

Statute of limitations for claims arising from construction work agreements – changes in computing time limits

The Law amending the Law – Civil Code and some other laws of 13 April 2018 (Journal of Laws of 2018, item 1104), (“the Law”) came into force on 9 July 2018, and introduced significant changes to the regulations governing the statute of general limitations periods for claims and also the general rules of counting the limitations periods.

Pursuant to the amended Art. 118 of the Polish Civil Code (“CC”), the general period of limitation has been reduced from ten years to six years. A three-year period of limitations for periodical payment claims and claims related to business activities has been preserved. In principle, claims arising from construction work agreements have limitations periods stipulated in Art. 118 of the CC. Accordingly, following the amendment of the Law, there is a time limit of six or three (regarding claims between business entities) years for these claims. However, the second sentence of the amended article establishes an additional general rule, according to which the end of the limitations period falls on the last day of the calendar year unless the limitations period is less than two years. For periods shorter than two years, the previous rules applicable to computing the limitations period remain in place. As for the limitations periods of two years or longer, i.e. the basic claims arising from construction work agreements, the end of the limitations period shall always be on the last day of the calendar year, according to the amended regulations. Given the lack of precise information as to which calendar year is referred to, it is taken for granted that the article refers to the last day of the calendar year in which the end of the statute of limitations for a given claim falls. As a result, the statute of limitations may be, in fact, longer than specified in the Law. The reason is that it will not end as previously immediately upon the lapse of six or three years but rather after the six- or three-year period plus the time left until the end of the respective calendar year. Previously, the regulations did not specify a general end date of the statute of limitations as it

was up to the interested parties, i.e. in principle, the creditor and the debtor, to determine the relevant dates from time to time. In numerous cases, the respective determinations of the end of a statute of limitations by the parties would differ significantly, thus giving the debtor grounds for coming up with an additional defence during the court proceedings. The legislator’s intention expressed in the justification on the Law was as follows: *“this solution (...) will facilitate defence, especially in cases where the time when claims fall due is conditional on the time when the creditor was first able to take action. The solution will be also helpful to creditors themselves as they will not be required to make detailed computations.”* Still, the start of the statute of limitations will be determined (by the creditor and the debtor, in many cases differently) in accordance with the previous rules (Art. 120 of the CC) as there have not been any change to the law in this respect (except for Art. 5.2 of the CC, which will be discussed further in the text). An attempt at simplifying the determination of statute of limitations dates (let alone the adopted method of simplifying the matter) should be generally welcomed as it will, at least, eliminate the need to determine the end of the limitations periods every time it is necessary. The proposed way to simplify the determination of the dates in question may, however, lead to an imbalance in legal relations and give a genuine advantage to one of the parties since, in point of fact, the dates will never be either exactly three or six years. In the case of claims which have fallen due at the beginning of the year the end date of the statute of limitations will be the same as the date for claims which have fallen due towards the end of the same

year. As a result, for some claims the statute of limitations will be almost seven years (favouring the creditor); for other claims, it will be a little more than six years (and thus give an advantage to the debtor).

Furthermore, typical for all legal amendments, there comes the issue of applying the law to the situations which have already occurred, i.e. the determination of the statute of limitations for claims which have come into existence prior to the amendment. Therefore, it is important to note the interim provisions of the Law, specifically Art. 5.1 pursuant to which the provisions of the Civil Code, as amended by the Law, will apply to claims which arose prior to the entry into force of the Law (i.e. before 9 July 2018) and are not statute-barred on that date. However, Art. 5.2 stipulates an exception to this rule. The regulation provides that if the statute of limitations period based on the amended regulations is shorter than the one set forth in the previous regulations, the start of the statute of limitations for the claim shall be on 9 July 2018 (so the Law introduces a specific start date of the statute of limitations) with a proviso that if the statute of limitations whose period started prior to the entry into force of the Law would be earlier, the claim would be statute barred on the earlier date. It results from the above that there will be no simplified rules, at least not with respect to claims which arose prior to the amendment, and in these cases both debtors and creditors will need to exercise utmost care in determining statute of limitations dates.

Regardless of the foregoing, it should be noted that the Law introduces also new statute of limitations dates for claims confirmed by a final court ruling or by a court settlement (Art. 125 of the CC) as well as major changes to the statute of limitations regarding claims resulting from the relations with consumers who, according to the legislator’s intention, required necessary protection as they are usually the weaker party of legal relations (e.g. Art. 117 of the CC and a new Art. 117¹ of the CC).

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