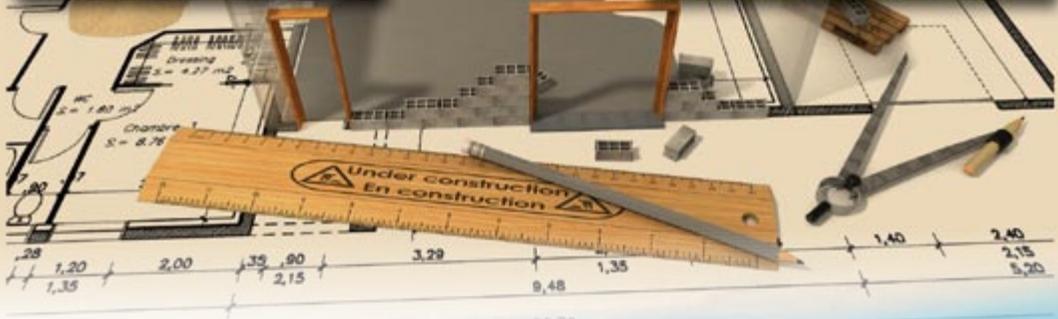
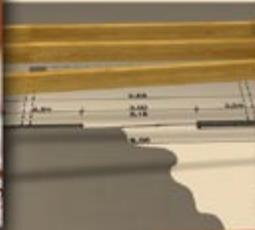


BALÁZS & KOVÁTSITS
LEGAL PARTNERSHIP

NEWSLETTER

2018/3 September-December

FOUNDING MEMBER OF EAST LEGAL TEAM EEIG – AN INTERNATIONAL ASSOCIATION OF EASTERN EUROPEAN LAW FIRMS



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DEAR READERS,

It is my pleasure to inform you that the previous two months have been a very active period in the life of our Legal Partnership especially regarding Construction Law and Real Estate Law.

First of all, three of our colleagues (Dr. Tamás BALÁZS Managing Partner, Dr. Ádám MILLEI attorney at law and Dr. Károly BAGÓCSI lawyer) specialized in Construction Law and Real Estate Law have been participating in the edition of the Hungarian Chapter of the European Construction Law Book.

In addition, the European Society of Construction Law held its annual conference in Bucharest, Romania on 25-27 October 2018 where two lawyers of our Legal Partnership (Dr. Tamás BALÁZS and Dr. Károly BAGÓCSI) represented the Hungarian Society of Construction Law giving a country report on Public Procurement Regulations in Hungary. Also kindly note that Dr. Tamás BALÁZS Managing Partner and BALÁZS & KOVÁTSITS Legal Partnership have been shortlisted by Advisory Excellence and can be found in their international list of Construction Law and Real Estate Law experts.

It is small wonder that our present Newsletter deals with the first two very important events summarizing the surveys and researches we made for these two extraordinary events.

Should you have any remarks, questions regarding the articles presented in our newsletter or the activity of our Legal Partnership, please do not hesitate to contact us.

Best regards,

Éva SÁNDOR
Marketing Manager



DISPUTE RESOLUTION IN CONSTRUCTION LAW MATTERS IN HUNGARY

In Hungary basically we can differentiate three different forms of settling legal disputes in connection with construction and design contracts. These possible claim enforcements are as follows: out of court dispute settlements (reconciliation between the parties in front of Dispute Adjudication Boards /DAB/, or via payment order procedure), in front of an ordinary state court via civil lawsuit, or in front of Hungarian or international arbitration courts.

From the above mentioned opportunities the possibility of claim enforcement in front of ordinary courts is open in all cases, whereas the contract is signed upon Hungarian law. Currently in Hungary there is one Arbitration Court attached to the Hungarian Chamber of Commerce. In so far as the contracting parties would like to use this or the international arbitration court in the settling of their dispute based upon a contract signed, according to Hungarian law, in a way that they put down this intention of theirs either in the contract or at latest in a written agreement at the development of their legal dispute. One of the greatest advantages of the Arbitration Court functioning beside the Hungarian Chamber of Commerce is that each of the parties can delegate an arbitrator from the list of arbitrators to the board of arbitrators and the two delegated arbitrators will choose the third member of the board of arbitrators who is also the President. An additional advantage is that the procedure of the arbitration court is quicker than the procedure of the ordinary state court, as cases usually finish within a few months in front of these arbitration courts, whereas in front of state courts – where the procedure is in two instances – in certain cases the procedure can last for years and sometimes the revision of the Supreme Court may be requested. In case of the constraint of the arbitration court according to Hungarian law, there is a possibility



of the procedure in front of ordinary state courts, only the statement of invalidation of the verdict of the arbitration court can be required, as long as the verdict of the arbitration court.

