

Reduction of conflictivity as a prerequisite for sustainable construction

L.I. Zaytseva

Russian Presidential Academy of National Economy and Public Administration

Abstract: The transformation of project management approaches and business processes organization in crisis conditions requires rethinking and supplementing the concept of sustainable construction in terms of the socio-economic component, taking into account an important feature of the investment and construction sector - huge number of disputes and contradictions, the effective resolution of which depends on the successful implementation of projects.

The article suggests such an indicator as the degree of conflicts (conflictivity), which should supplement the sustainability indicators, and can be measured on the basis of the following factors: the dynamics of the number of economic disputes, the amount of conciliation agreements concluded at the stage of litigation, the result of consideration of insolvency (bankruptcy) cases, the number of terminated government contracts, business participation in the implementation of major projects, the degree of alternative dispute resolution popularity.

Keywords: sustainable construction, ESG principles, alternative dispute resolution, sustainable contracts.

Introduction

The problem of sustainable cities has become of prime importance in present-day environment, in the era of crisis events and sanction pressure. Social tension, growing in intensity in connection with toughening external factors, makes it necessary to update sustainability criteria and indices.

The ESG principles that have to be integral to implementation of investment and construction projects have made the basis for national assessment systems developed in the RF. An increasing number of pilot projects is being initiated and implemented with due regard for main trends of sustainable construction.

It should be noted that in general the concept of sustainable business is continuously expanding (all systems of urban habitat assessment are based not only on ecological parameters, but also on parameters of ensuring comfort and energy efficiency) [6]. Existing approaches are complemented with new indicators, such as using sustainable contract structures (smart contracts), “green” dispute resolution procedures, new forms of reporting that make it possible to determine not only financial soundness of a company, but also its contribution to improvement of the people’s standard of living, development of the

infrastructure and new quality of life, prevention of discrimination or other negative effects throughout the project lifecycle and all over the supplier chain.

Alongside with that, nowadays domestic developments fail to cover the above-mentioned sustainable construction indicators, since contract strategy culture and business practice in terms of constructive cooperation remain unaddressed and non-systemic.

On top of that, overlooked is such peculiarity of investment construction as the presence of a huge number of disputes and contradictions that are vital for successful project implementation. On the one hand, conflicts are an integral part of development of any system, because conflicts serve to detect the main trigger points to be impacted to prevent further aggravation of crisis events. At the same time, lingering disputes and disagreements, in the absence of an efficient system of their settlement, entail destructive consequences in the form of project freezing, bankruptcies, negative business environment. A system within which contradictions tend to ratchet up cannot be deemed sustainable, either in social terms or with regard to efficient management.

Materials and methods

Foreign experience features extensive developments in terms of characteristics of intellectually sustainable cities, namely, indicators that are taken into consideration in the process of assessment and exceed ecological limits. In general, however, approaches to assessment of sustainability factors are uncoordinated and inconsistent. Thus, there are over 400 of various indices characterizing ESG factors. The major providers of such ratings and indices are S&P, FTSE Russell, MSCI, Sustainalytics, CDP, Bloomberg, JUST Capital, Refinitiv, etc.

In the Russian Federation, approaches to the above-mentioned area were consolidated in Executive Order of the RF Government of 14.07.2021 No. 1912-p “On approval of objectives and main lines of sustainable development (including green development) of the Russian Federation” [1] and Resolution of the RF Government of 21.09.2021 No. 1587 “On approval of criteria for sustainable development (including green development) projects in the Russian Federation and requirements for the system of verification of sustainable development (including green development) projects in the Russian Federation” [2]. Among the identified directions are: waste management, power industry, construction, industry, transport and industrial machinery, water supply and water discharge, natural landscapes, rivers, waterbodies and biodiversity, agriculture and sustainable infrastructure. For the first time, preferences are defined particularly for green construction facilities, and their relevance was recognised at the nationwide level.

Moreover, the notions of “green” buildings, constructions and standards are fixed in the Strategy of development of construction industry and public utilities sector of the Russian Federation for the period until 2030 with the forecast until 2035, adopted by Executive Order of the RF Government of 31.10.2022 No. 3268-p.

Increasingly popular are national certification systems, such as IRIIS, intended for assessment of transportation, social, energy, engineering and telecommunication infrastructure. The value of this system consists in the ability to ensure efficient risk management, complex approach to project management throughout the project lifecycle, compliance with high standards of financing organisations and development of instruments for state management of investment activity, as well as promotional marketing of the project. Pilot projects in this area are: The Eastern Exit (construction of a 14-kilometre auto road (4 traffic lanes), including a 1.2-kilometre tunnel and a bridge crossing over the Ufa river); Special Economic Zone Kaluga (construction of approach tracks between the Lyudinovo-1 station and SEZ Kaluga), creation of an international interuniversity IT campus, building infrastructure for sea transit container carriage, etc.

The KLEVER system, in its turn, is used to assess projects in the sphere of real estate in terms of compliance with the principles of environment friendly construction and sustainability along three directions: environment, social well-being and responsible governance. 52 new facilities and 33 already operational ones are undergoing this certification now.

At the level of development institutions, work is also under way to further sustainable construction. Thus, Dom.RF developed the National Standard of the RF of the GOST R 70346-2022 series “Multicompartment residential “green” buildings. Methodology of assessment and criteria for design, construction and operation”, which includes 81 criteria and 10 categories. A similar standard targeted at private housing constructions is being developed now.

