

Some issues of design and construction contracts – is a change expected in 2023 due to the new Construction Act?

“First and foremost, any facility shall first be designed.”¹ This is how the Hungarian commentary literature starts its introduction to design contracts. A design contract is necessarily an inherent part of a construction contract, since, as the literature puts it, by means of a construction contract “the contractor undertakes to construct not only a structure in general but typically a structure that was designed previously”.² Design and construction go hand in hand and, although they can be distinguished from each other in legal work and in practice, they are closely related units.

This article attempts to present, firstly, the fragmented state of regulation relating to design contracts, the legal framework within which the design activity is carried out and, secondly, the regulation of construction contracts and construction activity, without claiming to be exhaustive.

Overall, it can be established that laws, at some points, even over-regulate the fields of design and construction (therefore care must be taken, for example, to ensure that the mandatory content elements are incorporated into the contract); however, the fragmented state of the rules and the resulting many interpretation issues create difficulties for those applying the law.

I. DESIGN CONTRACT

Design contracts are regulated in Hungarian law scattered in several pieces of regulations. The framework is primarily provided by the Civil Code, on the one hand by describing the rules of works contracts (Section 6:238 [Works contract]), and on the other hand by describing the rules of design contracts (Section 6:251 [Design contract]).

In addition to the framework rules provided by the Civil Code, the mandatory content elements of design contracts are regulated by the Built Environment Act, the Construction Code, the Decree on Practicing Professions and, in case of public procurements, by Government Decree 322/2015 (X. 30.) and other relevant regulation applicable to public procurement. Moreover, or according to certain interpretations, as a basic act, the rules of the Copyright Act and certain statutes on industrial property rights must also be taken into account when concluding and analysing a contract.

These laws, and also several others, in addition to defining the content elements of design contracts, also contain other rules relating to the activity. Other laws include the national building regulations (Government Decree 253/1997 (XII. 20.) on the national settlement planning and construction requirements (OTÉK)) and local building codes, which must be taken into account in the design activity.

When drafting a design contract, the scattered nature of the rules mean that the mandatory content elements of a contract must be gathered from several different laws, and other relevant provisions must be examined.

The design activity itself can be very varied, it can be directed towards the designs of construction and installation works (including, for example, horticultural or landscaping, soil mechanics, acoustics, electrical, statics and other designs, etc.)³, but in addition to these there are also production technology or other technical plans which are not strictly related to the field of architecture and therefore do not necessarily fall within the scope of the Built Environment Act.

It is beyond doubt that attention is mostly focused on architectural and engineering design.⁴ In view of this, and for reasons of limited scope, the focus of this article is on architectural and engineering design.

Civil Code

A design contract is governed by Act V of 2013 on the Civil Code [hereinafter referred to as Civil Code] as a *lex generalis*, and is referred to as a sub-type of works contracts, following the general rules of works contracts, preceding construction, as the first type of contract to be typified. Since it is therefore an

¹Great Commentary to Act V of 2013 on the Civil Code – Edited by: Lajos Vékás / Péter Gárdos

² Ibid.

³ Ibid.

⁴ <https://www.ksh.hu/docs/hun/xftp/idoszaki/jelberuh/2019/index.html> (downloaded on:04.02.2023)

obligation to achieve result, the contractor undertakes, as a contractual service, the risk of realisation or non-realisation of the result. The Civil Code provides that “(1) based on a design contract, the contractor undertakes to provide design services and to deliver the design documentation, and the customer undertakes to accept delivery thereof and pay a fee. (2) The design documentation shall contain technically feasible, economical and efficient solutions, and shall be suitable for satisfying the customer’s needs which can be identified and which are considered to serve the intended purpose. (3) On the grounds of a defect in the design, the rights related to breach of contract may be enforced insofar as any right exists on account of lack of conformity attributable to defective performance arising from a defect in the design. (4) The designer shall guarantee that no third person has any right that can prevent or restrict the use of the design.”

Problems of interpreting Section 49 of the Copyright Act

In the context of the warranty rules, it is important to note that according to an interpretation of Section 49 of the Copyright Act, if the contract relates to a work to be created in the future (as, by analogy, any design contract is a contract for a work to be created in the future), then, if protection and work are created under the Copyright Act, the contract is not considered a works contract under the Civil Code, but it is a special type of contract within the meaning of Section 49 of the Copyright Act, and therefore, the warranty rights provided by the Civil Code do not apply (!). It is not possible to go into details here, but it's worth thinking over this extreme interpretation and somehow handling the risk of such interpretation.