In Hungary most of the construction lawsuits can last up to several years in front of ordinary courts, as long as the parties receive the final and definitive sentence. With regard to this fact in certain nominated

cases (where the occurrence of the completion or its certification is disputable, or the completion is not disputable but payment has not been carried out, or there is a dispute in connection with the financial guarantees – mortgage, bank guarantee etc. – ensuring employer payment) there is an opportunity to turn to the Completion Validation Expert Organization attached to the Hungarian Chamber of Commerce since 2013, which can issue an expert opinion within 60 days upon request. As long as any of the parties do not agree with the expert report, there is a possibility to turn to court within 60 days following receipt of the expert report, and the court should have an accelerated procedure taken into consideration the report of the Completion Validation Expert Organization in a way as it would have been made by a forensic expert delegated by the court. These legal procedures last definitely shorter than other legal procedures in construction cases.

There is an opportunity to settle disputes out of court. It can be an agreement between the contracting parties, a written agreement, but in case of the consent of the contracting parties, even third parties, organizations dealing with out of court legal disputes or persons can be involved. In the latter case for instance a mediator can facilitate the settlement between the parties, or the conciliatory body beside the Hungarian Chamber of Commerce, but the decision of the latter can only be mandatory for the parties if they assumed it in writing at the beginning of the procedure to subject themselves to the decision of the conciliatory body. In connection with out of court dispute procedures it should be mentioned that as far as the parties accepted the application of one of the FIDIC-contract samples as they are to proceed according to the dispute settling rules included in it. In this regard we are only referring to the role of Dispute Adjudication Board.



An order for payment in front of a notary public has a special temporary character between out of court and litigation dispute. Except for certain cases, this procedure shall start in cases where the claim does not exceed HUF 3,000,000 (EUR 9,800). This procedure cannot be started if the amount of the claim is over HUF 30,000,000 (approx. EUR 98,000). You can initiate this procedure electronically in which the formal but not the substantive checking of the claim, the notary public releases a payment notice for the person indicated as the debtor in order to accomplish his payment obligation within 15 days, or if he does not agree with the claim to initiate a protest within 15 days at the notary public. In the case of the protest of the debtor, the creditor can initiate a civil law suit within 15 days in front of the competent court, thus the out of court procedure will be transferred to court procedure.

Dr. Tamás BALÁZS
Attorney at law
Managing Partner

SUBCONTRACTORS OF CONSTRUCTION PROJECTS IN HUNGARY

Construction business is about to finish with strong performance in 2018 in Hungary that has been fuelled by increasing demand for housing, low interest rates on loans, an ever-flourishing real estate market with ever increasing prices for housing, numerous government incentives and several ongoing large scale public construction projects. The rapid boom of the construction industry has resulted in a shortage of workforce and skilled craftsmen, and even a shortage of building materials and resulted in a surge of subcontractors in the industry. In such environment, understanding the Hungarian rules for subcontracting in the construction industry is as vital as ever for concluding successful projects.



A subcontractor is a person or a company which has a contract (as an 'independent contractor' i.e. not an employee) with a contractor (usually designated as the 'main' or 'prime' contractor) to provide some portion of the work or services under the construction contract. The most important general rules for subcontracting are laid down in the Hungarian Civil Code, under which subcontracting is in principle allowed and neither the general rules for contractor agreements (Articles 6:238 – 6:250), nor the specific rules for construction-type contracts (Article 6:252) rule out subcontracting.



Under the general rules in the Hungarian Civil Code and other, more industry-specific regulations in other laws, and the main contractor may contract subcontractor(s) to do any amount of the construction projects (with a few exceptions of course). It is important to note that the main contractor shall be still ultimately responsible for the performance of

the construction work: organisation and supervision the work of subcontractor(s) remains the main contractor's responsibility and liability.

Subcontractors may also employ additional subcontractors to perform the work, under similar legal liabilities. However, it is important to note that the employer has the right to specifically rule out the use of subcontractors in the construction contract, and that while the general regulations for subcontracting imply that the expressive permission of the employer is not needed for subcontracting, industry- or sector-specific laws and regulations may still rule out, or limit the permissibility of the employment of subcontractors.



