

## Legal brief

Regarding the amendments brought  
by the Government Decision no.343/2017



## Legal brief regarding the amendments brought by the Government Decision no. 343/2017 on the regulation regarding the taking over of Works (hereinafter the „New Regulation“)

With the enactment of the Government Decision no. 343/2017 on 30<sup>th</sup> of May in the Romanian Official Gazette, the Government Decision no. 273/1994 on the regulation regarding the taking over of Works was amended (hereinafter the „**Former Regulation**“), effective 29<sup>th</sup> of July 2017.

As regards the constructions for which the taking over upon the completion of works or the final taking over is ongoing at the moment when the Government Decision entered into force, the provisions of the Former Regulation will be applied, save for the case when during the taking over upon the completion of works, performed pursuant to the Former Regulation, it has been recommended that the taking over would be admitted with objections (the objections uncured within the agreed period shall be considered defects pursuant to the New Regulation). In such situation, the final taking over will be performed in accordance with the New Regulation and the cured defects will lead to the suspension of the final taking over.

### Amendments

The first amendment brought by this decision is the possibility provided by art. 4 of the New Regulation to perform the **taking over only for specific parts/objects/sections of the construction**, if these are physically and functionally distinct or independent.

Also, the New Regulation provides the investor with the possibility to conclude a **partial taking over protocol** („*the act through which the execution phase of the construction is documented, for the purpose of the registration of the ownership right with the Land Book*“) and to rightfully take possession from the contractor.

To some degree, this amendment responds to other construction standards like FIDIC and should help further implementation of such standards within construction agreements in Romania.

It is important to mention that the New Regulation expressly stipulates that **the contractor has to initiate the taking over** procedure within the period of validity of the building/demolition permit, by sending to the investor a notification regarding the date of the completion of all the works stipulated in the agreement or, as the case may be, of parts/objects/sections of the construction works and requesting the performance of the taking over upon the completion of works.

Subsequently, the investor (i) will request the designation of the assignees in the committee for the taking over upon completion of works, (ii) will set the date, hour and place where the committee will meet and begin the taking over upon the completion of works and (iii) will hand over the documents provided by the law to the State Inspectorate for Constructions within a 5 days term (prolonged term in the New Regulation, as opposed to the 3 days term as provided by the Former Regulation).

As regards the **composition of the committee for the taking over upon the completion of works**, we can observe the following amendments:

Firstly, in the New Regulation it is provided a 3-5 members composition (art. 11), as opposed to the provisions of the Former Regulation, which stipulated a

composition of at least 5 members and a composition of maximum 7 members, if the constructions are of exceptional importance (art. 7).

Thus, pursuant to the New Regulation, the taking over committee will be composed of:

- an assignee named by the investor, which will also function as chairman of the committee;
- an assignee on behalf of the government authorities which issued the building/demolition permit;
- 1 to 3 specialists in the field of the concerned construction works subject to the taking over (*such persons need to be different that the persons involved in the projection/execution of the mentioned works*).

Apart from the ones above mentioned, the committee will be mandatorily set-up with other members, depending on several features of the specific construction:

- an assignee on behalf of the State Inspectorate for Constructions, depending on the investment source and on the importance category of the building;
- an assignee named by the inspectorates for emergency situations, for the construction categories provided by the Law no. 307/2006 regarding the defense against fire;
- an assignee named by the directorates for culture, regarding the buildings part of the historical monuments list;
- an assignee named by the main credit release authority, depending on the investment source of the project and on the importance category of the building;
- the assignees of the contractor and the investor, as guests at the taking over of works.

Secondly, the New Regulation stipulates that, despite the fact that the authorized site supervisor (in Romanian "*dirigintele de santier*") is acting as the committee's secretary (art. 11 paragraph (3) and (4)), he is not a member of the committee.

The **New Regulation does not provide the committee's possibility to recommend the delay of the taking over upon the completion of works, but it does provide the possibility of the committee to decide the suspension of the taking over** in the following cases:

- the existence of defects, disparities, flaws or deficiencies capable of affecting the usage of the construction as per its destination;
- the existence of works improperly performed, completed or executed, which can affect the fundamental applicable requirements;
- the existence of vices, for which the remedy is lasting and strictly necessary for the insurance of the utility of the construction as per its destination;

- the existence of the reasonable doubt regarding the quality of the works and the necessity of technical expertise, trials or additional tests to clarify the situation;
- when the investor does not provide the committee for the taking over upon the completion of works with the documents stipulated in the New Regulation.

The New Regulation provides the fact that the final taking over is organized by the owner, which sets the date of this procedure in a 10 days term as of the expiry of the warranty period (provided by the law or the execution/works agreement), as opposed to the Former Regulation, which provided the fact that the final taking over is convoked by the investor, in a 15 days term as of the expiry of the warranty period, stipulated in the agreement.

The New Regulation stipulates the fact that the committee for the final taking over will be composed of the following:

- the assignee on behalf of the owner;
- the assignee on behalf of the investor (if the investor is not the owner);
- 1 to 3 specialists in the field of the construction works subject to the taking over.

The assignees on behalf of the contractor and the designer will participate at the final taking over as guests.

The New Regulation again provides the possibility to suspend the final taking over if, during the warranty period, vices are discovered, other than the ones resulting from the inadequate development of the construction, which can be removed.

Also, the final taking over committee decides the rejection of the final taking over if, during the warranty period, defects are discovered, other than the ones resulting from the inadequate use/exploitation of the construction, which cannot be cured/remedied and which can lead to the non-compliance with one or more fundamental requirements, in which case technical expertise, restorations, reestablishments etc. are needed.

As opposed to the Former Regulation, which stipulated the fact that the committee's decision for the final taking over was perceived as more of a recommendation for the owner, the New Regulation stipulates that the decision of the committee for the final taking over is mandatory for the owner.

### **What happens next?**

Should you have any questions or need further information in relation the above, please contact:

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