

Changes regarding the investor's and contractor's joint and several liability for payment of subcontractor fees

Amendments to Art. 6471 of the Polish Civil Code passed by the Sejm are of major importance to the course of the construction process.

Art. 647¹ of the Civil Code regulates joint and several liability of the investor and the contractor (general contractor) in respect of fees payable to the subcontractor for construction work performed. The regulations are modified pursuant to the Act on Amendment of Certain Acts with a view to facilitating recovery of claims.

The revised contents of Art. 647¹ of the Civil Code stipulate, among others, that:

- the investor will be jointly and severally liable together with the contractor for payment of subcontractor fees if the detailed scope of the work was notified to the investor by the contractor or subcontractor prior to commencing the work unless the investor files a relevant objection to the contractor and subcontractor within 30 days. The notification and complaint must be made in writing, otherwise being null and void;
- the notification referred to above will not be required if the investor and the contractor specify in the agreement – made in writing, otherwise being null and void – a detailed scope of the works and name the subcontractor;
- the investor's financial liability to the subcontractor will be limited to the amount of fees payable to the contractor in respect of construction works.

The regulations will apply accordingly to the joint and several liability of the investor, contractor and subcontractor which concluded the agreement with a further subcontractor in respect of the further subcontractor's fees. Any provisions contrary to the regulations set forth in the Civil Code will be deemed null and void.

The presented solutions are not final as the bill has been introduced to the Senate, which can further amend it.

What should be noted is that the presented changes do away with the contractor's obligation to present the agreement with the subcontractor to the investor. The investors will only be made familiar with the scope of the subcontractor's scope of work. It should be concluded that the lack of knowledge of rules with respect to financial settlements between the contractor and the subcontractor can potentially be troublesome to the investor in the event of a dispute concerning joint and several liability for payment of subcontractor fees.

A clear advantage is that the subcontractor will be allowed to notify a subcontractor to the investor acting out of its own accord – the subcontractor will be allowed to actively participate in the process while securing its own financial interests. From the viewpoint of the construction process's smoothness, it

appears that a 30-day deadline for filing an objection concerning a subcontractor can stand in the way of construction work and severely delay projects.

Furthermore, the amended regulation also abandons the obligation for the contractor to conclude agreements with subcontractors in writing, on pain of nullity. It appears to be a step backward with respect to the previous regulation which contributed to transparency of the agreements and added to the professionalization of the construction industry.

As indicated above, the bill of amendment has been introduced to the Senate, which may amend it in the course of the proceedings. However, if nothing changes, the amended regulations will come into force on 1 June 2017.

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