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”Construction defects” – partial revision of warranty law in sales contracts and contracts for works:

To strengthen the rights of buyers and customers in connection with construction defects, fundamental changes to warranty law in sales contracts and contracts for works (as well as an amendment concerning the registration of building contractors' liens) will come into force on 1 January 2026. In particular, buyers and customers may now benefit from a longer defect notice period of at least 60 days, a mandatory right to rectification, and a limitation period of at least five years.

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On 1 January 2026, the revised legal provisions for dealing with construction defects in the law on sales contracts and contracts for works will come into force. This article provides an overview of the revised provisions.

A. Background

The current construction contract law is appropriate and balanced. However, buyers and customers are sometimes inadequately protected in the event of construction defects. Against this background, in summer 2020 the Federal Council submitted a preliminary draft for consultation with selective amendments to the Swiss Code of Obligations (**CO**) relating to sales contracts and contracts for works and an amendment to the Swiss Civil Code concerning the requirements for substitute security in the case of building contractors' liens.

During the consultation process and subsequent parliamentary proceedings, there was agreement that changes were needed. However, there were significant differences of opinion as to what form these changes should take. The amendments passed by the Swiss Parliament at the end of 2024 are, on the whole, much more favourable to buyers and customers than the preliminary draft had envisaged.

After the referendum period expired, the Federal Council decided at the end of April 2025 to bring the revised provisions into force on **1 January 2026**. They apply to all contracts concluded on or after 1 January 2026. The previous law remains applicable to earlier contracts.

The revised provisions of the CO are hereinafter referred to as **nCO**.

B. Changes to warranty law for sales contracts and contracts for works

1. 60-day defect notice period (unilaterally mandatory)

Buyers and customers now have 60 days to give notice of (obvious and hidden) defects.

This period applies to:

- **Property purchases** (Article 219a(1) nCO);
- **Immovable works** (Article 367(1bis) and Article 370(4) nCO);
- **Movable purchased objects** (Article 201(4) nCO) and **movable works** (Article 367(1bis)(a) and Article 370(4) nCO) **that have been incorporated in an immovable work in a manner consistent with their nature and purpose** and whose defects have caused the immovable work to be defective; and
- **Movable works that have been created by an architect or engineer and used in a manner consistent with their nature and purpose as the basis for the creation of an immovable work** and whose defects have caused the immovable work to be defective (Article 367(1bis)(b) and Article 370(4)(b) nCO), e.g. plans, drawings, static calculations, and expert opinions.

The 60-day period to give notice of defects is **unilaterally mandatory,** i.e. it cannot be shortened by contract (Article 201(4), Article 219a(1), Article 367(1bis) and Article 370(4) nCO). However, an extension by mutual agreement is possible.

This is intended to mitigate the severity of the previous obligation to "give immediate notice of defects", which often only amounts to a few days (Article 201(1) and (3), Article 367(1) and Article 370(3) CO). In practice, the short deadline overwhelms many buyers and customers, as they are often unable to recognise the legal significance of defects after they occur and to give substantiated notice of defects within the deadline that meets the requirements in terms of content. Once the defect notice period has expired, the purchased object or work is deemed to have been approved and

buyers or customers lose (forfeit) their rights in respect of defects.

As before, the defect notice period begins after the inspection has been carried out (obvious defect) or when the defect is discovered (hidden defect). However, there will be no change to the inspection obligation pursuant to Article 201(1) and Article 367(1) CO – as before, an inspection must be carried out as soon as it is "feasible in the normal course of business" after delivery.

In addition, notice of defects should be given as quickly as possible despite the longer notice period. Otherwise, due to a breach of duty to mitigate damages (Article 2(1) of the Swiss Civil Code, Article 99(3) in conjunction with Article 44(1) CO), buyers and customers may lose their right to compensation for damages that would not have occurred if they had reported the defect earlier.

The distinction between the new 60-day defect notice period and the previous obligation to give notice of defects immediately is likely to continue to be a subject of debate in practice in the case of defects in movable purchased objects and movable works. In particular, it remains to be seen to what extent the actual installation of the object or work in question may be a prerequisite for the application of the 60-day defect notice period or whether it is sufficient that the object or work in question is intended for installation. According to the wording of Article 201(4), Article 367(1bis) and Article 370(4) nCO, the 60-day period only applies to defects in movable objects or works that have been "incorporated in an immovable work in a manner consistent with their nature and purpose".

