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EPC-contracts using in renewable energy: Legal and practical aspect

Використання EPC-контрактів у відновлювальній енергетиці: практичний та юридичний аспект

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Abstract

The relevance of the article is connected with the rapid growth of investor`s interest in the project implementation of renewable power plant construction, through the conclusion of so-called EPC-contracts because Ukrainian legislation can't properly keep up to carry out legal regulation of the public relations, which forces business to use foreign jurisdiction rules or standard contract forms developed by specialized international organizations with a purpose for project implementation. The purpose of the study is clarification of the main features of the capital construction of renewable facilities in Ukraine through the conclusion of EPC- contracts and the problems of current adaptation of legislation according to the best world practices. The main research methods are comparative law research and logical law method, the first of which allows to compare and identify common and distinctive features which are inherent for Ukrainian law and provisions of EPC-contracts which were designed by International Federation of Consulting Engineers (hereinafter – FIDIC), the second one helps to logical study of the legal rules and avoidance of contradictions during conclusion and execution of contracts. The results of the study will

Анотація

Актуальність дослідження зумовлена стрімким зростанням інтересу інвесторів до реалізації проектів будівництва електростанцій, що використовують відновлювальні джерела енергії, шляхом укладення так званих EPC-контрактів, адже українське законодавство не встигає здійснювати належне правове регулювання суспільних відносин, що примушує суб'єктів господарювання все частіше звертатись до норм закордонних юрисдикцій чи проформи міжнародних профільних організацій з метою здійснення договірних транзакцій. Метою дослідження є виявлення основних особливостей укладення EPC-контрактів в Україні та підходів до їх адаптації, відповідно до імперативних норм національного законодавства. Основними методами дослідження проблеми є порівняльно-правовий та логіко-юридичний методи, перший з яких дозволяє співставити і виявити спільні та відмінні риси, що притаманні нормам українського законодавства та положенням EPC-контрактів, розроблених Міжнародною федерацією інженерів-консультантів (далі – FIDIC), а другий – сприяє логічному вивченню правових норм та уникненню суперечностей при укладенні та виконанні договорів. Результати

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be useful for practicing lawyers who support renewables power plant construction projects as well as for scientists who study public relations in the field of capital construction.

Keywords: capital construction, EPC-contract, FIDIC standard form, international business contract, renewable energy.

дослідження стануть в нагоді юристам-практикам, які супроводжують реалізацію проектів будівництва електростанцій, що використовують відновлювальні джерела енергії, а також науковцям, які вивчають суспільні відносини в сфері капітального будівництва.

Ключові слова: капітальне будівництво, EPC-контракт, типові форми FIDIC, зовнішньоекономічний договір, відновлювальна енергетика.

Introduction

The problems of sustainable development and environmental protection pose unprecedented challenges to humanity in terms of scale and complexity (Teremetskyi, 2014; Duliba et al, 2021). The economic growth of each state inevitably leads to an increase in the use of natural resources and wastes of consumption, and increases the anthropogenic load on the environment. Our environment is constantly changing. However, as our environment changes, so does the need to become increasingly aware of the problems that surround it (Kurylo and et., 2020).

The globalization of economic processes and increase in transnational market turnover, as well as one of the highest feed-in-tariff level, led to the rapid development of economic and legal relations in the field of capital construction of renewable energy facilities in Ukraine. FIDIC proformas have become widely used among customers and contractors, in particular Conditions for Contract for EPC Turnkey Projects ("Silver Book") (FIDIC, 2017) without which implementation of large-scale energy projects is impossible as a rule. This stems from the fact that the use of EPC-contract increases both the chances of attracting project financing and investment appeal of the project for such international financial institutions as the European Bank for Reconstruction and Development, the European Investment Bank, credit and export agencies etc.

All facilities that produce energy from renewable sources, in particular solar, wind or biomass power plants have been realized directly through capital construction. However, such an issue constantly related to the application of current regulations, most of which have lack of legal reserve. Accordingly, a situation when the legislation in force must "catch up" a practice, rises over and over again.

For example, during realization of majority wind energy projects in Ukraine, wind turbine manufacturers, as usual, have to enter into supply agreements (offshore obligations) and construction agreements (onshore obligations) under a single EPC-contract. It is important to understand the difference between onshore and offshore obligations to take into account such features while structuring a contractual relationship (Hritsyshyna, 2021), because national legislation does not contain direct indication for separation of obligations according to the contract under mentioned above criteria. This approach was formed exclusively in practice, when Ukrainian lawyers were faced with the lack of legal regulation of obligations under mixed (complex) contracts, which combine elements of different agreements such as Engineering, Procurement and Construction and one party of which is a non-resident company.

