with AEDIP, the sector grew up in the a: [1]

1990-2000, sustained average growth of the 18.34%

2000-2007, average sustained growth of the 24,31%

2007-2009, average sustained growth from 8,92% (coinciding with the economic crisis)

These positive media data, which are logical from 1990 to 2007, he was a non-existent building sector, have achieved that the DIP ("integrated management of project") has been established and consolidated within the building.

2009-2011, sustained average growth of 2.32% (in midst of crisis there is still a slight demand for services, although they have decreased fees, this demand is due to the services offered abroad).

One of the fundamental data has been the high growth in public administration, that 5% of the total turnover of the sector in 2005, it has become a 36 per cent in 2008.

With this information starting, we asked ourselves:

Why an agent within a sector consolidated as the "Project Management" in construction, not has any legal legislation covering it or compel him?

How can you incorporate an agent like this in the building planning law with its own identity?

We understand, and from AEDIP so they corroborate us that the "Project Manager" is the physical and legal person who provides, in connection with the construction of a building all or parts of related services: [3]

- Assistance the sponsor (individual agent in the LOE) in the definition of the basic elements of the project including the location, characteristics, deadlines and estimated costs.
- Colaboration with the promoter of the hiring of technicians responsible for the drafting of projects, project engineers and addresses voluntary (individual agents in the LOE)
- Revision of Projects and suggestions, modifications or clarifications.
- Assistance to the developer in the hiring of contractors (individualized agent in the LOE) and coordinating their respective roles in the process back.
- Control of the implementation process of the work, including controls costs and time of execution
- Tramitation and obtaining of permits and licences required to develop a building legally.
- Assistance to the promoter at the reception of the work and the requirements of relief during the different periods of warranty

With these definitions of performance, we are seeing that it participates in the promoter, the Planner, the FACULTATIVE direction and CONSTRUCTOR functions, affecting his performance to owners and users (agents individualized with its own identity in the LOE)

1 Stage of the question.

The BPL(building planning law) since 1999, [6] date of adoption, regulates the back process, through the establishment of obligations and responsibilities of the actors involved, as provided for in the above-mentioned agents to submit guarantees against the owners or users, with the aim of protecting them against risks and ensure the quality of the built.

The performance of any agent will be regulated by the LOE, additional laws and contracts

1.1 Responsibility of the Project Manager as agent of the building. [2]

The only Project Manager will be responsible under the regime of the LOE if he is considered to be agent of the building, either with individuality and characteristics, by acting as typified by the LOE for another agent of the building, or as "co-agent" with another speaker in the construction process

Its responsibility will lead the tasks that perform or functions that play, or should have played in that process, and the form or diligence (or negligence) with them has been executed

It is important to note that not only will have to identify the functions assumed by the Project Manager, but analyze in detail the content and as they have, or should have been, executed.

Thus, for example:

- The definition of the basic features of the project, its revision and amendment can be confined to economic, aesthetic and functional aspects, or get even be confused with the job of the designer.
- The development in the process of hiring of technicians and construction companies can be performed only from a technical point of view or include the drafting and negotiation of the relevant contracts;
- The monitoring of the implementation of the work process can be confined to an apparent review of quality and a detailed cost control, or include the usual functions of the director's work

1.1 Responsibility of the Project Manager as "constructive" in jurisprudence on article 1591 of the Civil Code. [4]

Given its recent approval, still no jurisprudence that can guide us on the liability regime of the Project Manager in the light of the LOE, so it should go to the jurisprudential criterion that mentioned in article 1591 of the Civil Code.

Although most of the doctrine considers that the article has been tacitly repealed by UNITA Derogatory Disposition of the LOE, also is true that jurisprudence relapse on this precept shall be taken into account when interpreting the LOE.

In the light of the jurisprudence relapse on article 1591 of the Civil Code, we believe that the Project Manager should be included in the regime of civil liability of the actors involved in the process of building that defines the article 17 of the LOE. Like this:

- The judgment number 250/2001 of the Supreme Court of 15 March 2001 (article) RJ 2001\3194) includes within responsible for subjects in the light of article 1591 of the Civil Code to the so-called "constructive Manager". In case that analyzes this ruling the entity in question had been sued for having carried out in the constructive process of the building, "in a direct and personal, work of structuring guidelines and coordination of the work, to carry out control technical, although not itself and materially of

building, however their profession of Master Builder, well as advertising and sale of the House “having become decisions on their own variation of the works, variations which considerably harmed the quality of the building. "The activities carried out are the full constructive Manager." The Court of instance declares the responsibility of the Manager based in article 1591 of the Civil Code under the contract signed with the promoter of the building. The Supreme Court confirmed the conviction of the Court of instance "in reason to proven intervention directly managing" Manager 6e\

