

Major changes regarding copyrights in construction documents and the legal consequences of employers' payment delay

Two important changes have recently been made to the regulations concerning construction projects which have relevance for businesses involved in realising such projects.

Copyrights in construction documents

Effective from 31 December 2019

The new regulation addresses an issue that has been well-known to practitioners in the Hungarian construction industry. The background to the problem is that copyright protection of architectural designs, and the buildings constructed on the basis of such designs, is incredibly extensive under Hungarian law, which often catches international investors by surprise. Thus, the use of architectural works in the copyright sense has often involved practical difficulties in Hungary, particularly if an alteration of the works (i.e. renovation/rebuilding) became necessary. This issue has therefore necessitated an adequate solution for a long time, and it appears that the Hungarian legislature has made a significant step towards clarifying this matter.

The most tangible practical consequences of the changes include the introduction of the 'Register of Construction Copyrights'.

The amendment of the relevant copyright law states that in the absence of an indication on the construction document to the contrary, the copyright holder is presumed to be the person listed in the register. Under a related important new regulation, the employer and the designer are required to submit a joint declaration to the entity keeping the Register of Construction Copyrights about the holder(s) of copyrights in the architectural and technical documentation and in the building itself.

Administrative legal consequences of payment delay

Already in effect (since 12 February 2019)

The other legislative development may represent a major issue for employers, as a certain payment delay by an employer can now serve as the basis for the decision of the authorities to block an ongoing construction.

The mandatory reliance by employers on construction trustees as payment intermediaries has been a source of uncertainty ever since its introduction in 2009. The original function of the construction trustee was to securely handle and transfer the fees owed to contractors in a construction project (i.e. payment does not directly flow between the employer and the contractor) and potentially block the funds if a dispute with a subcontractor is reported to it. Currently, a construction trustee is required to be involved in a construction

project if (i) it does not fall under the rules of public procurement and (ii) the value of the works exceeds EUR 5,548,000 calculated on the basis of a statutory formula.

Failure to involve a construction trustee despite the existence of the statutory conditions has been considered a grave infringement in itself and has thus been regarded as the basis for stopping the ongoing works by the construction authority since 2016. This authorization has however been extended in recent legislation. Under the newly-introduced provision, if the construction trustee submits a report to the construction authority stating that an employer has failed to provide the funds required under the construction contract within 30 days of the deadline specified in the contract, the construction authority will order the cessation of the construction works until such time as the infringement is remedied.

For more information

Dr. Tamas Polauf
Partner in Hungary
tamas.polauf@chsh.hu
Tel: +36 1 457 8040