

ARBITRATION IN HUNGARY

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1. Historical background

- 1.1.1 The Hungarian legal system was influenced by German and Austrian law and is still based on the 19th century German and Austrian civil and commercial law codes. It has, however, developed significantly from these origins in order to keep up with the demands of the modern commercial world.
- 1.1.2 In 1911, shortly after the Austrian Code of Civil Procedure was introduced in 1895, a commercial arbitration system was established in the Hungarian Code of Civil Procedure.
- 1.1.3 In 1952, the Hungarian Code of Civil Procedure was replaced by Act III of 1952 on the Civil Procedure Code and, in line with the communist legislative tendencies at the time, existing Hungarian arbitral tribunals were closed. Afterwards, only foreign trade disputes could be referred to arbitration. These were submitted to a newly-formed Court of Arbitration, which was attached to the Hungarian Economic Chamber (now the Hungarian Chamber of Commerce and Industry). Under the Moscow Convention of 1972 (**Moscow Convention**), all disputes between trading organisations in different Member States of the Council for Mutual Economic Assistance (**COMECON**) (including Hungary) had to be referred to the arbitral tribunal attached to the chamber of commerce in the country of the respondent. Alternatively, the parties could choose a third country's arbitral tribunal, provided that the third country was also a member of COMECON.
- 1.1.4 In 1994, as a result of democratic changes to Hungary's political system, the new Act LXXI of 1994 on Arbitration (**Hungarian Arbitration Act**) was introduced. The Hungarian Arbitration Act, which is based on the Model Law (1985),¹ has removed both the restrictions on arbitration contained in the Moscow Convention and the previous laws governing arbitration in Hungary.
- 1.1.5 The Hungarian Arbitration Act is supplemented by Section 376 of Act CXX of 2001 on the Capital Market (**Capital Markets Act**), which came into force on 1 January 2002, providing the framework for the establishment of the Permanent Court of Arbitration of the Money and Capital Markets.

¹ For the text of the Model Law (1985) see CMS Guide to Arbitration, vol II, appendix 2.1.

2. Scope of application and general provisions of the Hungarian Arbitration Act

2.1 Scope of application

2.1.1 The provisions of the Hungarian Arbitration Act apply to both ad hoc and institutional arbitral tribunals, provided that the seat of arbitration (or the seat of the stipulated institutional arbitration court) is in Hungary.²

2.2 Parties

2.2.1 The Hungarian Arbitration Act places restrictions on who may choose arbitration, instead of state court proceedings, as their dispute resolution mechanism and who may be a party to arbitral proceedings. Arbitration may only take place if at least one of the parties is a natural or legal person professionally engaged in business activities and where the legal dispute is related to such activity.³ This restriction, however, does not apply to the proceedings of the Permanent Court of Arbitration of the Money and Capital Markets.

2.3 Subject matter

2.3.1 Under Hungarian law, disputes are only arbitrable where the parties have free disposal over the subject matter of the dispute.⁴ As a result, family law issues, public and private guardianship issues, state administration and employment issues cannot be submitted to arbitration. Other than these particular exceptions, there are no other restrictions on the type of issue which may be resolved by arbitration.

2.4 Structure of the law

2.4.1 Chapter I of the Hungarian Arbitration Act contains the general rules governing arbitral proceedings. Chapter II deals with the formation of the arbitral tribunal. Chapter III governs the jurisdiction of the arbitral tribunal, while Chapter IV addresses the rules of procedure to be applied in arbitral proceedings. Chapter V deals with the making of awards and the termination of proceedings. Chapter VI sets out additional rules for international arbitrations. Chapter VII contains the rules regarding the proceedings and rights of ordinary courts in relation to arbitration. Finally, Chapter VIII contains the closing provisions of the Hungarian Arbitration Act.

² Hungarian Arbitration Act, s 1.

³ *Ibid*, s 3(1).

⁴ *Ibid*, s 3(1)(b).

2.5 General principles

- 2.5.1 The Hungarian Arbitration Act is based on and construed in accordance with three guiding principles:
- equality of the parties, meaning that the parties shall enjoy equal treatment during the course of the arbitral proceedings;⁵
 - party autonomy, meaning that the parties are free to determine the rules that will govern the proceedings;⁶ and
 - due process, meaning that each party must be given a proper opportunity to present its case.⁷

3. The arbitration agreement

3.1 Definitions

- 3.1.1 The Hungarian Arbitration Act defines an arbitration agreement as an agreement in which the parties agree to submit their disputes which have arisen or which may arise in the future in respect of their legal relationship, whether contractual or not, to arbitration.⁸

3.2 Formal requirements

- 3.2.1 Sections 5(2)–(5) of the Hungarian Arbitration Act set out the formal requirements of an arbitration agreement. An arbitration agreement must be in writing. It can be a separate agreement or form part of a larger contract. An arbitration agreement is deemed to be in writing if it is concluded between the parties by way of an exchange of letters, facsimiles, telexes or by such other means of telecommunication which is capable of producing a permanent record of the agreement. It is also deemed to be in writing if the claimant asserts in its statement of claim that an arbitration agreement was entered into between the parties and the respondent does not deny this assertion in its statement of defence. Reference to a written contract containing an arbitration clause will also qualify as an agreement to arbitrate.