Also, it should be emphasized that the conclusion of the EPC-contract is possible due to possibility of using two fundamental law principles: Freedom of Contract and Autonomy of the Will. As for the focus of the principle of freedom of contract, it is intended to stimulate contract activity of entities, enabling them to determine the strategy of its behavior and, in particular, determine the terms and the future of contracts concluded by them. Thus, freedom of contract is a socially significant phenomenon be¬cause it is a prerequisite for development of entre¬preneurship, it facilitates new economic ties and fosters conquering of new markets, identifying new ways to meet societal needs (Bondarenko, 2016) as well as principle of Autonomy of the Will – the basis of the international contract law.

Nowadays, Engineering, procurement and construction contracts are on the way to become the most usual contract form applied by the private sector to undertake construction works on large scale infrastructure projects. In every project, it is necessary to have good contract management in place; otherwise it can have

negative consequences for all parties involved – the client, contractor, lenders, government, etc (Pícha et al, 2015).

We point out, that there is no approved main contract form for construction works in Ukraine. Instead of this, the decision of the Cabinet of Ministers of Ukraine № 668 of August 1, 2005 "On the approvement of General conditions for conclusion and performance of capital construction contracts" regulates the procedure of concluding and executing contracts for new construction, reconstruction, restoration and renovation of construction object (Resolution No 668, 2005). However, the rules stipulated in this decision were supplemented by provisions about engineer, but the majority of regulations are outdated and don`t meet the requirements of the present time.

As some scholars correctly noted, apart from regulatory and other mandatory requirements and the Ukrainian public order issues, it is necessary to account for the differences between FIDIC contracts and the law of contract in Ukraine, as discussed below. The differences are rooted in the historical background of Ukraine and the peculiarities of the civil law system to which Ukraine adheres. In civil law jurisdictions, (here are difficulties with the interpretation and implementation of many terms, notions and principles of common law underlying FIDIC contracts (such as "time is of the essence", "dispute adjudication board", "variations", "value engineering", "early warning", "substantial completion", "constructive acceleration", "time at large", "experienced contractor" or "determinations") (Teush and Klee, 2018). Such a phenomenon is not solitary, it has also been encountered in Kazakhstan, Uzbekistan, Russia, Belarus and a number of other post-Soviet countries. Of course, it has raised a big interest from scientists and legal practitioners who support construction projects in energy sphere.

In order to use FIDIC proforma, depending on the project, the place of performance and jurisdiction of the parties, it is necessary to decide which substantive law is applicable. Adaptation of specific FIDIC proforma to the substantive law of the project country shall be done through Special Conditions of FIDIC contracts. In fact, the Special Conditions shall be prepared in similar form as additional agreement. Through the use of Special Conditions parties can implement standard conditions to the local legislation and object specificity, include additional conditions and provisions, remove unnecessary or unacceptable provisions from the contract (sub-clauses, points, articles) (Sukhostavets, 2019).

Literature Review

There is a limited number of researches, which describes problems of EPC-contract execution in Ukraine. In fact, Ukrainian scientists do not pay enough attention to the study of EPC-contracts, unlike practicing lawyers, which deal with the conclusion of such agreements very often.

Theoretical foundation of this research is based on works, which reveal some aspects of the use of the Principle of Freedom of Contract (Bondarenko, 2016), legal support of economic competition (Muzychuk et al, 2021) and environmental protection (Teremetskyi, 2014). One of the first attempts to research FIDIC'S standard forms of contract within the framework of Ukrainian legislation was made by Teush S. (Teush, 2013), whose study was focused on overviewing of the general practice of applying standard FIDIC agreements in Ukraine. EPC-contracts study from the practical point of view was made by Lipavsky V. (Lipavsky, 2015), who emphasized the most common problems of EPC-contract applying in post-Soviet Union countries which are related to Romano-Germanic legal family. Finally, Hritsyshyna M. (Hritsyshyna, 2021) and Sukhostavets I. (Sukhostavets, 2019) have made a huge practical work on study of issues connected with adaptation of EPC-contracts in Ukraine. Which is not surprising, because those researchers are well known in Ukrainian law market as great specialists in energy and real estate practices.

