



BALÁZS & KOVÁTSITS
LEGAL PARTNERSHIP



Dear Readers,

It is my pleasure to inform you that in our present Newsletter we will highlight some of the hottest issues our Legal Partnership has been dealing with nowadays. Inter alia, you can read about employing a technical controller, plot of land formation, agency agreement and indemnification, and a new government decree as a result of which foreigners no longer need work permits at Paks II NPP project.

In addition, let me call your kind attention to the fact that Dr. Tamás BALÁZS, Managing Partner, and Dr. Károly BAGÓCSI, Junior Partner, were again appointed as lecturers for the course of *the Continuing Engineering Education Institute of Budapest University of Technology and Economics* starting in October 2022. The training is for engineers who are interested in FIDIC-contracts and is on the Engineering Consultancy and FIDIC-contract System.

Finally, please kindly be informed that two of our colleagues, Ms. Zita BALOGH and Mr. Dániel BEGALA led by Dr. Tamás BALÁZS Managing Partner compiled a study on agency agreements in Hungary for the project of *Confidustria Vicenza* which will be published soon.

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

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AS A DEVELOPER SHOULD WE EMPLOY A TECHNICAL CONTROLLER?

The answer to the question in the title is clearly and unequivocally yes, although the use of a technical controller is required by law in a relatively narrow range of cases.

The employment of a technical controller is required in the following cases: if the construction activities are carried out by two or more main contractors, or if the construction activity falls within the scope of the Hungarian Public Procurement Act, or if the construction activity concerns a building listed under historical monument protection, or if it is a project of major importance for the national economy, or if a developer's construction trustee contributes to the construction activities. In all other cases, it is up to the builder whether to employ a technical controller.

The technical controller assists the client (the constructor) by checking the professionalism of the execution of the construction activity, the materials to be installed in terms of conformity and compliance with the parameters specified in the relevant contract, makes the necessary declarations on behalf of the developer during the construction. Since in the overwhelming majority of construction projects, the constructor is not a construction or building specialist, the technical controller can provide extremely important assistance and support to the developer who commissions him. From the foregoing, it is clear that it is not worth saving the costs of a technical controller, since the expenditure incurred in this way is recovered many times over in the majority of cases, as the professionals carrying out the construction work and the materials to be installed are under constant professional control, thus preventing many subsequent disputes and litigation. In many cases, the contractor company itself may recommend a technical controller to the developer. However, it is advisable to treat such recommendations with reservations, as the ideal case is when the technical controller is independent in all respects from the contractor construction company, i.e. has no links of friendship or decades of acquaintance to the directors of the construction company. In our practice, we have seen cases where the construction company has offered a higher contractor's fee to the developer if it hires a technical inspector, as if it had not made use of this right. In such cases, as a developer, it is worth being suspicious as to why the contractor is trying to discourage us from employing a technical building inspector by such means.

Dr. Tamás BALÁZS
Managing Partner, Attorney at law
Professor of law



PLOT OF LAND FORMATION

If the size of the plot of land is not proper for the implementation of the investment purpose (building of a house, a factory, a warehouse, solar power plant etc.) because it is smaller or bigger, it has to be shaped. The possible way of it is the plot of land formation.

The formation of the plot of land has 4 possible types. The first type is the subdivision, if the plot of land is bigger and the owner has the intention to apportion it for two or more separate plot of lands. The second is the consolidation where some plots of land are consolidated to be one plot of land. The third is the correction of the borders of the plots of land if the borders do not comply with the Land Register. The fourth is the redistribution of the plots of land where some plots of land are consolidated and at the same time, they will be subdivided to separate plots of land with different sizes.

The precondition of a successful plot of land formation is that the new plot(s) of land will be conform to the local and national construction legal rules. With regard to this fact, prior to the commencement of the procedure for plot of land formation the actual and the planned legal situation have to be exactly examined and determined. The legal regulation exactly determines the size, the type, the location of the plots of land which can be formed in that place where the plot(s) of land is/are situated. Besides, the legal rules regulate the type, the size, the height, the distance of the buildings which can be lawfully constructed on the current and future plot(s) of land. Based on taking into consideration of the aspects mentioned above and the investment purpose, the owner of the parcel should make the decision whether it is worth to initiate the procedure for plot of land formation or not.

Basically, the procedure for plot of land formation is the process where the Land Registry approves the type of the formation of the plot(s) of land. After this successful procedure, the result of the plot of land formation has to be registered into the Land Register in another procedure. The second procedure at the Land Registry is also necessary to the legal and successful finish of the plot of land formation. Besides, there is an opportunity that the plot of land formation can be done in one consolidated procedure in which the approval of the plot of land formation and the registration of its result into the Land Register will be done in the same procedure.

Dr. Károly BAGÓCSI
Junior Partner, Attorney at law, LLM



AGENCY AGREEMENT AND INDEMNIFICATION

Act V of 2013 on the Civil Code has finally implemented the rules of *Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents* and, thus, since 15 March 2014 *Act CXVII of 2000 on the independent commercial agency contract* along with some typical characteristics of the Hungarian Law is no longer in force. However, common European guidelines do not yet mean the end of all divergences between Hungarian law and the legal system of other EU member states and the contrast can be even stronger with the legal systems of states that are no members of the EU. An especially sensitive aspect of agency agreements is indemnification.

The importance of the rules of the Hungarian Civil Code relating agency agreements are underlined by *Section 6:300 of Chapter XLI* of the Act as this section lays down imperatively that any agreement that had been reached between the parties before the contract was terminated and which contains a clause that derogates from the provisions below to the detriment of the agent is null and void.

In case the agency contract is terminated, the agent is entitled to indemnification if deemed justified having regard to all circumstances of significance to the contract, in light of the fact that the termination of the contract deprives the agent of his right to a commission to which he would be entitled in connection with the transactions concluded, or planned to be concluded if the contract remained in force, provided that the agent solicited new clients for the principal through forming new business relations, or expanded existing business relations resulting in at least one new client, if such business dealings produce substantial benefits for the principal even after the termination of the contract.

The amount of indemnification may not exceed one year's average commission the agent had received during the last five years before the contract was terminated, or if the agency contract had existed for less than five years, the average calculated for one year from the sum received during the life of the contract.

Indemnification does not affect the agent's claim for compensation and the fee due on the basis of an agreement containing a restriction imposed upon the agent in exercising economic activities after the time of termination of the contract.

Dániel BEGALA
Legal Trainee



THIRD-COUNTRY NATIONALS NO LONGER NEED WORK PERMITS AT PAKS II NPP PROJECT

Third-country nationals (i.e. foreigners from outside the EU and the European Economic Area) can now work without a work permit for the main contractors and subcontractors of the Paks II nuclear power plant project in Hungary.

According to a new government decree published on 18 August 2022, no work permit is required for work carried out in Hungary "by a main contractor or its subcontractor, including employment through temporary agency work, in connection with the project".

This first provision of the new legislation does not mention a specific investment project, but the second half of the decree does: the County Government Office (Kormányhivatal in Hungarian) will not be participating as a competent authority in the procedure for the employment of foreign labour in connection with the "design, procurement, construction, commissioning and preparation for operation" of the two new units of the Paks NPP.

This new regulation is in force during the state of emergency in Hungary concerning the war in its neighbour Ukraine.

BALÁZS & KOVÁTSITS Legal Partnership is at the disposal of clients seeking advice in matters related to obtaining a residence permit for third-country nationals in Hungary for employment and other purposes.

Zita BALOGH
Legal Trainee





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