- 3.2.2 If the parties wish their arbitral proceedings to be conducted under specific institutional arbitration rules (e.g. the ICC Arbitration Rules), they should stipulate the applicable rules in their arbitration agreement in an unambiguous way.⁹ This

⁵ *Ibid.*, s 27.

⁶ *Ibid.*, s 28.

⁷ *Ibid.*, s 27.

⁸ *Ibid.*, s 5(1).

⁹ *Ibid.*, s 28.

requirement also applies where the parties wish to stipulate the rules of procedure of an institutional arbitral tribunal e.g. the Permanent Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry (**Court of Arbitration**). The Court of Arbitration has its own detailed Rules of Proceedings (**Court of Arbitration Rules**), but also administers arbitral proceedings under the UNCITRAL Arbitration Rules.¹⁰ The parties may include other provisions in the arbitration agreement if they wish, such as provisions regarding the number and appointment of arbitrators and other procedural issues.

3.3 Special tests and requirements of the jurisdiction

3.3.1 Aside from the requirements described in paragraph 2.3.1 and section 3.2 above, there are no other restrictions on arbitrability in Hungary.

3.4 Separability

3.4.1 An arbitration clause that forms part of another agreement shall be treated as an independent arbitration agreement.¹¹ Accordingly, if the more general agreement is found to be null and void, this will not necessarily affect the validity of the arbitration clause contained therein.¹²

3.5 Legal consequences of a binding arbitration agreement

3.5.1 If a valid and binding arbitration agreement has been made by the parties, the ordinary courts are excluded from assuming jurisdiction over the subject matter specified in the arbitration agreement. The Hungarian Arbitration Act expressly provides that the courts shall not intervene in arbitral proceedings except where provided for by the Hungarian Arbitration Act.¹³

3.6 Mandatory and non-mandatory provisions

3.6.1 The parties may only deviate from the provisions of the Hungarian Arbitration Act where the Hungarian Arbitration Act so provides.¹⁴

3.6.2 By way of example, the parties may not agree that the award will be reviewed by a second-level arbitral body because, under the Hungarian Arbitration Act, an award issued by any permanent or ad hoc arbitral tribunal in Hungary is final and binding.¹⁵

¹⁰ For the text of the UNCITRAL Arbitration Rules see CMS Guide to Arbitration, vol II, appendix 3.1.

¹¹ Hungarian Arbitration Act, s 24(1).

¹² *Ibid*, s 24(2).

¹³ *Ibid*, s 7.

¹⁴ *Ibid*, s 61.

¹⁵ *Ibid*, s 58.

3.7 Domestic and international arbitration

- 3.7.1 The Hungarian Arbitration Act draws a distinction between domestic and international arbitration. Chapter VI of the Hungarian Arbitration Act contains specific provisions applicable to international arbitral proceedings. Additionally, the other provisions of the Hungarian Arbitration Act apply to international proceedings unless specifically modified by the provisions of Chapter VI.¹⁶
- 3.7.2 An arbitration shall be deemed to be international if, at the time of conclusion of the arbitration agreement, the parties have their seat or place of business in different states, or one of the following places is situated outside the state in which the parties have their seat or place of business:
- the seat of arbitration as determined in the arbitration agreement;
 - the place where performance of the obligations originating from the legal relationship of the parties takes place; or
 - the place with which the subject matter of the arbitration is most closely connected.¹⁷
- 3.7.3 The Hungarian Arbitration Act provides that in international cases heard by an arbitral institution, where the seat of the arbitration is in Hungary, the Court of Arbitration acts as an institutional arbitral tribunal.¹⁸ In international arbitrations, the parties are free to choose the language of the arbitration¹⁹ and the applicable substantive law.²⁰

4. Composition of the arbitral tribunal

4.1 Constitution of the arbitral tribunal

- 4.1.1 The following persons may not be arbitrators:
- persons under 24 years of age;
 - persons who have been barred from public affairs by a final and binding court judgment;
 - persons who have been placed under state curatorship by a court; or
 - persons who have been sentenced to imprisonment, without the right of further appeal, until the conviction has been erased from their criminal record.²¹

¹⁶ *Ibid.*, s 46.

¹⁷ *Ibid.*, s 47(1).

¹⁸ *Ibid.*, s 46(3).

¹⁹ *Ibid.*, s 48.

²⁰ *Ibid.*, s 49.

²¹ *Ibid.*, s 12.

