

The image shows a construction site at sunset. Two large tower cranes are visible against a bright orange and yellow sky. In the foreground, several large rolls of blueprints are stacked. The text 'CERHA HEMPEL' is overlaid in white, bold, sans-serif font, with 'CONSTRUCTION PAPERS' in a smaller font below it. A small square icon with a diagonal line is centered below the text.

CERHA HEMPEL

CONSTRUCTION PAPERS



The New Construction Act – Part IV

New terms for construction contracts, stricter rules for construction trustee arrangements and mandatory liability insurance for contractors

As we reported in [in the first article](#) in our series on the new construction act, the most important rules in Act C of 2023 on Hungarian Architecture (“HAA”) took effect on 1 October. The [second article](#) of the series described certain key changes concerning the regulation of advertising, while the [third](#) gave an overview of new rules on designers and on copyrights in architectural works.

The provisions of the HAA have overhauled the system of rules that govern the design, permission procedures and construction of buildings, and therefore a large number of Government Decrees that were associated with Act LXXVII of 1997 on the Development and Protection of the Built Environment (“Old Construction Act”) have been repealed. Nevertheless, Government Decree No. 191/2009 on Construction Activities (“Construction Decree”) remains in effect despite the large number of changes.

Of the many new rules introduced in the Construction Decree, this article in our series focuses on new terms that will have to be included in construction contracts and on the rules pertaining to construction trusteeship arrangements and contractors’ liability insurance.



1. Mandatory terms and elements of construction contracts [Construction Decree, Section 3(2)]

[1] Section 188(5) of the HAA states that construction contracts must be formed in writing, just as under the previous legislation. Changes in the mandatory terms and elements of construction contracts are summarised in the table below:

Mandatory terms and elements of construction contracts under the Old Construction Act in effect through 30 September 2024	Mandatory terms and elements of construction contracts under the HAA in effect since 1 October 2024	Notes
(a) the details of the employer or, in the case of a subcontract, of the contractor that orders the relevant service(s) from a subcontractor;	(a) the details of the employer or, in the case of a subcontract, of the contractor that orders the relevant service(s) from a subcontractor;	The Construction Decree allows companies to specify a business establishment instead of their registered office.
(b) details of the contractor that is required to perform the relevant service(s);	(b) details of the contractor that is required to perform the relevant service(s);	
(c) a specific description of the construction or fitting work to be performed;	(c) a specific description of the construction or fitting work to be performed;	-
(d) a description of the relevant construction phases and the agreed deadlines (including the deadline for the delivery of the construction plan , the handover of the worksite, the opening of the construction log, the proposed start of construction, partial completion, the technical handover procedure and the transfer of possession, and the requested completion deadline);	(d) a description of the completion phases and deadlines that the contractor agrees to, including the date of the delivery of the construction documentation , the activation of the electronic construction log, the handover of the worksite, the opening of the electronic construction log and the proposed start of construction, and the deadline for partial completion, the technical handover procedure and the transfer of possession, as well as the requested completion deadline;	The deadline applies to the delivery of the documentation and includes the date when the electronic construction log is activated.
(e) the contract fee, as well as the method of determining and paying its amount;	(e) the contract fee, as well as the method of determining and paying its amount;	-
(f) the employer's consent to the contractor's reliance on subcontractors;	(f) the employer's consent to the contractor's reliance on subcontractors;	-



Mandatory terms and elements of construction contracts under the Old Construction Act in effect through 30 September 2024	Mandatory terms and elements of construction contracts under the HAA in effect since 1 October 2024	Notes
(g) a provision on the delivery of the construction documentation ;	(g) a provision on the delivery of the construction documentation by the employer ;	More specific wording: the construction documentation must be provided by the employer .
(h) name of the entity that is required to remove debris produced during construction activities;	(h) name of the entity that is required to remove construction and demolition debris produced during construction activities to a licensed waste management operator;	More specific wording: debris means construction and demolition debris .
(i) reference to the existence of an unpriced bill of quantities that served as the basis for the determination of the contractor's fee;	(i) reference to the existence of an itemised unpriced bill of quantities that served as the basis for the determination of the contractor's fee	More specific wording: the unpriced bill of quantities must be itemised
(j) the method of determining the fees for any qualifying additional work and extra work;	(j) the method of determining the fees for any qualifying additional work and extra work;	-
(k) name of the employer's site inspector who is authorised to issue the certificate of performance;	(k) name of the employer's site inspector who is authorised to issue the certificate of performance;	-
(l) a provision concerning reliance on a mediator in the case of a dispute; arbitration clause;	(l) a provision concerning reliance on a mediator in the case of a dispute; arbitration clause;	-
(m) employer's declaration on having sufficient funds;	(m) employer's declaration on having sufficient funds;	-
(n) determination of how advance payments may be used and will be paid;	(n) determination of how advance payments may be used and will be paid;	-
(o) determination of the amount, form and purpose of the security, and how it may be used;	(o) determination of the amount, form and purpose of the security, and how it may be used;	-
(p) specific rules pertaining to the contingency fund;	(p) specific rules pertaining to the contingency fund;	-