Built Environment Act – architectural and engineering design contract

In addition to the Civil Code, architectural and engineering design activities are governed by Act LXXVIII of 1997 on the formation and protection of the built environment [hereinafter referred to as the Built Environment Act]. Among others, the Built Environment Act defines what exactly constitutes architectural and engineering design activities.

According to the definition included in the Act, architectural and technical design activity is considered “the preparation of the architectural and engineering documentation necessary for the construction, expansion, renovation, remodelling, rehabilitation, modernisation, demolition, relocation or changing the function of a structure, a section of a structure, group of buildings, landscape or garden architectural work, inspection in line with the related government decree, and it also includes the performance of designer supervision services.”

Pursuant to Section 32/A of the Built Environment Act: “the rules of the design contract regulated by the Civil Code shall apply to an architectural and engineering design contract, except that (a) the contract shall be concluded in writing, (b) the designer may use a co-designer or a specialist designer in the case and manner specified in the contract, and (c) the designer's fee shall be due at the same time the design documentation is delivered, unless otherwise agreed by the parties.”

Construction Code –mandatory content of contract

Government Decree 191/2009 (IX. 15.) on building contractor activities [hereinafter referred to as Construction Code] uses the terms architectural and technical design and architectural and technical designer before an abbreviation, similarly to the Built Environment Act, however, in the context of a contract, only the term design contract is used. Pursuant to Section 9 of the Code, a design contract shall contain “(a) the exact designation of the design activity (specialist designer activity) undertaken, (b) the definition of the requirements (quantitative and qualitative indicators) for the design documentation, the level of elaboration (required detail drawings, consignments, scope of budget), (c) the number of copies of the construction documentation to be prepared and the obligation to submit them in electronic form, (d) the rules for reviewing and inspecting the design, (e) the regulation of any amendments to the design which may become necessary, and (f) the detailed conditions for the provision of designer supervision services, if the designer is to perform such services.”

Decree on Practicing Professions – mandatory content of contracts

The Decree on Practicing Professions stipulates that, in addition to the provisions of the Civil Code, the Built Environment Act and the Construction Code, the design contract required for the performance of

architectural and engineering design activities shall include: “(a) performance deadlines, including the provision of designs according to a schedule, (b) in addition to the amount of the design fee, the form and method of accounting, as well as the method and deadline for payment, (c) requiring any professional security”.

Absence of mandatory elements – nullity or invalidity

The mandatory content elements required by laws are of great importance, since failure to include them may lead to the consequences of nullity or invalidity. This will not be discussed in detail in this article, but in summary it is important to note that presumably nullity does not, but invalidity does arise in the absence of mandatory elements. Not much jurisprudence is available on the topic, but the regulation relating to mandatory elements should definitely be observed.

Disciplines – general designer

According to Section (2a) of the Construction Code, “the contracted designer shall inform the developer about the specialist designer tasks. If, despite being advised so by the contracted designer, the developer does not involve a specialist designer, the contracted designer shall not be liable for any unauthorised or unprofessional activity resulting from the developer’s failure to do so.” As it will be explained later, a given designer (company) is only entitled to perform design activities in the discipline in which it is registered with the relevant chamber, but under the Decree on Practicing Professions other activities may be subcontracted.

Pursuant to Section 33 of the Built Environment Act, the designer is responsible for “(c) selecting the specialist designers who participate (in part or on a continuous basis) in the preparation of the architectural and technical documentation and who have the appropriate expertise and authority in relation to the professional content of the design task, and (d) the coordination of communication between the specialist designers and the alignment of their designs.”

When interpreting related laws, it is difficult but not impossible to understand that the Built Environment Act intends to introduce the rules of a general designer, and makes it the designer's task to coordinate the specialist designers; however, the Construction Code suggests that the designer's task is merely to draw attention to the need for specialist designers. The related regulation is not sufficiently clear, and the role of the general designer should be clarified in legislation on construction activities.

Copyright and industrial property rights

Reference has already been made above to Act LXXVI of 1999 on copyright [hereinafter referred to as the Copyright Act]; it is an important element of a design contract to consider what type of license agreement should be concluded with the designer; however, it should also be considered, at what point during the design process may copyright protection issues arise (for example, certain articles do not include specialist design or implementation documentation), who qualifies as an author, whether subcontractors are covered by the license, and how Section 49 of the Copyright Act should be interpreted. In addition to copyright, industrial property issues may also arise, where the designs potentially create a result protected by industrial property rights.

