


Construction and Public Works, Works Projects and the Inspection of Construction Works



On 24 January 2024, Presidential Decree 31/24 was published in the official gazette, *Diário da República*. This Decree **(i)** approved the new Regulations on the Pursuit of Construction and Public Works Activities, Works Projects and the Inspection of Construction Works, and **(ii)** repealed in their entirety the previous regulations set out in Presidential Decree 146/20 of 27 May (“**Previous Regulations**”).

The law entered into force on the day of its publication (24 January) and applies to individuals and companies that pursue the activities of construction and public works, works projects and the inspection of construction works (“**New Regulations**”).

This informative note deals with the main changes introduced by the law and follows the order of the chapters of the New Regulations.



The number of documents required from interested organisations has been reduced. This is seen as a positive simplification measure.

I. Pursuit of the activities of construction, public works, works projects and the inspection of construction works

OBTAINING AUTHORISATION DOCUMENTS

As was the case under the Previous Regulations, it is necessary to obtain an authorisation document in order to pursue the activities of construction and public works, construction projects and the inspection of construction works. The concept of “*Qualification Documents*” has been introduced in the New Regulations with the aim of broadly covering “*the set of authorisations ‘Registration Documents and Permits’ that certify the classification of contractors and design, consultancy or contract management companies, as well as all the qualifications that economic operators must have in order to carry out construction and public works activities*”.

In contrast with Previous Regulations, the Qualification Document to carry out the activities in question can now only be issued by the Municipal Authorities in the case of registration documents (works up to a maximum amount of AOA 50 million) and Class 1 to 4 licences, or by the Regulatory Institute for Construction and Public Works (“IRCOP”) in relation to the issuing of licences for the other classes. This removes the powers of the Provincial Governments in this area.

With regard to the application for a Qualification Document, the New Regulations have reduced the number of documents required from interested organisations and this is seen as a positive simplification measure. For example, in the case of companies, it is no longer necessary to submit the deed of incorporation and the articles of association, a copy of the publication of the deed of incorporation in the official gazette, *Diário da República*, and a certificate of absence of a criminal record for the manager(s) or legal representative(s).

TRANSFERABILITY OF AUTHORISATION DOCUMENTS

An important change in the New Regulations is the introduction of the possibility of transferring the Qualification Document in cases of transfer or lease of the commercial establishment, which only needs to be notified to the IRCOP within 15 days from the date of transfer. Under the Previous Regulations, registration documents and licences could not be transferred under any circumstances.

VALIDITY OF AUTHORISATION DOCUMENTS

Under the New Regulations, Qualification Documents are now valid for twice as long, i.e., 10 years for Registration Documents and 6 years for Licences, both of which are renewable for the same period.

REQUIREMENTS FOR OBTAINING A CLASS 4 LICENCE

The new regulations extend the less stringent requirements for obtaining Class 3 Licences to Class 4 Licences (works worth up to AOA 265 million). For example, holders of Class 4 Licences may not be required to provide financial indicators and economic and financial capacity. In terms of economic and financial capacity, the applicant is only required to have no negative equity, rather than a minimum equity of 5% or more of the limit for the class prior to the one applied for.

UPGRADING OF QUALIFICATION CLASSES

The provisions of the New Regulations relating to the upgrading of Qualification Classes no longer includes the rule in the Previous Regulations. Under the old rule, when applying for an upgrade to a class other than the one immediately above, the applicant had to demonstrate that “*for each of the above qualifications, they have performed during the last year a cumulative value of proven work equal to or greater than the limit of the class held*”.

Holders of Class 4 Licences may not be required to provide financial indicators and economic and financial capacity.

SUBCONTRACTING

The New Regulations abolish the rule on subcontracting, which states that “*licensed entities that do not have all the qualifications required for admission to a public tender or for the licensing of an activity, and that therefore use subcontractors to take advantage of their qualifications, are bound to them for the performance of the corresponding contractual work*”.

COMPLAINTS AND APPEALS

An obligation is introduced for Municipal Authorities and the IRCOP to respond within 15 days of receipt to complaints from interested parties who have been denied the right to obtain or maintain a licence. In the absence of a response, these complaints are deemed to have been upheld.

PROCESSING OF LICENCE APPLICATIONS AND RENEWALS

Several aspects of the processing of applications for the granting and renewal of licences have been amended. These include (i) the time limit for the authorities to take decisions has been extended to 15 working days (it was 10 working days under the Previous Regulations) and (ii) the maximum time limit for the applicant to submit missing documents has been reduced to 15 days (it was 30 days under the Previous Regulations).