Provisions of the Ukraine legislation and the rules of international law makes the empirical basis of this research. Huge scale of secondary legislation was analyzed and selected, especially resolution of the Cabinet of Ministers of Ukraine and other government executive bodies. The empirical basis also includes analysis of practical cases and best market practice.

Methodology

The methodological basis of the study includes: system analysis and synthesis, comparative legal and structural logic, legal forecasting. While exploring possibility of EPC-contract adaptation in Ukraine, the method of legal modeling was used as well. It's allowed to estimate the amount of necessary changes to the standardized form of agreement, which are necessary for contract performance. Also, this method helped to

identify contractual provisions that cannot be applied within the current legal framework and need to be adapted accordingly.

The comparative law method, which consists in comparing the rules of law from different jurisdictions or the rules of national law with the provisions of specific forms of contracts, played a significant role in this study. This is due to the fact that the legal framework within which the conclusion of EPC-contract shall be made, has been already formed, but it does not meet the modern needs of developers. This necessitates its comparison with the progressive provisions of the standard FIDIC proforma, which have become widespread in the EU and the US.

System analysis and synthesis also played an important role in the study, as they helped to identify the necessary provisions of EPC-contracts that need to be compared with national legislation in order to future adaptation.

Results and Discussion

Rapid development and support of lawful and fair legal relations between business entities, efforts to develop the use of fair and equitable customs in business are among the main tasks of Ukraine in the implementation of state policy (Muzychuk et al, 2021). For several years in Ukraine, the infrastructure of the national economy is played an important role, in particular, both enterprises in the field of water supply, sewerage, production, transportation and marketing of heat and electricity, gas distribution and transportation and water heating and gas supply networks in residential buildings (Loiko and et., 2021). In the field of large construction projects, a contract for the complex execution of works by a single organization with a fixed price and construction of a turnkey facility was the most common form of agreement. This is the so-called "design, purchase and construction contract", which is known as the EPC-contract. Mentioned type of contract allows investors and customers to predict time and financial costs in advance, and this approach was so popular that some organizations, such as FIDIC, have prepared standard agreement templates based on real market conditions. Firstly, published in 1999, the Silver Book, which focuses on turnkey projects, stipulates assumption by contractor a number of risks connected not only with comprehensive construction process of the facility, but also associated with design and commissioning. Book also gave impetus for the further active use and implementation of EPC conception.

First publications of Ukrainian scientists about FIDIC proformas appeared in 2013, which has helped to further study the scope of their application not only in theory but also in practice (Teush, 2013).

The legal nature of EPC-contracts is quite polemic. Some researchers consider that such contracts belong to the so-called "soft law" or "non-legal soft law", other researchers attribute these proformas to the "lex constructionis" – a system of non-governmental regulation of international construction contracts, which reflects to the trade customs as well as typical conditions of international construction contracts. In accordance with lex constructionis, FIDIC develops recommendations in the form of proformas, model contracts, standard regulations, legal adjustments used by customers and contractors while concluding contracts for realization of capital construction projects (Sukhostavets, 2019).

The practice of agreement concluding based on the proformas developed by international associations is not an isolated, case in point of this exists in agricultural sector. For example, FOSFA - The Federation of Oils, Seeds and Fats Associations and GAFTA - The Grain and Feed Trade Association have developed a lot of model contracts for delivery and trading of oilseeds, sheanuts, meat, fish etc. (FOSFA, 2021; GAFTA, 2021).

Due to the lack of necessary technologies in Ukraine, most EPC-contracts ware concluded in the field of renewable energy are foreign economic agreements with foreign element (in the sense of legal entity). Therefore, attention should be paid to the provisions of the Law of Ukraine "On Private International Law", article 5 of which stipulates the autonomy of the contract parties, which allows them to choose the law that will apply to the transaction or its parts. Also, part 4, article 5 of the above-mentioned law contains an indication that the choice of law in respect of certain parts of the transaction must be clearly expressed (Law of Ukraine No 2709-IV, 2005).

Therefore, while concluding an EPC-contract, the parties, can not only divide it into offshore and onshore part, but they are also entitled to choose which jurisdiction shall be applied to the transaction as a whole, or to its individual parts (second option could lead to legal collisions).

