



BALÁZS & KOVÁTSITS
LEGAL PARTNERSHIP



Dear Readers,

It is my pleasure to inform you that in our present Newsletter we introduce some relevant topics from the expertise of our Legal Partnership in Construction Law, Real Estate Law and Immigration Law. Inter alia, you can read about whether you need a building permit for conversion, renovation or modernisation, on plot restructuring procedure, the long-term settlements of foreigners in Hungary, and on warranty rights.

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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DO YOU NEED A BUILDING PERMIT FOR CONVERSION, RENOVATION OR MODERNISATION?

It often happens in the practice of our Legal Partnership that clients – i.e. who already own a building and do not intend to construct a completely new building, but to transform, renovate or modernise an existing one - wishing to carry out some minor construction activity are unsure whether it is necessary to apply for a building permit in their case, and whether failure to apply for a permit will have adverse consequences, namely a fine. In our experience, the competent building authorities are not always consistent and lawful in their assessment of these issues.

Annex 1 to Government Decree 312/2021 (8.XI.), which lists the activities that may be carried out without a building permit, states, inter alia, that the conversion, renovation, restoration, modernisation or alteration of the façade of a building is not subject to a permit - except in the case of a building with a closed or twin structure - if these activities also affect the foundation or supporting structure of the adjacent building. After reading the aforementioned legal provisions, many people tend to think that the legislator thus provides a very wide scope for activities not subject to authorisation, since the concept of conversion, renovation, restoration, modernisation includes or can be explained by many things. Far less people think that it might also be worth looking into whether the legislator, in this case the government, has not defined what is meant by these terms which are also used in everyday language, as a temporary necessity for a building permit. The definitions of these activities - for the purposes of applying for a building permit - are set out in the Annex to Government Decree 253/1997 (XII.20.) No. 1 bearing the title of "Definition of terms". Consequently, a conversion is understood to be a building work carried out in order to change the layout or appearance of an existing building, part of a building, a single use or a room without increasing the internal volume of the building. It follows that architectural additions which increase the internal volume of a building may already be subject to a planning/building permission. According to the referred Decree, renovation is understood to mean an activity carried out in order to maintain the proper and safe use of an existing building, part of a building, a single functional unit or premises, and its operational safety without increasing the volume of the building. Modernisation means construction work carried out in order to improve the suitability of an existing building, part of a building, a single functional unit or premises for its intended purpose and safe use, to increase its utility value, performance or operational safety.

It is clear from the above that the legislator uses the concepts of conversion, renovation and modernisation in a much narrower sense than in common parlance, and in certain cases makes the exemption from authorisation conditional on the existence of restrictive conditions.

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



PLOT RESTRUCTURING PROCEDURE: PLOT SUBDIVISION

In the case that someone is thinking of subdividing a plot of land they own (building plot, or parcel of land under agricultural use, or parcel of land set aside from agricultural cultivation), the following aspects should be taken into account and the following steps should be taken in order to enable the land concerned to be subdivided.

Colloquially often referred to as real estate property division, the first step in the process is to establish the ownership of the plot, what the area of the new plots to be created by the subdivision will be (how many m²) and what the purpose of the plot to be subdivided and the buildings on it will be.

In addition, it is also necessary to determine whether the new plots created by the subdivision will have separate direct vehicular access to a road or a private road. If the plots resulting from the subdivision will not have such an access, it will be necessary to provide such an access for the plot concerned. The area providing the road or private road access must be at least 3 metres wide and not longer than 50 metres.

It is then necessary to examine the relevant construction legislation, in particular the local construction regulations, to see whether they allow the plots to be subdivided on the basis of the area, the built-up area, the type of use and the location and other characteristics of the buildings on them.

If it is possible to subdivide the land according to the regulations, a land surveyor with a land surveyor's qualification or a person with a special qualification in land surveying and cartography as defined in a separate law must prepare a map (land registry plan) of the subdivision, which must be approved (endorsed) by the land registration authority.

When drawing up the land registry plan, the professional carrying out the land surveying will of course also need to check that the criteria described in the previous paragraphs are met for the plot to be subdivided. In addition, the professional will also need to draw up a site plan for land conversion for the new plots to be created by the subdivision.

In addition, depending on how the plot is to be subdivided, it may be necessary to obtain the written consent of the holders of the encumbrances (for example, the universal service providers as holders of the right to utility easement) registered in Part III of the title deeds of the plot to be subdivided.

