

Liability for Payment of Subcontractor's Fees in Construction Work Contract

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Pursuant to Art. 6471.1 of the Civil Code, the investor and the contractor (general contractor) are jointly and severally liable for the payment of fees to the subcontractor for construction work performed. Joint and several liability has been implemented into the legal system by way of the law amending the Civil Code of 14 February 2003. The grounds of the draft legislation stipulated that the objective behind the change was to prevent general contractors' negative practice of not paying or of making overdue payments of fees to subcontractors performing construction work. The investor's liability is independent from anybody's fault.

In principle, joint and several liability applies to construction work whose detailed scope has been notified to the investor in writing, under pain of nullity, by the contractor or subcontractor prior to commencing the construction work. An exception occurs when the investor files an opposition in writing, under pain of nullity, with the subcontractor and contractor against a subcontractor performing the work within 30 days from receiving the notification. A notification of the detailed scope of the construction work is not required if the investor and the contractor have defined a detailed scope of construction work to be performed by a specified subcontractor in the agreement. The agreement must be made in writing, otherwise being null and void. The regulation is aimed to protect the investor against liability for the payment of fees to the subcontractor for construction work which have not been detailed in the subcontractor notification. The investor's liability is waived with respect to any other claims the subcontractor may have against the contractor except for claims for the payment of fees for construction work performed and specified in the notification. Accordingly, the investor will not be liable for the payment of fees to the subcontractor for additional construction work not detailed in the notification.

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