The most common problems that arise while "splitting" EPC-contract into offshore and onshore part include:

1. Inexhaustibility of specification. The ultimate goal of EPC-contract is to build a turnkey facility by a single general contractor (EPC-contractor), which is responsible for the timing and quality of construction only before the employer. Accordingly, its quite often situation while concluding such a transaction, when the EPC-contractor does not fully understand the whole scope of work and amount of equipment that will be needed for project implementation. For example, after contract signing or during its execution, it turns out that there is no concrete plant near the site that could meet the construction needs of the appropriate brand of concrete, which could cause increasing of the contract price or rescheduling works. Experienced EPC-contractors always take such things into account at the negotiation stage and immediately include such costs in the contract price, but this does not mean that specification shall not be changed, if EPC-contract is divided, changes are necessary for two parts of it. In practice, such features of renewables projects realization certainly led to necessity of signing a number of additional agreements to offshore and onshore contracts, or only to onshore part, if the manufacture and supply of equipment under the offshore part has already been done. Such problems in splitted EPC-contracts could be solved by signing an umbrella agreement which will be considered further.
2. Deadline problems. Delay in performance of offshore contract part is bound to create a delay in performance of onshore contract. Inclusion of such a "knock-on effect" is important while performing an EPC-contract, because charging of contract sanctions by the employer will take place after the EPC-contractor fail of complying with the project implementation schedule. Such violations of the terms may lead to the fact that contractual sanctions will be charged by the customer for two (offshore and onshore) contracts simultaneously. In order to avoid such consequences of the EPC-contract splitting, it is necessary to envisage provisions that would establish a mechanism for sanction calculating according to one of the contracts.
3. Conflicts in the application of legal rules from different jurisdictions. As we have already mentioned, while concluding an EPC-contract with a foreign element, parties are entitled to independently choose the right that will be applied to the transaction or its separate parts. Accordingly, ignorance of the law of the state on which territory the construction of the facility shall be carried out, in our case - the legislation of Ukraine, could lead to arise a number of non-contractual or unagreed obligations. For example, in accordance with Ukrainian legislation, the construction of a site fence is a necessary component of preparatory construction works, but such an obligation may not be included in EPC-contract. In this case, the absence of a fence may lead to a refusal in obtaining of necessary authorizations for performing construction work. In practice, such issues are relevant to large solar power plants, which can occupy a lot of hectares, and installation of a fence around the construction site will increase project cost and, as a consequence, the EPC-contractor could appeal to the absence of such obligations in the text of the contract. This occasion will lead to impossibility in obtaining an authorization for beginning of construction works.
4. Other. Discordance of offshore and onshore contractual provisions regarding: limitation of liability of the parties, force majeure, termination and suspension of the agreement, etc.

All the above-mentioned issues in splitting of EPC-contracts into offshore and onshore part can be mitigated through the use of umbrella agreement, which will include common provisions to all parts of the EPC-contract with respect to:

– guarantees among the parties and compensation of damages;
– penalties and the procedure of its calculation;
– parent company guarantees;
– dispute resolution and arbitration;

Analyzing all the above-mentioned, it should be noted that splitting of the EPC-contract into offshore and onshore part is determined by commercial considerations and has no legal basis, but, as a consequence, leads to a number of legal issues that need to be settled on a contractual basis. However, experienced legal practitioners can turn the disadvantages that arise

while splitting of the EPC-contracts into advantages for one or another party.

Also, it's necessary to pay attention to realization of the Freedom of Contract principle which allows parties to choose the type of contract they want to conclude. In accordance with part 2, article 628 of the Civil Code of Ukraine, the parties have the right to enter into agreement that can have elements (parts) from various agreements (mixed agreement) (The Civil Code No. 435-IV, 2003). Appropriate regulation regarding different types of agreements shall apply to the certain parts of the agreement unless otherwise was established by the contract or does not arise from the essence of the mixed contract. Therefore, in view of the current legislation of Ukraine, we can definitely say that EPC-contract is a mixed agreement because it combines certain elements of the contract for construction, supply, engineering and services (as option).

As for the elements of the supply agreement, EPC-contract includes all the features that set out in Chapter 30 of the Commercial Code of Ukraine and article 264 of the Civil Code of Ukraine (The Civil Code No. 435-IV, 2003; The Commercial Code No 436-IV, 2003). However, some rules of Ukrainian legislation inherited from the times of the Soviet Union cannot be applied. For example, Instruction on the procedure for acceptance of products for industrial and technical purposes and consumer goods by quality, approved by the Resolution of the State Arbitration of the Council of Ministers of the USSR № P-7 dated 25.04.1966 (Resolution No. P-7, 1966) and Instruction on the procedure for acceptance of products for industrial and technical purposes and consumer goods by quantity, approved by the Resolution of the State Arbitration of the Council of Ministers of the USSR № P-6 dated 15.06.1965 (Resolution No P-6, 1965).