Subject of the design service: various design documentation

In the design contract, it is necessary to precisely specify the nature/extent of the architectural and engineering design services to be provided under the design contract.

Among others, as a result of the rapid development of technology and market demands, it is becoming increasingly common that there is no general design carried out for a building – which would include the entire design process –, but instead, certain sub-processes of the design are divided also among those performing architectural and technical design work. This may lead to a situation where a designer only undertakes the preparation of an initial simple design without any details, or even a visual design, while another one is responsible for the design of a much more detailed work.

The Hungarian legislator also names these design service elements in several places, in some cases making it mandatory to have certain design documents.⁵ These elements have a pronounced practical relevance; however, Hungarian law does not build on an exhaustive, comprehensive list within a specific law regarding the types of design services and their mandatory content elements. In this respect, the legislator specifies that architectural and technical documentation shall include the design program, plans and documents required for the implementation of the construction activity – for tenders, design contests, design council, authority procedure (formerly: permit procedure)⁶, request for quote, construction works, condition surveys, documentation of condition or implementation.

Design services are basically grouped as follows:

- (a) concept designs, basic designs, tender designs, FEED or similar hybrid designs
- (b) building permit documentation
- (c) construction documentation, and
- (d) implementation design documentation.

The main purpose of the preparation of the building permit plans is to compile a documentation consisting of designs and text descriptions, on the basis of which the competent building authority can make a decision to grant a building permit. Previously, the content was defined by Decree 45/1997 (XII.29.) of the Ministry of Environmental Protection and Regional Development, which prescribed in detail the drawings, technical specifications and technical calculations required for the preparation of the building permit plan.⁷

The current content of the building permit plan is precisely defined by Section 72 of Government Decree 312/2012 (XI. 8.) on regulatory procedures and inspections for building and construction supervision, and on building authority services, and Annex 8 to the Decree.

In comparison, a construction documentation is much more detailed than a building permit documentation. It contains the individual phases of construction and the specifications applicable to carrying out the construction work.⁸

An important change is that, as of 1 January 2017, Annex 1 to the Construction Code no longer contains detailed requirements for the content of construction documentation. These are defined in the regulations to be developed by the Hungarian Chamber of Architects and the Hungarian Chamber of Engineers.⁹ This has simplified the situation, since it is much easier to amend a chamber's regulation to reflect changes in life than to amend a law.

The implementation plan is mentioned in the Decree on Practicing Professions, but its content is not described in detail.¹⁰ It essentially states that buildings constructed on the basis of building permit and implementation plans almost invariably show deviations from the original architectural and specialist designs. The implementation plan serves to indicate such modifications, which is also a work part that is mandatory to be submitted with the application for the occupancy permit.¹¹

Eligibility for designer activities, foreign designers' work in Hungary:

Pursuant to the Built in Environment Act, a natural person who wishes to carry out architectural and engineering design activities in Hungary shall meet the following requirements:

⁵ <https://epitesijog.hu/1867-epiteszetimszaki-dokumentacio> (downloaded on: 04. 02. 2023)

⁶ As of 13 May 2016, the definition includes the term "authority procedure" instead of "permit procedure". Documentation is also required for the simple reporting of residential buildings, which is not a permit procedure, and therefore this clarification has been made [Section 13(d) of Act XXXVI of 2016].

⁷ Decree 45/1997.(XII.29.) of the Ministry of Environmental Protection and Regional Development

⁸Its detailed rules are contained in the Construction Code.

⁹ Annex 1 to the Construction Code

¹⁰Section 15(1) of the Decree on Practicing Professions

¹¹ <https://bauszter.hu/hu/szolgalatasok/megvalosulasi-tervek-keszítése/> (downloaded on: 04. 02. 2023)

1. must have an authorisation issued by the body operating the directory of designers [which is either the Hungarian Chamber of Engineers or the Hungarian Chamber of Architects], that is, it is considered an activity subject to a license;
2. must be registered in the list of designers maintained by the Hungarian Chamber of Engineers or the Hungarian Chamber of Architects;
3. must be a member of the Hungarian Chamber of Engineers or the Hungarian Chamber of Architects.¹²

