

## Tax & Legal Weekly Alert

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#### **Significant changes brought to Law no. 10/1995 on construction quality**

The main amendments brought by Law no. 163/2016 for amending and supplementing Law no. 10/1995 on construction quality refer to the legislative regulation of minimum warranty periods regarding the quality level of constructions depending on their significance category, as well as to the extension of the prescription term provided for applying sanctions.

In addition, the certification obligation is established for companies or individuals working in constructions (i.e. design, execution and consultancy), while the obligations incumbent on investors, owners and construction users are extended and the limits on sanctions applied to various contraventions are doubled. Moreover, following these amendments, new deeds are to be sanctioned as contraventions.



## Significant changes brought to Law no. 10/1995 on construction quality

Law no. 163/2016 for amending and supplementing Law no. 10/1995 on construction quality ("Law 163/2016" or "Amending Law") was published in the Official Gazette no. 561 dated 25 July 2016 and will enter into force on 24<sup>th</sup> of August 2016. Nevertheless, the certification obligation established under art. 9 letters m), n) and o) under Law no. 10/1995, republished, with the subsequent amendments ("Law 10/1995" or "Law on Construction Quality"), will enter into force on a subsequent date, namely 24<sup>th</sup> of February 2018.

### **Extension of the scope of Law no. 10/1995**

The provisions of the Law on Construction Quality will now be applicable to (i) the stage of technical verification of projects and (ii) the stage of technical expertise on the project. Furthermore, according to the Amending Law, the interventions to existing constructions shall also include, amongst others, the modernization, rehabilitation and restoration works.

In addition, technical universities, research institutes in the construction field and related professional associations shall be included in the category of the involved factors, responsible for ensuring the fundamental requirements for quality in the field of construction.

Consequently, the Amending Law extends the scope of application of responsible persons in the field of construction, as well as the stages when the quality requirements must be observed.

### **Minimum warranty period for construction quality**

Depending on a buildings' category of importance, as established by law, the warranty period has to be provided expressly in the construction agreements and, in any case, such warranty period established by the parties cannot be lower than:

- 5 years for constructions of A and B category (e.g. reactors, barrages, bridges, railways, highways, airports);
- 3 years for constructions of C category (e.g. household buildings with more than two levels, industrial constructions);
- 1 year for constructions of D category (e.g. household buildings with ground floor or ground floor and first level, household appurtenances, temporary constructions).

It should also be noted that the warranty period will be extended with the remedy period for defects discovered within the period of warranty.

The Amending Law does not offer additional clarification regarding the application of minimum legal terms, namely if such provisions are also applicable to agreements concluded before the amendments entered into force, by way of legally extending the contractual warranties to the legal minimum, or if such amendments are applicable only to the warranty periods agreed under contracts concluded after these provisions entered into force. In the absence of express transitory provisions, we consider that the minimum legal terms shall be applicable only to the agreements concluded after the Amending Law enters into force.

The purpose of establishing minimum legal terms for the warranty period under the Amending Law is to avoid further cases when the warranty period granted by the constructor, especially in the event of agreements concluded by the public authorities, are much shorter than the duration of the construction. This type of situation has resulted in the past in the utilization of low quality materials. As

such, the example used as justification was the case when the constructors granted a warranty period of only 2 years for building the section of a highway. Consequently, the new mandatory minimum warranty terms will have a significant impact, especially for constructors, as they will now have to quantify their exposure by referring to minimum warranty periods provided by law.

### **Certification obligation of companies or individuals working in construction field**

The Amending Law provides for new components, part of the quality system in construction, namely (i) technical-professional certification of individuals providing design, consultancy services or execution of works in constructions; and (ii) the obligation of continuous professional development of specialists active in constructions.

### **New obligations incumbent on investors, owners of buildings and users of buildings**

The Amending Law introduces additional obligations for:

- the investor, namely to perform the final reception at the expiry of the warranty period (sanctioned with fine between RON 20,000 – 40,000). ;
- construction owners, namely to use the construction only after (i) reception upon finalization of works, (ii) performing the hand-over and (iii) obtaining the authorization required by law (sanctioned with fine between RON 20,000 – 40,000);
- managers or users, namely to inform the owner in case quality defects appear within the warranty period established by the law.

It is important to note that the liability of the State Inspectorate in Construction is limited by the Amending Law in that the authority shall be liable for the quality control only from a technical standpoint.

### **Increasing the limits of fines**

Mention should be made that the amount of the fines will be doubled, meaning that both the minimum limits, as well as the maximum limits, will be increased.

It is also important to note that, on the basis of the Amending Law, failure of the investor to perform the reception upon finalization of works, as well as the final reception upon the expiry of the warranty period, shall now be sanctioned with a fine between RON 20,000 – 40,000. With the same fine shall be sanctioned the failure of the investor to prepare and hand over to the owner the technical book of the construction.

Furthermore, it is expressly provided that the “warning” sanction is not a valid sanction to be applied on the basis of the Law on Construction Quality.

### **Amending the complementary sanctions applicable to authorized specialists active in constructions**

The Amending Law provides the possibility to apply complementary sanctions to the fines corresponding to the contraventions such as suspending or cancelling the technical-professional certificate or authorization of specialists active in constructions, including the suspension of their right to practice, upon the request of criminal investigative bodies.

### **Amending the prescription of the right to apply corresponding to the contraventions**

The prescription term of the right to apply fines for contraventions provided under the Law for Construction Quality is increased from 3 to 5 years;

Moreover, the prescription term shall start from the reception date of termination of works. Previously, the starting point for the prescription term was

the date the sanctioned deed was performed. Consequently, the prescription terms shall be fixed, calculated each time from the reception of works date.

**In conclusion, the main amendments of Law no. 10/1995 refer to:**

- establishing minimum warranty periods for constructions, depending on their category;
- increasing the prescription term of the right to apply sanctions;
- providing for the certification obligation incumbent on the companies or individuals involved in construction design, execution and consultancy;
- inserting additional obligations incumbent on investors, owners and users of constructions;
- new complementary sanctions such as the possibility to suspend or cancel the certificate or authorization of specialists in construction;
- doubling the amounts of fines applicable to the contraventions;
- extending the law's scope of application.

For further questions regarding the aspects mentioned in this alert, please contact us.

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