Ukrainian employers, as a rule, prefer to control all the construction process. Therefore, in most cases, the employers or a supervisor engineer makes a lot of inspections, measurements and other control measures. Meanwhile, it is necessary to remember the imperative rule contained in part 1, article 853 of the Civil Code of Ukraine: "The employer is obliged to accept the work performed by the contractor in accordance with the contract, inspect it and in case of deviations from the terms of the contract or other deficiencies, immediately report the contractor about that. If the customer does not make such a statement, he loses the right for the further referring to these deviations from the terms of the contract or deficiencies in the performed work". It should be emphasized, that this norm of the Civil Code of Ukraine is radically different from the existing international practice. FIDIC proformas are based on the opposite principle: the approval of any work or the absence of comments from the employer does not release the contractor from liability for violations in any way (Lipavsky, 2015).

Additionally, let's focus on hand-over of the site from employer to EPC contractor. According to the Ukrainian legislation, in particular, State Construction Standard A.3.1-5:2016: Organization of construction production, "construction site" means an area that is allocated for the construction of facilities, placement of temporary buildings, structures and utilities, construction machinery, building materials, products and equipment used in the construction process (State Construction Standard, 2016). Also, part 1, article 875 of the Civil Code of Ukraine stipulates the employer`s obligation to "provide the contractor with a construction site (front of works)" (The Civil Code No. 435-IV, 2003). It is typical when under EPC-contract, the customer is obliged to transfer site to the contractor with additionally arranged connection to electric networks, drainage, water supply, without trees, etc. If the customer has not fulfilled these conditions or fulfilled them incompletely, the contractor has the right to reasonably refuse to accept the site and not to fulfill the terms of the contract on the basis of part 3, article 612 of the Civil Code of Ukraine (if as a result of the debtor's delay in performance, the obligation has lost interest for the creditor, he may refuse to accept performance and claim reimbursement of the damages) (The Civil Code No. 435-IV, 2003).

Due to the fact that the engineering contract is "unnamed" (Civil Code of Ukraine doesn`t contain it), accordingly, there are no special legal requirements for its content in Ukraine. However, subparagraph 14.1.85 of the Tax Code of Ukraine contains broad definition of "engineering" by which is meant provision of services (performance of works) connected with drawing up of technical tasks, project offers, carrying out of scientific researches and technical or economic inspections, performance of engineering and reconnaissance construction works, technical documentation development, design processing of objects or technics and technology, providing consulting and author's supervision during installation and commissioning works, as well as providing consultations related to such services (works)

(The Tax Code of Ukraine, No. 2755-VI, 2010). This concept does not contradict the legal nature of the EPC-contract, because the last one may obligate the contractor to carry out engineering work on certain technical products (such as wind turbines, nuclear reactors or inverters), which will later become a part of a complex facility. Therefore, the position of some researchers, who consider the engineering contract exclusively as an integral part of the construction work and equate engineering with author's supervision, is incorrect in our view.

As commonly defined, liquidated damages are damages whose amount is designated by the parties during the drafting of a contract for the harmed party to collect as compensation upon a specific breach (eg, late performance). If the contractor fails to complete the works by the specified time, or within a reasonable period of time, it will be in breach of contract and liable to the client in damages. Parties commonly agree that a liquidated (fixed and agreed) sum will be payable as damages for failure to complete by the specified time. Liquidated damages are often calculated on a daily or weekly basis, and as a percentage of the contract price, and should be a genuine pre-estimate of the client's loss arising from the delayed completion.

At the same time, the Ukrainian legislation does not contain such a concept as "liquidated damages". Instead, there are provisions of part 3, article 216 of the Commercial Code of Ukraine which contains an indication that economic and legal liability is based on the following principles:

- the injured party has the right for compensation, notwithstanding whether appropriate provisions are exist in the contract or not;
- the liability of the manufacturer (seller) for low-quality products applies regardless of existing such a provision in the contract or not;
- payment of penalties or compensation for damages do not release offender from fulfillment of obligations in kind;
- contractual provisions regarding exclusion or limitation of responsibility of the manufacturer (seller) of production are unacceptable (The Commercial Code No 436-IV, 2003).

Therefore, there is a complete contradiction between the provisions related to compensation for damages under the EPC-contract and Ukrainian law. However, there is a way out of the situation, because when a non-resident company is a party to the contract, it allows the parties to regulate their relations according to the rules of certain jurisdictions. Typically, application of English law allows the parties to limit their liability under the contract, however, in this case there should be a direct indication in the text regarding that.