Mandatory terms and elements of construction contracts under the Old Construction Act in effect through 30 September 2024	Mandatory terms and elements of construction contracts under the HAA in effect since 1 October 2024	Notes
(q) in the case of a contract between a consumer and a company, information provided prior to the conclusion of the contract and a declaration stating that the relevant activity will start within 14 days;	(q) in the case of a contract between a consumer and a company, information provided prior to the conclusion of the contract and a declaration stating that the relevant activity will start within 14 days;	-
(r) a declaration by the contractor stating that it has or will have mandatory liability insurance.	(r) <i>number of the contractor's mandatory liability insurance policy and the insurer's name and contact details</i> , or a declaration by the contractor stating that it will have mandatory liability insurance on or before the date when the worksite is handed over	Stricter rules: the number of the contractor's mandatory liability insurance policy and the insurer's name and contact details, or the contractor's declaration on the existence or future existence of the insurance must be included.
-	<p>New elements:</p> <p>(s) the contractor's reference number for the construction contract;</p> <p>(t) preparation of a construction schedule by the contractor as part of the construction documentation.</p> <p>Mandatory annex: liability insurance policy (if available on the contract date) [Construction Decree, No. 3(2b)]</p>	The Construction Decree has introduced additional mandatory elements (<i>reference number of the construction contract and a construction schedule in the construction documentation</i>) and mandates the use of a new annex (<i>liability insurance policy</i>).

Table 1

2. Mandatory terms and elements of construction contracts if a construction trustee is involved [Construction Decree, Section 4]

[2] If a construction trustee is involved in a project, the construction contract will also have to include certain special elements in addition to those listed in Table 1.



- [3] Most of these special elements have not changed, but three have been added in Section 4 of the Construction Decree [Section 4g) through i)]:
- (i) mandatory annex: a declaration by the main contractor stating the names of all of its subcontractors and the details of the activities that each of them agrees to perform
 - (ii) a declaration by the main contractor in case it refunds the balance of the contract fee to a subcontractor (if the main contractor, after signing the construction contract with the employer, agrees to a greater amount in its contract with the subcontractor than what has been provided by the employer to the construction trustee for the relevant construction activity);
 - (iii) if a subcontractor also has its own subcontractors: the subcontractor's declaration as an annex, stating the names of all of its subcontractors and the details of activities that each of them agrees to perform.

3. When is a construction trustee necessary?

- [4] A construction trustee must be hired to ensure that the funds available for a construction project and the security provided by the employer is actually used for the relevant purpose if the project is not covered by Hungary's Act CXLIII of 2015 on Public Procurement (PPA), but its value exceeds the Community threshold specified in the PPA. [Construction Decree, Sections 17(1) and (2)]
- [5] However, due to a new exemption that has been added to the Construction Decree, the involvement of a construction trustee is not required in the construction of nuclear energy, defence, military and national security facilities. [Construction Decree, Section 17(2)]
- [6] The relevant value threshold has been EUR 5,538,000 or HUF 2,120,223,300 since 1 January 2024.
- [7] Annex 1 to the Government Decree No. 245/2006. (XII. 5.) on the Determination of Fines in the Construction Industry ("Fines Decree") should be used as an aid in the calculation of building values. Based on the calculation of the building value according to Section 17 (3) of the Construction Decree, we illustrate the necessary need for a construction trustee using the example of the building of a department store or office building:

	Thresholds set by the PPA	Unit price (HUF/m²)	Area of the building (m²)
previous version of the Fines Decree	2.120.223.300	250,000	8,480.9
current version of the Fines Decree	2.120.223.300	800,000	2,650.3

