

New Professional Organisation May Accelerate Settlement of Building-Construction Disputes

Establishment of a new professional organisation operating at the Hungarian Chamber of Commerce and Industry may accelerate the settlement of legal disputes arising out of building-designing and construction contracts and performance, the expert of Kovács Réti Szegheő Attorneys at Law calls the attention of [origo] to the aims of the adopted Act XXXIV of 2013. Dr. Mónika Kapetz reveals, such construction investments shall fall within the competence of the Professional Organisation for Performance Certification, that are realised in Hungary, and its opinion will be available in return for remuneration set out by the law; such provisions shall take effect as of 1 July.

The National Assembly adopted Act XXXIV of 2013 on March 25, 2013 which establishes the Professional Organisation for Performance Certification (Professional Organisation). The Professional Organisation shall provide an expert opinion if retained by the client, the designer, the contractor or the subcontractor for such cases when no performance certificate has been issued, its issuance is disputed or when the performance certificate has been issued but not paid.

The Professional Organisation's opinion may also be requested for the enforceability of collaterals (bank guarantee, lien, mortgage or pledge, suretyship). It shall proceed in cases of construction investments in Hungary, and it shall provide its opinion in return for remuneration set out by the law, the expert of Kovács Réti Szegheő Attorneys at Law elaborates.

Dr. Mónika Kapetz points out that the Professional Organisation shall operate at the Hungarian Chamber of Commerce and Industry, its head, deputy and members shall be appointed from the forensic experts by the minister responsible for construction management.

Procedure of the Professional Organisation for Performance Certification

The three members of the panel proceeding with the case shall be appointed by the head of the Professional Organisation. Such persons who shall act as expert witness pursuant to the Code of Civil Procedure shall not act as member of the panel either. The Professional Organisation examines the performance of the contract, provides expert opinion based on which it can be determined whether the contract was performed or whether performance was contractual and what amount of consideration in return for performance is deemed justified.

The expert opinion contains, pursuant to the technical content of the contract, the description of the contractor's obligation of designing and constructing works, the definition of the quality and quantity of fully ascertainably completed works, the definition of quality and quantity of the not fully ascertainably completed works furthermore, the value of the completed and not completed works determined on the basis of the contract's budgetary items, the expert of Kovács Réti Szegheő emphasises.

The expert opinion shall be prepared within 30 days upon receipt of such request – in case of supplementation of documents is required, from the date when such documents have been supplemented. The head of the Professional Organisation, in especially complicated cases may once extend such deadline by not more than 30 days.



The proceeding panel shall carry out the inspection necessary for the preparation of the opinion on the site, of which it shall take minutes. In the event that the possessor of the real property does not enable entry by such professional panel or tests to be carried out, the expert panel, on the request of the party shall seek the assistance of the police.

Null and void are such provisions of a contract that exclude or limit the proceeding of the Professional Organisation for Performance Certification or render adverse legal consequences to the commencement of thereof, Dr. Mónika Kapetz warns. The provisions shall take effect from 1 July, 2013.

How does the expert opinion accelerate the settlement of legal disputes?

In order to accelerate the settlement of legal disputes at court, the Hungarian Code of Civil Procedure will be added a new chapter to regulate litigations based on the expert opinion of the Professional Organisation for Performance Certification. Irrespective of the litigated value, such shall be deemed high-profile actions that is, the courts shall hear them in priority proceedings.

Actions shall be filed within 60 days upon service of the expert opinion. Irrespective of who the parties are, such documents containing the parties' affidavits based on the opinion of the Professional Organisation or the attempt to seek out-of-court settlement need be filed with the action.

Such part of the ruling in cases seeking monetary award, that are in excess of HUF 400 M shall be deemed enforceable irrespective of lodgement of an appeal. These provisions shall take effect as of 1 February, 2013.

Mandatory electronic communication

The expert of Kovács Réti Szegheő emphasises that in the course of litigation communication shall be made electronically that is, the submissions and annexes thereto shall be filed with the court electronically. Declarations included in submissions not filed electronically will be deemed as having no effect. These provisions shall take effect as of 1 January, 2014.

Having regard to the above legal regulations, settlement of legal disputes arising in connection with building-designing and construction contracts and performance will be accelerated. The Professional Organisation's proceedings shall not be validly excluded so it might be advisable to retain them for preparing an expert opinion prior to the commencement of litigation, as such cases where an expert opinion is available are heard in priority proceedings.

According to dr. Mónika Kapetz, it is expected that such further legal provisions will assist in the prevention of chain debts enhancing the legal security of clients, contractors and subcontractors.