There is also another statutory concept that indirectly contradicts the provisions of the standard EPC-contract - it is deprivation of the right to compensation of losses which is fixed in part 3, article 226 of the Commercial Code of Ukraine, according to which the party is deprived of the right to compensation in case when it was timely warned about possible default and could have prevented the damages by its actions, but did not do so. Typical form of EPC-contract does not consider the question about waiver of damage reimbursement and protects the rights of injured party regardless of whether it was notified or not.

In addition, the difference in the process of works hand-over may also cause difficulties in concluding and executing the EPC-contract, because Ukrainian law provides the following model form of acts for the use: № СВ-2 в "Act of acceptance of completed construction works" and № СВ-3 "Certificate of construction costs and expenses".

These acts must be signed by mutual consent of the parties and shall be used as primary accounting documents required for further recognition. According to EPC-contract proformas, hand-over acts must be signed by the employer individually. The constructor has the right only to provide comments in case of disagreement.

Among the other things, the next legislative issues must be allocated:

- Excessive state regulation of construction pricing instead of regulation and management (achievement) of the required end result (lack of methodology for calculating the value of the construction object according to the consolidated resource norms and analog objects);
- Difference in the composition and content of the project documentation provided by the terms of the FIDIC contract (lack of technical specifications; there is no "organization of works" section on the project documentation, accordance with the FIDIC model contract);

In the presence of all the mentioned restrictions, adaptation of FIDIC contracts is possible by banally removing any provisions that contradict the mandatory rules of Ukrainian law from the text of contract. At the same time, such a modification will lead to the loss of the original content of the contracts and the optimal risk balance according to FIDIC's Golden principles.

Conclusion

International creditors can be historically considered as the first "lobbyists" of EPC-contracts use in Ukraine. Driven by reasonable effort to protect themselves from the surprises and dangers existing in local Ukrainian market as well as to save resources that would otherwise have to be spent on research and development of individualized forms of contracts involving local experts and taking into account local specifics, international investors usually prefer to use generally accepted tools that accumulate the best world practices and international customs in a particular field (for example, Incoterms). FIDIC proformas can be referred to the category of such tools. This application is an indicator of the maturity of the company, the degree of its integration into the international business environment. The same criterion can be applied to the assessment of the state engineering and construction industry and the investment climate in general.

In addition, the choice of other contractual forms is extremely limited and the need to use FIDIC proformas in most cases is dictated by conditions of international funding. It is not a secret that EPC-contracts are a kind of "password" for access to international investment, especially in case of large-scale infrastructure and energy projects. The international prestige and benefits of FIDIC proformas are undeniable. However, currently the main driving force behind their use in Ukraine is the fact that proformas are integrated into the tender documents of international development banks such as the EBRD and the World Bank Group.

The authors have analyzed the main aspects of EPC-contracts adaptation (the list of which is not exhaustive) also, it was provided practical recommendations for concluding such agreements s and applying implementation of projects for construction of renewable energy facilities in Ukraine; investigated the inconsistency of the norms of the Ukrainian legislation with the standard provisions of the EPC-contract developed by FIDIC (the given list is not exhaustive); provided practical recommendations on the adaptation of EPC-contracts in Ukraine for the needs of renewable energy.

While adapting the General Conditions of the FIDIC Silver Book to the legislation, it is necessary to pay attention to: the form of the main agreement (Contractual Agreement does not contain essential conditions); permits and approvals; terminology while translation into Ukrainian (works, employer, site); wording from English law (such as "acceptability", "reasonableness", "rationality"); fulfillment of obligations security; applicable law and arbitration clause; applicable language (agreement, documentation, correspondence); commissioning. It should be noted that the above list is not exhaustive. Adaptation process shall be done only in case of obtaining a license from FIDIC to amend the standard form of the contract (in connection with the copyright of its developers).

Therefore, the issue of EPC-contract adaptation according to standard proformas developed by FIDIC is a legal necessity that helps Ukrainian business successfully integrate into the world economy and develop country's energy independence. The authors hope that the study will encourage the scientific community and legal practitioners to further explore the specifics of the use of EPC-contract, as a form of international standard agreement created within Anglo-Saxon legal system. It is necessary to give the opportunity for execution such a contract in a proper way within Romano-Germanic legal system countries, which will develop close economic ties between entities from different jurisdictions.

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