The formation of the systems discussed above was influenced by the following trends:

- necessity to replace international standards for the reason of special political conditions. However, in spite of the fact that foreign certification systems are not used in Russia at present, they made the basis for domestic developments [11];
- digitalization that brought about transformation of business processes towards higher consistency, transparency, efficient monitoring of the project implementation throughout the project lifecycle;
- development of corporate social responsibility (CSR), which ensures companies engagement is solution of environment, social and governance tasks [4]. An example of regulation on this area is EU Directive 2014/95/EU on non-financial information disclosure [10], which envisages special reporting for major economic entities, containing ecological and social aspects, and also matters of employment, respect of human rights and combatting corruption;
- renovation and redevelopment processes, requiring transition to new quality of urban habitat. Such projects are distinguished by their complex character, particular social relevance, public private partnership, special contractual structures and organization models [9];
- search for optimum cooperation models making possible to implement projects without disruptive consequences, such as termination of an agreement, numerous litigations, recovery of financial sanctions, bankruptcy, project freeze, etc. Such models foster reduction of strife in construction, form common value navigators for project stakeholders, provide an opportunity to promptly settle and resolve disputes and disagreements extrajudicially [7].

Results

Under the existing circumstances, in order to update the priorities of sustainable development of the construction industry, it is necessary to supplement the list of sustainability indicators with such indicator as degree conflictivity that may be measured on the basis of the following factors:

- dynamics of the number of economic disputes, including construction disputes and initiated bankruptcy procedures. Starting from 2015, they have been growing steadily: from 5 to 30 %. In spite of measures aimed at development of reconciliation procedures, all efforts for achieving positive dynamics failed;
- the number of settlement agreements made at the trial stage. This indicator does not exceed 2%, which demonstrates reluctance to strike a compromise and make concessions;
- result of insolvency (bankruptcy) cases handling. In the RF, only 2% of cases end with financial sanation and proper rehabilitation of the debtor. By and large,

restoring the debtor solvency is not even an objective, since the priority is revealing the debtor's property for its subsequent sale to satisfy creditors' claims.

- the number of terminated government contracts. Analysis of statistical data dynamics for 2019 – 2022 revealed systemic increase of such contracts, and on the basis of the 2022 results, this indicator may exceed 20%;
- business participation in implementation of major projects, such as KRT, by way of making and agreement on KRT, concessionary agreements, etc.;
- the extent of popularity of alternative dispute resolution (ADR) mechanisms, as well as consolidation of reconciliation mechanisms that make it possible to resolve differences and ensure productive dialogue between business entities and authorized bodies;
- flexibility and variability at the stage of entering into a government contract. This involves agreement of terms and conditions on which the parties shall implement their project. At present, this indicator is at a very low level. Tenderers are practically unable to influence the conditions of the contracts, in spite of the fact that they are professional market players capable of full-fledged assessment of risks and opportunities of utilization of a certain contractual structure. It is for this reason that the professional community proposed the mediation procedure for government procurement [3].
- presence of standard contractual structures aimed at procuring productive cooperation and observance of the fundamental sustainability principles [8]. The first group includes dispute resolution clauses and provisions, securing, among other things, extrajudicial methods of dispute resolution based on self-determination, independence, expert evaluation, and prioritization of reconciliation procedures. The second group comprises the so-called “sustainability clauses”. Such provisions are focused on prevention of any deviations from standard business practices throughout the project lifecycle, namely, the anticorruption component, ensuring competition, prohibition of counterparty coercion, apparently disproportional risk distribution, uncontrolled right for unilateral termination or modification of agreements. The said structures are based on the following aspects: distribution of responsibility among all project stakeholders, necessity of examining potential economic, social and – by all means – environmental effects of the project, relevance of public interest and recognition, identification of factors (e.g., affiliation, counterparty inequality, disbalance of competences) that hinder project implementation.

An example of a foreign development of standard forms of “sustainable” contractual conditions could be the Model Contract Clauses proposed by the American Bar Association. These clauses impose on the parties to an agreement an obligation to identify and prevent violations of human rights all over the supply chain, that is, a specialized assessment procedure (human rights due diligence) is secured. Special attention is paid to restoration of rights of those persons, whose rights were violated in the process of performance of the contract [5].

In general, the non-confrontational approach is applicable in the following areas:

- activity of state bodies (at the federal and regional levels). These are the subjects who determine general directions of implementation of sustainability principles and basic indicators associated with it;
- corporate governance, since it is at this level that sustainability concept is formed within the scope of a company's internal activity and in terms of interaction with counterparties and partners;
- contractual sphere – by way of development of standard forms, implementation of specialized clauses;

- information modelling, technologies of which ensure systemic monitoring, transparency, accountability and proactivity to prevent disputes and disagreements, which is in full compliance with principles of sustainable development of business environment.

Conclusion and discussion

As follows from our analysis, the concept of sustainable development, in particular, as far as implementation of construction projects is concerned, is being substantially supplemented and modified, taking into consideration present-day circumstances and challenges. The social and economic component of this concept embraces elements of friendly cooperation and productive interaction of participants of investment and construction activity ensuring project-oriented approach. For this reason, such indicator as degree of conflictivity is extremely important for determination of sustainability of a system, which in a situation of increasing contradictions and opposition will not be able to operate properly.

With this in mind, one cannot agree with the opinion of a number of experts that a high index of business environment conflictivity, developed by Moscow School of Management Skolkovo, is a sign of a high level of activity and efficiency of business processes. Such indicator has destructive character, since the relevant processes inevitably lead to escalation in contradictions, growing number of litigations and bankruptcies of business entities (or their inclusion in the supplier blacklist).

Increase of the business environment conflictivity index is indicative of the necessity to adopt a number of legislative and organization and management measures aimed at implementation of conciliation mechanisms and ensuring efficient extrajudicial dispute resolution with utilization of a wide range of ADR procedures.

Thus, at present, an all-new paradigm is being formed for responsible implementation of investment and construction projects and organization of business processes, aimed at ensuring sustainable development and based on principles and indicators taking into account present-day reality.

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