Once the land registry plan is approved (endorsed) by the land registry authority, the written consents of the potential beneficiaries, the site plan for land conversion and other necessary documents are made available, the plot subdivision procedure for the subdivision of the plot can be initiated and, if successful, the new plots created by the subdivision can be registered as separate real estate properties in the real estate registry.

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



LONG-TERM SETTLEMENT OF FOREIGNERS IN HUNGARY

Over the years, our Legal Partnership has helped many of our foreign Clients to obtain a residence permit in Hungary. Since residence permits are usually granted for 1-2 years, those who have been living in Hungary for some time and who wish to settle their legal residence in Hungary for a longer period of time, and who are maybe even thinking of acquiring Hungarian citizenship in the future, might consider applying for a Hungarian national permanent residence permit which entitles you to stay for an indefinite period, but the card itself is valid for 5 years.

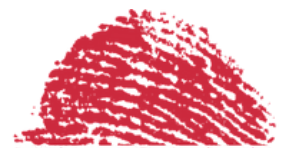
Pursuant to the dispositions of the respective Act on the entry and residence of third-country nationals (citizens of countries outside of the EU and the European Economic Area), foreigners who have lived continuously in Hungary for at least 3 years, except for occasional stays abroad of up to 4 months (and less than a total of 270 days in 3 years), can apply for a Hungarian national permanent residence permit.

Additional conditions for obtaining a national permanent residence permit include that the applicant must have secure residence and income in Hungary, have comprehensive health insurance, and additionally his/her settlement in Hungary is in accordance with the country's interests (e.g. by contributing to Hungary's economic, scientific, cultural or sport life and the high level of social integration of the foreign applicant). This last condition is also reflected in the practice of the Hungarian Immigration Authority, which requires of the applicant to have a clean criminal record in Hungary as well as the attachment of a document proving a clean criminal record issued by the applicant's country of origin (where the applicant lived before coming to Hungary).

Spouses of Hungarian nationals, and spouses and minor children of immigrants or permanent residents can obtain a Hungarian national residence permit under more favourable conditions.

The experienced staff of BALÁZS & KOVÁTSITS Legal Partnership is ready to assist our current and new foreign Clients in matters related to entry, residence and settlement in Hungary.

Zita BALOGH
Legal Assistant



LACK OF CONFORMITY AND WARRANTY RIGHTS

Our Legal Partnership is often approached by clients who wish to claim the lack of conformity of a contract. A lack of conformity may give rise to a number of warranty rights instead of the original performance, but it is worthwhile to be aware of the main rules of the Hungarian Civil Code before pursuing the claim.

First, it is important to clarify what is considered to be a lack of conformity. According to the Hungarian Civil Code, the obligor is in breach of contract if the performance at the delivery date is not in compliance with the quality requirements laid down in the contract or stipulated by law. In this context, it should be emphasised that the obligor is not liable for any lack of conformity if - at the time of the conclusion of the contract - the obligee knew or should have known the lack of conformity. Thus, a claim for defective performance cannot be brought if, for example, the car was not inspected before purchase and the wipers did not work. The principle of reasonable conduct in this case is again the general clause at the beginning of the code, which says that one must act as it can reasonably be expected from one in a particular situation. Thus, in the previous example, it is expected to check indicators, wipers and lights before buying a car, but the law does not expect anyone to notice smaller, hidden defects that only a professional mechanical would notice.

An important exception to the above rule is that the obligee is not obliged to inspect those characteristics whose quality has been certified or those that are covered by commercial guarantee. Thus, for example, the obligee does not have to examine products for which the business selling them is obliged by government decree to provide a mandatory guarantee.

The Civil Code establishes an order of the claims from lack of conformity. In the first place, we must ask the obligor (the person who offered the performance) for repair or replacement. As a general rule it is important to note that it is only after the obligor refuses or is unable to fulfil our claim for repair or replacement that we can proceed to the other claims: we can ask for a commensurate reduction in the consideration or we can have the defect repaired by a third party at the expense of the obligor or we can withdraw from the contract.

For the lack of conformity the defect must exist at the time of performance and as a general rule it is the obligee who must prove this. The Hungarian Civil Code makes an exception for consumers by placing the burden of proof on the seller business. This means that as consumers our claim will be valid without any proof if the obligor business cannot prove that our claims are false and the defect was recognised and notified to the seller within 2 months. In the case of a guarantee, the situation for the buyer is similar: the obligor is not released from its guarantee obligations until he proves that the reason for the defect arose after performance.

Despite the different claims given because the lack of conformity, it is always the easier way to properly inspect the service at the time of performance or to make sure that the obligor has given a guarantee. And if a defect is found in the performance, it is important to claim the warranty rights in the exact order prescribed by law.

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