- The rulings of the Supreme Court of 3 October 1996 (Aranzadi RJ 1996\7006) and 15 October 1996 (Aranzadi RJ 1996\7111), point out that "the activities of management, administration and management of the building process are own promoters and which are carried out are not excluded from the decennial liability", so "take another criterion would mean helpless to purchasers of apartments from greater or lower solvency of the" "other participants in the construction".
- In final, according to the annotated sentence, "collecting societies, when done are you authentic developers, according to the jurisprudential sense, cannot be excluded from the decennial liability because he filed, by a contract of accession the figure of a community of property owners, if this is in addition, as in the case of cars, the purpose of fraudulent avoid apply them article 1591 of the Civil Code

2.3. Conclusions on jurisprudence

A. Taking into account all the definitions chosen and defined the general scope of the Service Department, Project Manager offers a number of advantages that have an impact on the three pillars of the construction process: Technology (quality), Costs and Deadlines. [7], [8], [9]

B. In general, Project Management ensures that the project will be carried with the funds allocated and the envisaged time frame. These benefits are clearly tangible, because mainly due to the fact that you can materialize and quantify in numbers and, consequently, control through partial measurements during the execution of the project. [8], [9]. Addition to these clearly identifiable benefits there are others that make this service a strategic tool into an investment: [5]

- 1) Acts on behalf of the property and is responsible for the control of the entire development of the project to achieve an optimization of the return on investment. I.e., the Project Manager has the same objectives as the property.
- 2) It identifies the needs of the client with a welfare approach. The property maintains its authority and control throughout the process, i.e. recovers ownership lost in the traditional method.

- 3) Lays down some clear and reasonable goals and achieves a balance between them
- 4) It is conceived as a process management and is based on a systemic approach. It avoids the "tightness" of the different phases of a construction process
- 5) Defines also the expectations of all interested parties and is responsible to the relationship between them develop better communication, however the difference of the different agents involved in the process.
- 6) Raise the project in a comprehensive manner, which leads to an optimization of the means and resources, allowing you to avoid the dilution of responsibilities and the distraction of resources by the property for a project that is not the purpose of your business.
- 7) Manage risks throughout the project to ensure the delivery of the product on time, within budget, with the quality requirements and to the satisfaction of all parties in the project
- 8) Timely action to anticipate and correct deviations ensuring the completion of the project at the time, cost and quality planned within the defined scope. The problems are discovered in advance to provide correct solutions.

The DIP is applied throughout the project life cycle and soon begins to act, best results will be obtained because to the extent that advances the project possibilities of minimizing the risks decrease while the impact of these increases.

2 Proposal for action

Within the agents appearing in the back process, "Project Management" or DIPE [10] (Integral Director of the Building process, denomination proposed for possible incorporation in the LOE) currently does not appear as such in the LOE (management of the building law) being one of the agents that exist within the process of building is not regulated from the legal point of view, without obligations. While it is compulsory by law to have a designer, a builder, a construction management, etc. a DIPE only hires him who will, as they have gone advanced knowledge of their services by customers they have been hiring these agents, not exist any legal obligation as mentioned above, then the market is dictating its judgment on this new figure already that if not necessary, not will hire you and end up disappearing back process.

One of the following, from our point of view of the existing crisis will be the obligation by the promoters of a greater professionalism of the actors involved in the process, which obliged all those actors that the LOE does not make them knowledge under the umbrella of a university qualification such as designers, the directors of work or the directors of execution of work to look for sources of content through professional courses containing the requested knowledge, to establish guarantees and avoid intrusion into an area highly affected by the crisis.

D.I.P.E. (comprehensive Director of the Building process) as agent with its own identity must be outside all the actors involved, this translation refers to a figure which depending on the promoter,

monitors coordinates and controls the entire process by integrating techniques and methodologies of project management, with all the actors involved in the process.

Be considered DIPE, any physical or legal, public or private person delegation from the promoter and under a contract with him, manage and coordinate with all actors involved in the back.

Also you must manage before the Administration and on behalf of the promoter all permissions and administrative licenses in order to develop the building.

Is important to define its obligations, there are responsibilities deriving from their performance that can affect other actors involved in global or partial way in this process of building

Obligations of DIPE:

- a) Be in possession of the degree or vocational training that enables compliance with the conditions required by law to act as consultant in the process of building a delegate.(Countries Anglo-Saxons is compulsory professional associations recognized PRINCE2 and PMI (Project Management Institute) certification.) (UK)
- b) Designate the person responsible for and his team, who will assume the functions as legal representative of DIPE in the process.
- c) Assuming the functions of the promoter with the agents involved in the process, assuming its representation and decision-making.
- d) Subscribe to insurance to ensure that its action against the owners and users.
- e) Comply with the legal provisions affecting him, including the liability of existing contracts

3 Conclusions

Ultimately that analyzing the above, article 8. Concept is considered to be agent of the building all physical and legal persons involved in the building, and then the DIPE intervenes actively in the process back.

Jurisprudence, which can turn into law, because judgments are incorporated as references to the judicial proceedings, condemns the project manager, joining together with other actors and marked a period of responsibility of 10 years, then that creates the obligation to have decennial liability insurance according to the LOE as other agents.

For all previously outlined would be fundamental incorporation as agent with its own identity in the building planning law to regulate a profession that is involved in the public and private sector is not yet regulated

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