In addition, Government Decree 266/2013 (VII. 11.) on the activities of professional practice in the field of building and related to construction [hereinafter referred to as: Decree on Practicing Professions] also stipulates¹³ that architectural and engineering designer activities may be carried out by a natural person or a company if he or it is authorised by the body holding the register.¹⁴

For companies, pursuant to the Decree on Practicing Professions, “the company may commence and pursue its professional activity if it announces its intention to do so, and its senior executive, member contributing in person, or any of the employees who work at least 20 hours per week have the right to practice the profession in the given field, and the activity is carried out by the person holding such authorisation. Out of the professional activities undertaken by the company, it may only perform activities for which it meets all the required conditions, for the performance of which it has concluded a written contract with the customer, and the practicing of which has not been prohibited by the regional chamber.

In addition to the conceptual framework of the Built Environment Act, Annex 1 to the Decree on Practicing Professions contains a detailed set of requirements as to which specialist areas/sub-areas fall within architectural and technical design, and what professional field authorisation is required to perform them. If a particular field is listed in this Annex, it is also subject to authorisation by the body responsible for the register.¹⁵

Although the list is very detailed, there are also design activities which do not fall within the definition of architectural and engineering design and which are laid down in separate rules by the Hungarian legislator. In respect of these, there is no obligation to obtain an authorisation as set out above, such as the design activity covered by Decree 1/2016 (I. 5.) of the Ministry of National Economy on the technical safety requirements and authority supervision of storage tanks and storage facilities for hazardous liquids or melts.

¹²Section 32(3) of the Built Environment Act

¹³ Section 6(1) of the Decree on Practicing Professions

¹⁴ The Decree on Practicing Professions also stipulates further conditions:

For natural persons

As formulated in the Decree on Practicing Professions, architectural and engineering designer activities may be carried out by a natural person if he is authorised by the body holding the register.

In addition, the body managing the register of designers according to the Built Environment Act shall grant an authorisation to carry out architectural and engineering design activities to any person who:

- is not prohibited from practicing the profession in question;
- has no criminal record;
- has a higher education degree in the relevant professional field and the necessary qualifications and experience required by the relevant government decree, and
- is able to meet the other requirements laid down in the relevant government decree.

In addition, a person performing architectural and technical design activities may only carry out design work in a specialised field for which he has the appropriate designer or expert qualifications under this Act. [Section 32(5) of the Built Environment Act]

For legal persons:

In accordance with the Decree on Practicing Professions, a “company” may only perform architectural and engineering designer activities in Hungary if:

- it notifies its intention to do so to the body holding the register of designers;
- the senior executive or a member contributing in person, and any of its employees who work at least 20 hours per week hold a license to exercise the profession of designer in the given field (discipline), and
- the designer activity is carried out within the company by the person(s) holding such authorisation.

In addition, out of the professional activities related to the work undertaken by the company, at least one must meet the conditions listed above, and that activity must be carried out by the company. The company may perform other professional activities related to the work undertaken – which it is not authorised to perform – with the involvement of a subcontractor.

Taking these into account, a company may perform such professional activities out of the professional activities it has undertaken,

- for which it meets all the conditions laid down above;
- for which it has concluded a written contract with the customer, and
- the practicing of which has not been prohibited by the regional chamber

¹⁵ Annex 1 of the Decree on Practicing Professions

As a result of the globalisation of economic processes, the question may arise whether there is a difference in the requirements if the designer is not a Hungarian citizen or a company not registered in Hungary and established under Hungarian laws.

Further rules are set out in Section 40 of the Decree on Practicing Professions. According to the Decree, a service provider legally established in an EU (EEA) Member State and authorised to practice professional activities as a designer may also carry on the same professional activities as a designer in Hungary without establishing a permanent economic residence there under the freedom to provide services (that is, on a cross-border basis), if it complies with the requirements and conditions stated above and defined in the Decree on Practicing Professions, as well as all other legal requirements and conditions.

Under the rules, a service provider established in an EU (EEA) Member State must notify the Budapest Chamber of Architects or the Budapest and Pest County Chamber of Engineers that it intends to carry out design activities in the framework of a cross-border service, on which the Chamber holds a separate public register.¹⁶

In addition to the above, other relevant Hungarian legislation (e.g. Act LXXVI of 2009 on the general rules for the commencement and pursuit of service activities) and certain other conditions and requirements specified by the competent chamber must also be met in order to carry out cross-border design activities in Hungary.