Table 2



- [8] The rule of aggregation has been specified for the building value. Accordingly, in the case of a building not covered by the Fines Decree, the building value carried out by the same builder on the same or connected or separate land, on new buildings or on existing buildings with the same use or closely connected uses, and whose building work is to begin within 2 years, must be added together. [Construction Decree 17(3)]
- [9] **It is important to note that reliance on construction trustees has become more prevalent due to the stricter rules introduced in the Fines Decree. We have discussed the finer details of construction trustee arrangements in a [previous article](#), and therefore we will only focus on the key changes here.** We will take a deeper dive into the Fines Decree in an upcoming article.
- [10] According to the new rules a construction trustee may not act as one in a project if it contributes or contributed to the financing of the project. [Construction Decree, Section 17(5)]
- [11] Otherwise, the main rules of construction trusteeship have not changed, nor have the requirements concerning the mandatory terms and elements of construction trustee agreements.
- [12] The rules of the Construction Decree concerning the suspension of construction activities have been amended. The new rules state that if funds equal to the fees payable for the main contractor's services are not provided by the employer to the construction trustee before the relevant deadline or, ***in the absence of such a deadline, within 8 days after the construction contract took effect***, and the competent construction authority ***has not prohibited*** the continuation of the construction activity, the main contractor or its subcontractors may suspend performance of the relevant activity. The maximum length of such a suspension is 30 days. [Construction Decree, Section 18(6)]
- [13] The provisions concerning the payment of construction securities have not changed. [Construction Decree, Section 18(7)]
- [14] A construction trustee performs its activities electronically. The construction trustee's register must include the contractors listed in the electronic construction log, as well as a description of their activities. [Construction Decree, Section 19(1)]

4. Contractor's liability insurance

- [15] In the past, the main contractor was subject to the obligation to take out mandatory liability insurance for the damage or loss caused by the construction activity it undertook in respect of the residential building covered by the simple declaration. [Government Decree No. 155/2016. (VI. 13.) on the simplified notification of residential buildings, Section 6/A]



- [16] Therefore, contractor's liability insurance was not mandated by the Old Construction Act [Section 39(5)]; however, contractor's liability insurance is now mandatory under the HAA and the Construction Decree. [HAA, Sections 69(3) through (5); Construction Decree, Sections 3(1)r) and (2b)]
- [17] The rules pertaining to contractor's liability insurance are included in a new subchapter that has been added to the Construction Decree. [Construction Decree, Sections 21/B through 21/G]
- [18] A contractor is required to take out liability insurance that provides coverage for damage or loss caused by it as a result of the construction activities that it has agreed to perform. [Construction Decree, Section 21/B(1)]
- [19] This requirement does not apply in the case of government construction projects. [Construction Decree, Section 21/B(2)b)]
- [20] The liability insurance must provide coverage for losses on the basis of the contractor's annual net income. The relevant income ranges are shown in the table below:

Annual net income ("ANI")	Minimum insurance amount
HUF 100 million > ANI	per insured event: HUF 20 million
	in the case of an indefinite-term insurance contract: HUF 40 million per year
	in the case of an insurance contract concluded for a specific period: HUF 40 million
HUF 100 million < ANI < HUF 500 million	per insured event: HUF 50 million
	in the case of an indefinite-term insurance contract: HUF 100 million per year
	in the case of an insurance contract concluded for a specific period: HUF 100 million
HUF 500 million < ANI < HUF 2 billion	per insured event: HUF 100 million
	in the case of an indefinite-term insurance contract: HUF 200 million per year
	in the case of an insurance contract concluded for a specific period: HUF 200 million
HUF 2 billion < ANI < HUF 10 billion	per insured event: HUF 150 million
	in the case of an indefinite-term insurance contract: HUF 300 million per year
	in the case of an insurance contract concluded for a specific period: HUF 300 million
ANI > HUF 10 billion	per insured event: HUF 200 million
	in the case of an indefinite-term insurance contract: HUF 400 million per year
	in the case of an insurance contract concluded for a specific period: HUF 400 million

Table 3



- [21] Annual net income means the net income realised in the calendar year prior to the conclusion of the insurance contract or the policy anniversary, not including net income realised from government construction projects. [Construction Decree, Section 21/B(2)]

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