2. Obligations of licensing authorities, project owners and technicians

NOTIFICATION OF CHANGES IN CIRCUMSTANCES THAT ALLOW FOR QUALIFICATION DOCUMENTS TO BE OBTAINED

The New Regulations now include a broad obligation to notify the Municipal Authorities and the IRCOP of any changes that may affect the circumstances that led to the granting of their licence (in particular, suitability, technical capacity, economic and financial capacity). Failure to do so will result in sanctions.

3. Penalties and administrative offence procedures

With regard to Chapter V of the New Regulations, Article 37 introduces, in comparison with the Previous Regulations, new administrative offences (previously “infringements”) punishable by financial penalties (previously “fines”) calculated based on a certain number of minimum wages. For example, it is now an administrative offence to provide false information about employees who are not part of the company’s technical personnel. This is punishable by a financial penalty of between 25 and 200 minimum wages. Another example is when companies that suspend their activities for reasons beyond their control do not fulfil their obligation to notify the Municipal Authorities and the IRCOP within 30 days of the event.

Furthermore, it is expressly stated that the administrative offence procedure starts with the notification of the offence, which can be the result of (i) an Official Notice (which is issued even if the accused refuses to sign it or considers that there is no offence), (ii) a report or (iii) a private complaint, in which case the Municipal Authorities or the IRCOP must carry out the necessary investigations and procedures, culminating in the closure of the case or the imposition of a financial penalty.

It is expressly stated that the administrative offence procedure starts with the notification of the offence.

There is also a rule concerning the service of notice and the hearing of the accused. Under this rule, in the case of a non-curable offence (as opposed to the warning system for curable offences already provided for in the Previous Regulations), the accused is served with a notice of the facts of which they are accused and the legal provisions that prohibit and punish them. The accused may then, within 30 days, if they so wish, contest the allegations and indicate the means of proof. In this context, it is also established that the accused has the right to be heard, if they so wish, during the investigation phase of the procedure, and that no financial penalty or ancillary penalty may be imposed on them without them having been heard.

Under the New Regulations, at the end of the investigation phase, the investigating officer may propose the imposition of a financial or ancillary penalty. This will be decided by the head of the relevant department within a maximum of 45 days, and then confirmed by the municipal administrator or the director general of IRCOP (or bodies to which powers have been delegated).

Furthermore, the New Regulation provides for the possibility of complaints or appeals against decisions, orders and other measures taken within the framework of the above-mentioned administrative offence procedures.

4. Annexes to the New Regulation

Finally, the New Regulations also introduce a number of changes to the tables relating to (i) works and categories of works for the Registration Document, (ii) works and categories of works in construction and public works, (iii) categories of activities in construction projects, (iv) categories of works in the inspection of construction works, (v) minimum staffing levels for construction and public works licences and inspection of construction works, (vi) minimum staffing levels for licences in construction projects, (vii) minimum qualifications required by category in construction and public works, (viii) minimum qualifications required by category in works projects, (ix) minimum qualifications required by category in the inspection of construction works, (x) minimum qualifications required by category in works projects, (xi) classes of qualifications in construction and public works, and (xii) classes of qualifications in the works projects and inspection of construction works.

As it is particularly important, these are the new limits for works associated with the qualification classes for construction and public works, and for works projects and inspection of construction works:

CLASS OF QUALIFICATIONS	LIMIT ON THE VALUE OF THE WORKS	LIMIT ON THE VALUE OF THE SERVICES PROVIDED
Registration document	Up to AOA 50,000,000	-
1st	Up to AOA 60,000,000	Up to AOA 13,300,000
2nd	Up to AOA 90,000,000	Up to AOA 18,000,000
3rd	Up to AOA 115,000,000	Up to AOA 28,750,000
4th	Up to AOA 265,000,000	Up to AOA 47,700,000
5th	Up to AOA 583,000,000	Up to AOA 28,750,000
6th	Up to AOA 795,000,000	Up to AOA 265,000,000
7th	Up to AOA 1,060,000,000	Up to AOA 424,000,000
8th	Up to AOA 2,650,000,000	Up to AOA 636,000,000
9th	Up to AOA 5,500,000,000	Up to AOA 901,000,000
10th	No limits	No limits





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