The entitlement of third country service providers may only be established on the basis of reciprocity according to the Decree on Practicing Professions. However, it should be noted that Hungary has concluded a reciprocity agreement in this respect only with Canada, with certain reservations.¹⁷

Accordingly, in the absence of an appropriate reciprocity agreement, third country service providers must be economically established in Hungary in order to carry out design activities, which means that they shall establish and register a Hungarian branch or a Hungarian subsidiary.

Further specific rules apply to architectural and engineering design work when carried out in the context of a public procurement project.

Pursuant to Section 8(2) of Government Decree 322/2015 (X. 30.) on the detailed rules of public procurement of construction projects and design and engineering services related to construction projects [hereinafter referred to as: Project Decree] *“the contracting entity may stipulate in the contract notice launching the procedure that, in the event the winner is an economic operator not established in Hungary – or a professional employed by it to carry out the given design or engineering work –, it must be included in the list of the national professional chamber competent for the subject of the design or engineering service related to the construction project at the latest at the time of concluding the contract.”*¹⁸

In practice, however, it raises uncertainties in legal interpretation, since a number of construction projects have been/are being carried out in Hungary, which were implemented according to designs selected in an international design competition.¹⁹ In such competitions, there are several wordings that, if the successful applicant does not have designer authorisation valid in Hungary (corresponding to the details above) at the time of signing the contract, he shall either report or register his authorisation to the chamber that holds the register, or he shall act in a way to ensure his designer authorisation by involving a specialist with appropriate Hungarian professional authorisation for the discipline, i.e. appropriate for the work he intends to undertake. However, the exact meaning of such recurring wording at competitions is unclear, which raises a number of legal questions. The question arises as to what the clause “involving” actually means in practice, and what legal technical solutions may be considered acceptable in such cases. If we wish to elaborate on the latter, it is questionable who is entitled to

¹⁶Section 40 of the Decree on Practicing Professions

¹⁷Section 40 of the Decree on Practicing Professions

¹⁸Section 8 of Government Decree 322/2015. (X. 30.)

¹⁹ And example for this is the House of Hungarian Music. As phrased by the official Hungarian website: *“The international design competition received nearly 170 entries from all over the world, and the winner, Sou Fujimoto Architects, was announced on 19 December 2014. In 2015, Sou Fujimoto Japanese architect signed the contract for designing the House of Hungarian Music.”* - <https://ligetplusz.hu/intezmeny/magyarzenehaza> (downloaded on:04.02.2023)

conclude the design contract, and what contract the designer company should conclude with designers holding Hungarian authorisations.

II. CONSTRUCTION CONTRACT

Hungarian law requires the construction contract to be concluded in writing in the case of construction works.²⁰ The regulation contains strict requirements not only in terms of formal criteria, but also in terms of content.²¹ Section 3(2) (a) to (r), Section 4 and 4/A of the Construction Code define, in a long list, the mandatory elements of a construction contract, specifically mentioning the case where a construction trustee is involved.

Civil Code, Built Environment Act and Construction Code

The regulation of construction contracts in Hungarian legislation is not particularly fragmented. The frameworks are primarily provided by the Civil Code, on the one hand by describing the rules of works contracts (Section 6:238 [Works contract]), and on the other hand by describing the rules of construction contracts (Section 6:252 [Construction contract]).

In addition to the framework rules provided by the Civil Code, the mandatory content elements of a construction contract are regulated by the Construction Code, and in case of public procurements, special legislation on public procurement. The Construction Code definitely shows signs of over-regulation.

Building, construction, building construction, construction and installation work, skilled building work

Different pieces of legislation do not always use the above terms consistently, but the Construction Code, referring back to the Built Environment Act, regulates the elements of a contract for the performance of construction work on a commercial basis, by including the definition for construction and installation work. Agreeing on a uniform terminology would be practical.

In order to perceive the level of detail in the regulation in the Construction Code, it is worth reading the first few paragraphs:

“(2) The construction contract shall include *

(a) the name or designation, address or registered office, contact details, tax number, payment account number of the developer or, in the case of a subcontract, of the contractor who is the customer in the contract, as well as the name or designation, address or registered office, contact details and, where an electronic construction logbook (hereinafter referred to as “e- construction logbook”) is kept, the logbook reference number (hereinafter referred to as “NÜJ-number”) of the person acting on his behalf,

(b) the name or designation, address or registered office, contact details, tax number, registration number in the register of contractors, payment account number of the general contractor obliged to provide services, and the name or designation, address or registered office and contact details of the person acting on behalf of the general contractor who is obliged to provide the service,

(c) specifying in the subject of the contract the exact name of the construction activity or construction and installation work undertaken, the exact description of the construction site (address, lot number), specifying the requirements for the building, construction activity (quantitative and qualitative indicators),...”

