

# Professional liability in the construction sector

**The Act of 7 July 1994 – Building Law regulates not only matters related to designing, construction, maintenance or demolition of building structures but also issues concerning professional liability in the construction sector.**

Chapter 10 of the Building Law regulates the issues of professional liability of persons who perform independent technical functions in the construction sector and have the required building licence to perform their functions. An independent technical function in the building sector is considered to be an activity relating to the necessity to perform a professional assessment of technical aspects or to solve architectural and technical problems or technical and organisational issues in an independent manner, including, in particular such activities as designing, checking of building plans and the authorship design supervision; management of construction projects or other construction work; management of the manufacturing of structural construction components as well as supervision and technical control of manufacturing processes; project owner's supervision; and technical inspection of construction works maintenance. It should be noted that professional liability, as regulated by the Building Law, does not preclude, in any way, criminal, civil or disciplinary liability (subject to certain exceptions) if a relevant act is subject to different legal regimes. Moreover, penal provisions of Chapter 9 of the Building Law should be differentiated from the issue of professional liability. The objective of the said provisions is to impose a specific penalty on the offender, while the regulations on professional liability aim to ensure appropriate performance of specific functions by the entity participating in the construction process (i.e. the entity holding independent technical functions in the construction sector).

The commission of an act involving professional liability is subject to the following penalties: warning; warning involving the obligation to take the examination confirming the knowledge of construction processes and the practical application of technical knowledge (within a specified term); and a ban on performing independent technical functions in the construction sector for a pe-

riod ranging from one to five years together with the obligation to take the examination referred to above. When imposing the penalty, the previous record of professional liability in the construction sector should be considered. The most severe penalty of the ban on holding independent technical functions is imposed in the event of major social harm caused by the action; the penalty is also applicable to a person who committed the act leading to professional liability for the second time despite two warnings or a person who refuses to take the requested examination. As indicated above, the duration of the ban on holding independent technical functions is specified in years/months, and the ban takes effect as of the decision on the ban becoming final. In the event of a penalty combined with the obligation to take the examination, the penalised person who failed to take the examination within the prescribed term is given an additional time of three months to six months to comply with the obligation. If the examination is not passed within the additional time, the person loses the right to hold independent technical functions in the construction sector.

The proceedings in cases relating to professional liability in the building sector are initiated upon request of the construction inspection authority (with the territorial jurisdiction for the place where the act was committed, or one that has determined the act was committed), or a professional self-regulatory body with the appropriate jurisdiction. The request is submitted based on the findings of a relevant investigation procedure. The request should specify the act, the factual and legal grounds and indicate the necessary evidence. Entities authorised to submit such a request do not include, for instance, the project owner and other persons taking part in the construction process. However, this does not rule out the possibility of reporting suspicion of violation of law. In such an event, the competent authority conducts an investigation procedure based

on the request and then decides whether to submit a relevant application or discontinue the matter.

Matters concerning professional liability of persons performing independent technical functions in the construction sector are conducted by the authorities of the professional self-regulatory bodies. Upon the completion of the procedure, the final decision to impose the penalty is served to the interested party and it is also forwarded to the organisational unit that employs the person subject to penalty; the relevant association; the authority that issued the licence to perform an independent technical function in the construction sector; and the General Inspector of Building Control. The information on the penalty is also recorded in the central register of persons subject to penalty under professional liability. It should be borne in mind that proceedings concerning professional liability in the construction sector may not be launched after six months of the date when building control authority was notified of the act resulting in professional liability, and it may not be initiated later than three years of the completion of construction work or the date of notifying the end of construction or the date of the decision allowing the use of the building structure.

What is relevant from the perspective of the person subject to penalty is that they are entitled to request the penalty to be deleted from records upon the lapse of a specified period. Depending on the type of penalty, the period ranges from two years from the time of issuing a warning to up to five years from the time of regaining the right to hold an independent technical position in the construction sector. However, during the set time, the person may not be subject to penalty again in connection with their activity in the construction sector. The information on the deletion of the penalty from records is forwarded to the same entities and is also recorded in the same registers as the information on the imposed penalty.

*Błażej Borowiec*

*Kancelaria Adwokatów i Radców Prawnych Miller, Canfield, W. Babicki, A. Chelchowski i Wspólnicy Sp.k.*