

Solicitors
70 Sir John Rogerson's Quay
Dublin 2 Ireland

T +353 1 232 2000
F +353 1 232 3333
W www.matheson.com
DX 2 Dublin

Matheson

Mr Michael Collins & Mr Eoin O'Cofaigh
c/o Michael Collins Associates Ltd
Newmount House
22 - 24 Lower Mount Street
Dublin 2

Our Ref
DAK 663895/1

Your Ref

9 August 2013

Dear Michael & Eoin

Legal opinion in relation to the implication for architects arising from the enactment of the Building Control (Amendment) Regulations 2013, SI No 80 of 2013 (the "2013 Regulations")

I refer to the above matter and your instructions to engage with Senior Counsel, Denis McDonald SC, for the purposes of procuring Senior Counsel's opinion in respect of the 2013 Regulations (the "**Opinion**").

I now enclose the Opinion of Denis McDonald SC dated 18 July 2013.

The Opinion examines the unqualified nature of the Certificate of Compliance on Completion to be issued by the Assigned Certifier under the 2013 Regulations and compares the terms of this certificate with the typical compliance certificate traditionally given by architects which was usually qualified in a number of significant respects. The Opinion concludes that the 2013 Regulations impose significant additional responsibilities on architects, (or others acting as Assigned Certifiers) under the 2013 Regulations.

In my view, and this is also the conclusion which Senior Counsel reaches in his Opinion, the Assigned Certifier under the 2013 Regulations will now be assuming responsibility to certify the work of others including specialist designers and most significantly the contractor's works. I can see this leading to an inevitable increase in claims against Assigned Certifiers by disgruntled building owners, leaseholders, occupiers and potentially even third parties, including (as Senior Counsel has speculated) where the complaints relate to defects in the works carried out by the contractor or his subcontractors, or the design by specialists and consultants, other than the Assigned Certifier. It seems that the Assigned Certifier takes blanket responsibility for compliance of the entire building project with building regulations; and the Code of Practice for Inspections, whatever its final wording, is unlikely to relieve

Dublin

London

New York

Palo Alto

Chairman: Sir Anthony O'Reilly - Managing Partner: Liam Quirke - Partners: Robert Heron, Patrick Sweetman, Brian Buggy, Michael Jackson, Chris Quinn, Tim Scanlon, Helen Kelly, Sharon Daly, Ruth Hunter, Tony O'Grady, Paraic Madigan, Michael O'Connor, Tara Doyle, Anne-Marie Bohan, Patrick Spicer, Turlough Galvin, Patrick Molloy, George Brady, Brid Munnelly, Robert O'Shea, Joseph Beashel, Deirdre-Ann Barr, John Dunne, Damien Keogh, Cara O'Hagan, Dualta Counihan, Ronan McLoughlin, Niall Horgan, Deirdre Dunne, Alistair Payne, Fergus Bolster, Christian Donagh, Bryan Dunne, Libby Garvey, Shane Hogan, Peter O'Brien, John O'Connor, Thomas Hayes, Nicola Dunleavy, Julie Murphy-O'Connor, Alan Connell, Bonnie Costelloe, Brian Doran, John Gill, Alan Chiswick, Joe Duffy, Pat English, Carina Lawlor, Shay Lydon, Aidan Fahy, Niamh Counihan, Gerry Thornton, Liam Collins, Darren Maher, Michael Byrne, Philip Lovegrove, Rebecca Ryan - Tax Principals: Greg Lockhart, John Kelly, Catherine Galvin - London: Stanley Watson - New York: John Ryan - Palo Alto: Mark O'Sullivan Of Counsel: William Prentice, Roderic Ensor, Paul Glenfield - Consultants: Arthur Moran, Emer Hunt, Frank Nowlan, Elizabeth Grace, Michael Tyrrell, Graham Richards, James Hickey, Don McAleese, Stuart Margetson, Anthony Walsh

the Assigned Certifier of this responsibility. Neither indeed could project insurance alleviate this responsibility in the first instance.

One of the biggest concerns that I would have is as to whether Assigned Certifiers' professional indemnity insurers would be prepared to insure Assigned Certifiers in respect of matters arising from issue by them of unqualified certificates of this nature at an affordable rate, if at all. From my understanding of the insurance market, it seems likely to me that they would not be prepared to insure on the basis that the Assigned Certifier would be certifying in respect of works or design that may be outside their scope of expertise or that they have simply not got direct knowledge of those works or design. In the circumstances, it could well transpire that the 2013 Regulations are not workable from an insurance perspective on the basis that Assigned Certifiers will not have the insurance cover to enable them to issue the required Certificate of Compliance on Completion. This is a very serious issue and I would strongly recommend that the insurance matter be addressed by architects in advance of the Regulations coming into force on 1 March 2014.

I trust the enclosed Opinion, and my personal thoughts, are self-explanatory but should you wish to discuss matters further please do not hesitate to contact me.

Kind regards.

Yours sincerely

A handwritten signature in blue ink, appearing to read "DAMIEN KEOGH", written over a circular stamp or mark.

DAMIEN KEOGH

D: +353 1 232 2397

E: damien.keogh@matheson.com

28415979.2