²⁰If the law requires the contract to be in writing (or other special form) and despite, it is not made in writing, then the contract shall be considered null and void – unless the performance accepted by the other party is valid. According to the Built Environment Act, if the construction work is carried out without a written contract, the building supervision authority may impose a fine of HUF 100,000 on both the developer and the general contractor. Furthermore, if there is no written contract for the preparation of the construction documentation, the fine shall be HUF 150,000, in which case the fine is automatic and no discretion is allowed in the matter (points 21-23 of the Annex to Government Decree 238/2005 (X. 25.)).

²¹Section 3(2) of the Construction Code

Absence of mandatory elements – nullity or invalidity

The mandatory content elements required by laws are of great importance, since failure to include them may lead to the consequences of nullity or invalidity. This will not be discussed in detail in this article, but in summary it is important to note that presumably nullity does not, but invalidity does arise in the absence of mandatory elements. Not much jurisprudence is available on the topic, but the regulation relating to mandatory elements should definitely be observed.

Pursuant to the general statutory requirements of Section 39(3) of the Built Environment Act, anyone wishing to engage in building construction activity within the framework of gainful activity (hereinafter referred to as: general contractor activity; construction activity; building construction activity) shall meet all the legal requirements set out in the Government Decree, and notify the body maintaining the register of its intention to do so.

In addition, the legislator stipulates the following as conditions for carrying out construction activity:

direct participation in the implementation of the construction activities undertaken

The general contractor (hereinafter referred to as: contractor, building contractor, construction contractor) may undertake construction activities only if directly involved in the performance of the construction activities undertaken.²²

notification / registration at the Hungarian Chamber of Trade and Industry

The Hungarian Chamber of Commerce and Industry keeps records of authorised contractors and checks the eligibility of contractors for performing activities.²³

A general contractor may only carry out construction activities if the register of persons authorised to perform construction activities, in respect of the general contractor, contains the activities carried out.²⁴

Accordingly, if a contractor wishes to carry out building construction activity in Hungary, he must register in advance as a contractor in the register of contractors kept by the Hungarian Chamber of Commerce and Industry. In accordance with the Construction Code,²⁵ the contractor must provide a number of information during the registration procedure, together with the underlying supporting documents.

responsible technical manager

Construction activities shall be supervised by the responsible technical manager authorised for the given type of construction activity, who is able to meet all other requirements and who is entitled to give direct instructions to the construction workers.²⁶

From among the activities undertaken, the contractor may only carry out those construction activities for which he has a responsible technical manager who is entitled to carry out the undertaken construction activity and who is a member (e.g. registered member) or employee of the contractor, or has other employment relationship (e.g. assignment) with the contractor.²⁷

professional employees

From among the activities undertaken, the contractor may only carry out those construction activities for which he has the sufficient number of skilled employees holding professional qualifications appropriate for the construction activity, or qualifications appropriate for the nature of the construction activity, and who are members or employees of the contractor, or have other employment relationship (e.g. assignment) with the contractor.²⁸

appropriate site

²² Section 12(1)(b) of the Construction Code

²³ Section 39(7) of the Built Environment Act

²⁴ Section 12(1)(a) of the Construction Code

²⁵ Section 35 of the Construction Code

²⁶ Section 39/A(1) of the Built Environment Act

²⁷ Section 12(1)(a)(aa) of the Construction Code

²⁸ Section 12(1)(a)(ab) of the Construction Code

The contractor shall have a site suitable²⁹ for carrying out the construction activity.³⁰

permits

Out of the undertaken activities, the contractor may only carry out those construction activities:

- for the commencement and finishing of which:
 - the permit pursuant to Government Decree 312/2012 (XI. 8.) has been granted, if required by law, or
 - the simplified notification set out in Section 33/A of the Built Environment Act has been made;
- the performance of which has not been prohibited by the building or building inspection authority.³¹

documentation

Out of the undertaken activities, the general contractor may only carry out those construction activities:

- in respect of which:
 - the construction documentation is available at the construction site, in the case of an obligation to prepare construction documentation; and
 - the construction logbook has been opened and is maintained in accordance with the requirements, in the case of an obligation to keep a construction logbook;
- for the performance of which a written contract has been concluded with the developer or, in case of a subcontract, with the building contractor in accordance with Section 3(1-3) of the Built Environment Act.

financial resources

The contractor may perform activities within the framework of contractor construction activities only if it has³² the financial resources³³ necessary to carry out the construction (installation) works according to the contract and in the agreed quality.

construction trustee

Construction trusteeship is mandatory for construction activities in Hungary if the value of the construction activity reaches or exceeds³⁴ the EU threshold³⁵ according to the public procurement provisions.