2. Right to free improvement (mandatory)

A key innovation of the revised law is the statutory **right to free improvement** of **defective buildings**. This right applies to:

- **Purchase agreements concerning properties with buildings that are yet to be constructed or that were constructed within the last two years prior to the sale** (Article 219a(2) nCO); and
- **Contracts for works relating to buildings** (Article 368(2bis) nCO).

The prerequisite is that the desired improvement is possible and does not incur excessive costs (Article 219a(2) nCO in conjunction with Article 368(2) CO).

The revised law refers to a "right to free improvement", but this means nothing other than the right to free rectification of defects irrespective of fault, which is already recognised in the law on contracts for works. Buyers and customers can choose whether to exercise their right to rescission, reduction or improvement, if applicable.

The right to free improvement is **mandatory** and cannot be validly excluded in advance (Article 219a(2) in conjunction with Article 368(2bis) nCO).

This is the legislator's response to the widespread practice of combined disclaimer and assignment of warranty claims: sellers or contractors exclude warranty claims entirely and instead assign their warranty rights vis-à-vis their subcontractors and suppliers to buyers or customers. Buyers and customers must then assert their rights in respect of defects independently against these parties, which weakens the position of buyers and customers for various reasons (without them being aware of this when concluding the contract).

In addition, the right to **substitute performance** for free improvement, which has been recognised by the Swiss Federal Supreme Court, is expressly enshrined in law (Article 219a(2) and Article 368(2) nCO in conjunction with Article 366(2) CO. This means that, after a reasonable grace period has expired, buyers and customers can remedy defects themselves – without requiring judicial authorisation – at the expense of the incapable or unwilling sellers or contractors.

3. Five-year limitation period (unilaterally mandatory)

In the following cases the limitation period for warranty rights **remains five years**, but is **now unilaterally mandatory** and may not be shortened to the detriment of buyers:

- **Property purchases** (Article 219a(3) nCO);
- **Immovable works** (Article 371(2) CO in conjunction with Article 371(3) nCO);
- **Movable works that have been incorporated in an immovable work in a manner consistent with their nature and purpose** and have caused the immovable work to be defective (Article 371(1) CO in conjunction with Article 371(3) nCO); and
- **When asserting rights for defects in an immovable work against the architect or engineer** who provided services in connection with such work (Article 371(2) CO in conjuction with Article 371(3) nCO).

C. Impact on SIA Standard 118

The application of SIA Standard 118, edition 2023 (**SIA 118)** is regularly agreed in construction contracts. However, the respective provisions apply only to the extent they are compatible with the (unilaterally) mandatory provisions of the CO.

In particular, the immediate defect notice period for hidden defects, as set out in Article 179(2) SIA 118, must now be at least 60 days.

The existing five year limitation period for claims for defects in buildings pursuant to Article 180(1) SIA 118 is now unilaterally mandatory.

D. Classification and outlook

The partial revision of warranty law brings selective, practice-oriented improvements in the area of construction law.

From a legal policy perspective, however, it is worth asking whether it would have made more sense to comprehensively address the reform of liability for material defects in sales contracts and contracts for works, rather than just in the area of construction law. In its 2023 report "Need to modernise warranty law for purchases", the Federal Council identified the following areas for action, among others: setting a 60-day period for giving notice of defects; introducing a right to rectification throughout sales law; and introducing more mandatory warranty provisions for consumers. It remains to be seen how these approaches can be reconciled with the partial revision of warranty law that has now been adopted.

E. Conclusion

The partial revision of warranty law strengthens the position of buyers and customers in the construction and real estate sector in a number of areas:

- The **extension of the defect notice period to at least 60 days in certain purchase contracts and contracts for works** (see Section B. 1. above) eliminates the immediate defect notice period, which has often been perceived as unreasonably strict. Specifying a specific deadline should provide greater legal certainty.
- The **mandatory right to rectify defects in buildings in the case of certain purchase agreements and contracts for works** (see Section B. 2. above) creates a more balanced relationship between the contracting parties. Although the right to substitute performance of the rectification of defects in the context of contracts for works has long been recognised by the Swiss Federal Supreme Court, it is now explicitly stipulated.
- To protect buyers and customers, most of the new provisions are (unilaterally) mandatory; the **five-year warranty period for certain purchase agreements and agreements on movable works is now unilaterally mandatory** (see Section B. 3. above).

However, the revised legal provisions are **open to interpretation in some areas**. It is to be hoped that case law will soon provide clarity and legal certainty.

These new provisions must be observed for contracts concluded on or after 1 January 2026. In particular, contract templates, general terms and conditions, and procedures for giving notices of defects must be adapted. We will be happy to assist you in this regard if required.