The Hungarian Civil Code only lays out the general rules and numerous limitations for subcontracting are found in the laws specific for the construction industry, primarily in Act LXXVIII of 1997 on the protection of the constructed environment, and its executive Governmental Decree 191/2009 (IX.15.) on the rules of activities in the construction industry.

When employing subcontractors, it should be also kept in mind that in order to prevent 'chain reaction defaults' in payment in the subcontractor chain, guarantee rules have been added to Hungarian construction law in 2013, providing financial guarantees that the main contractor will pay the subcontractors employed by him.

We hope that that enterprises engaged in either large- or small scale construction projects in Hungary would find this overview as a useful starting point to lay the legal foundations of cooperation when engaging subcontractors and will decide to make us of our professional experience in the field of Hungarian Construction Law.

Dr. Ádám MILLEI
Attorney at law

ON THE NEW REGULATION OF CONSTRUCTION PUBLIC PROCUREMENT

With regard to the fact that construction law is one of the most important special fields of our Legal Partnership, we continuously monitor an eye on construction law and its changes. According to our experience, over the last three years the most significant event in the field of construction law was the issue of the new governmental decree on construction public procurement. With regard to this fact, we would like to highlight some relevant aspects and experience on the new regulation in this article which are good to know if someone as a tenderer, a sub-contractor or an entity relying on the capacities would like to participate in a construction public procurement procedure in Hungary.



Participation of an accredited public procurement advisor – in order to secure the professionalism in construction public procurement and efficient use of public funds, the collaboration of an accredited public procurement advisor is necessary in construction public procurement if it is financed by the European Union or its subject is construction work in value of HUF 500.00 million at least.

About the sub-contractors – the governmental decree also includes strict regulation about sub-contractors. The tenderer is obliged to inform the contracting authority about the participation of sub-contractors in the implementation of construction public procurement until the time of conclusion of the public contract, although it is not necessary that the sub-contractors should be mentioned in the public



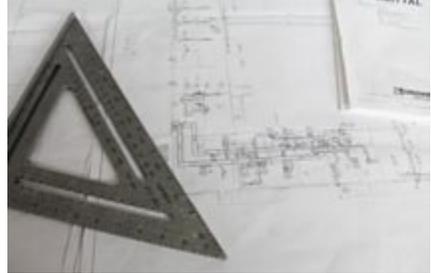
contract. Besides, the sub-contractors can undertake to execute 65% of the value and the volume of the construction work at most. This restriction has to be also taken into consideration for the sub-contractors of the sub-contractors. The grounds of the disqualification are also applicable for the sub-contractors. Therefore, they are obliged to make a statement that any

disqualification grounds do not exist against them.

Prepayment – the tenderer is entitled to get prepayment from the contracting authority that is 5% of the net contractual value but HUF 75.00 million at most if the completion of the construction works requires 2 months at least. In addition, the tenderer is not obliged to provide any security.

Partial invoices – if the completion lasts 6 months and the contractual value is HUF 50.00 million at least, there is an opportunity for the tenderer to issue partial invoices. If the contractual value is less than HUF 1.00 billion, 4 partial invoices can be issued. 6 partial invoices can be issued if the contractual value is more than HUF 1.00 billion. The amount of the prepayment and the partial invoices can be aggregately 70% of the contractual value at most. With regard to this fact, the final invoice can be equal to or more than 30% of the contractual value.

Ability requirements – pursuant to the governmental decree, all tenderers should have a liability insurance that covers the subject of the public procurement. Besides, the tenderers should be registered in their national registers of people entitled to perform construction activity. If the winning tenderer is a foreign person, the contracting authority can oblige him to register in the



Hungarian construction register. The certification of the technical-professional ability has been more simplified by technically equivalent references that comprise at least 75% of the value and the volume of the construction public procurement.

With regard to the fact that the fulfillment of the conditions prescribed in the new governmental decree has become easier and the participants especially the tenderers have got important rights from the legislator in order to strengthen their positions against the contracting authority during the construction project, according to our Legal Partnership, the new governmental decree tries to encourage the economical actors to participate in construction public procurements.

Dr. Károly BAGÓCSI
Lawyer

ESCL ANNUAL CONFERENCE, 25-27 OCTOBER 2018, BUCHAREST, ROMANIA

A picture gallery of the most
important events of the conference





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