If the trusteeship activity is mandatory (or performed on a voluntary basis), it is the responsibility of the developer (and not the contractor) to, inter alia:

²⁹ Section 12(1)(a)(ac) of the Construction Code

³⁰A site is considered suitable for carrying out building and construction activities if:

- in case of a site at a location other than the registered office of the company, the site is registered in the commercial register of companies, or the building contractor provides documents proving ownership or other title to the use of the site;
- it is a permanent, independent site that ensures the execution of the work phases related to the construction activity or the preparation thereof, in accordance with the contractor's registered activities
- it is suitable for storing the work equipment (hand tools, machines, machinery, devices, technologies, fittings and building materials, etc.) required for the construction work activity in accordance with the building contractor's registered activity, and for carrying out the preparatory works

³¹ Section 12(1a) (b) (d) of the Construction Code

³² Including, where applicable, subcontractor fees.

³³Section 39/A(5) of the Built Environment Act

³⁴ The detailed calculation method of the values is described in the Construction Code and Government Decree 245/2006.

³⁵ The trusteeship activity may also be performed on a voluntary basis, that is, in cases where the value does not reach the EU threshold.

- conclude a construction asset management agreement in writing with the assigned contractor, and
- select and employ/entrust the *construction technical inspector*, who is responsible, inter alia, for checking compliance with applicable laws, regulations, standards, contracts and construction documentation during the entire construction process.³⁶

Provision of construction activities in Hungary by foreign entities

Similarly to a design contract, service providers established and authorised in an EU/EEA Member State may perform cross-border general contractor activities in Hungary in conformity with the conditions and requirements set out in the relevant Hungarian legislation (e.g. Act LXXVI of 2009 on the general rules for the commencement and pursuit of service activities).

Third-country service providers (i.e. service providers outside the EU/EEA) may provide cross-border services within the territory of Hungary if expressly permitted by law or international contract. In the absence of such permit, the general contractor must also be economically established in Hungary in order to carry out the activity, which means that they must establish and register a Hungarian branch office or a Hungarian subsidiary, as explained above.

NEW CONSTRUCTION FRAMEWORK LAW IN 2023, FINAL REMARKS

This article was intended to present the details and some relevancies of how design and construction activities are regulated. In light of the above, it can be clearly concluded that both sides of the coin – design and construction – require legal precision as a priority in terms of the compliance of construction works with regulations. Keeping processes within the legal framework is not facilitated by the fragmented and often inconsistent nature of regulation, or dissonance between certain elements of legislation and practice. This article does not cover individual authorisation and authority procedures or notifications.

It is common knowledge that the Ministry of Construction and Transport, led by János Lázár, is planning to have the Parliament adopt a construction framework law consisting of two laws in 2023.

According to the Architects' Forum, “the nearly 70-page proposal for a construction framework law was drawn up by the Secretary of State for Architecture, Regő Lánsszki, and his team, under the Ministry of Construction and Transport headed by János Lázár, and includes terms such as “predictable urban planning” or “the principle of good civil taste”.

From among the planned laws, the text of the draft law on the order of state construction projects was published by the Government for the purpose of social consultation – the text of which is available for reading³⁷. The draft of the Construction Act, which would basically replace the Built Environment Act, has not yet been published, but the opinion of the Chamber of Architects is available, from which it seems that the regulation primarily affects the procedures and not legislation on contracts, however, naturally it cannot be excluded that several new implementing regulations of the Construction Act will also be issued, which will affect legislation on contracts, too.

In light of the new laws entering into force, it is also worth monitoring the status of contracts and checking their current legal status.

³⁶Section 20(1) of the Construction Code

³⁷ <https://kormany.hu/dokumentumtar/allami-epitesi-beruhazasok-rendjerol-szolo-torveny>