4.1.2 Court judges are also prohibited from accepting an appointment as an arbitrator during the tenure of their office. A similar requirement applies to high state officials, thus presidents of the Hungarian Republic,²² justices of the Constitutional Court,²³ senior public officers,²⁴ ombudsmen,²⁵ presidents, vice-presidents, senior accountants and accountants of the State Audit Office,²⁶ prosecutors,²⁷ presidents and vice-presidents of the Hungarian National Bank²⁸ and the speaker and vice-speaker of the Parliament²⁹ may not become arbitrators for the duration of their time in office.

4.1.3 The parties are free to agree on the number of arbitrators, provided that they choose an uneven number of arbitrators.³⁰ If the parties fail to agree on the number of arbitrators, the default position is that there shall be three arbitrators.³¹

Procedure if the parties fail to agree on the appointment procedure

4.1.4 The parties are also free to agree on the appointment procedure.³² Failing such agreement, the following rules apply.³³

4.1.5 In arbitral proceedings with three arbitrators each party appoints one arbitrator and the two party-appointed arbitrators appoint the third arbitrator, who is the chair of the tribunal.³⁴ Generally, the claimant appoints its arbitrator in its statement of claim. The respondent then has 30 days from receipt of the claimant's statement of claim to appoint its arbitrator.³⁵

4.1.6 If any party fails to appoint its arbitrator within 30 days following receipt of the request of the other party to do so, or the two party-appointed arbitrators cannot

²² The Constitution of Hungary, s 12(2).

²³ Act CLI of 2011 on the Constitutional Court, s 10(1).

²⁴ Act XXIII of 1992 on the Legal Status of Public Officers, s 21(3).

²⁵ Act CXI of 2011 on the Supervisor of Essential Rights, s 8(2).

²⁶ Act LXVI of 2011 on the State Audit Office, s 18(3).

²⁷ Act CLXIV of 2011 on the Legal Status of the Prosecutor General, Prosecutors, and Other Employers of the Prosecutor Service and Service of Prosecutors and the Carrier of the Prosecutors, s 45(1).

²⁸ Act CCVIII of 2011 on the National Bank of Hungary, s 55(3).

²⁹ Act LV of 1990 on the Legal Status of the Members of the Parliament, s 12(1).

³⁰ Hungarian Arbitration Act, s 13(1).

³¹ *Ibid.*, s 13(2).

³² *Ibid.*, s 14(1).

³³ *Ibid.*

³⁴ *Ibid.*, s 14(2).

³⁵ *Ibid.*

agree on the third arbitrator within 30 days following their appointment, any party may request that the county court makes the appointment.³⁶

4.1.7 In proceedings before the Court of Arbitration, the applicable provisions are set out in Article 18 of the Court of Arbitration Rules:

- if the claimant fails to appoint its arbitrator in its statement of claim and to request that the Court of Arbitration appoints the arbitrator, the Court of Arbitration will request the claimant to remedy such failure. If the claimant fails to comply with the request of the Court of Arbitration within the 60 day time limit set out in the Court of Arbitration Rules, the Court of Arbitration (i.e. the President of the Court of Arbitration³⁷) will terminate the proceedings;³⁸
- if the respondent fails to appoint an arbitrator, the Court of Arbitration will request that the respondent nominate its arbitrator. If the respondent fails to do so, the President of the Court of Arbitration will appoint the respondent's arbitrator from the roll of arbitrators after a 15 day additional time limit granted by the President of the Court of Arbitration has expired.³⁹

4.1.8 If, in an arbitration with a sole arbitrator, the parties are unable to agree on the person to be selected as the arbitrator, the arbitrator shall be appointed by the competent county court upon the request of either party.⁴⁰ The same procedure applies where, in the case of a panel consisting of three arbitrators, the two party-appointed arbitrators are unable to agree on the appointment of the chair.⁴¹

4.1.9 In proceedings before the Court of Arbitration, if the party-appointed arbitrators are unable to agree on the appointment of the chair within 15 days, the President of the Court of Arbitration will appoint the chair from the roll of arbitrators.⁴²

4.1.10 A proposed arbitrator shall disclose to the parties without delay any circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality.⁴³ An arbitrator shall accept the appointment through a written declaration addressed to the parties. The arbitrator's signature on the deed containing the appointment will be regarded as acceptance.⁴⁴

³⁶ *Ibid.*

³⁷ Court of Arbitration Rules, art 18(10).

³⁸ Hungarian Arbitration Act, s 18(5).

³⁹ *Ibid.*

⁴⁰ *Ibid.*, s 14(4).

⁴¹ *Ibid.*, s 14(2).

⁴² Court of Arbitration Rules, art 18(5).

⁴³ Hungarian Arbitration Act, s 17(1).

⁴⁴ *Ibid.*, s 17(2).

4.2 Procedure for challenging and substituting arbitrators

4.2.1 The challenge procedures are set out in Sections 18–20 of the Hungarian Arbitration Act. A party may challenge an arbitrator, including the chair, if circumstances exist that give rise to justifiable doubts as to the arbitrator’s independence or impartiality or if the arbitrator does not possess the qualifications specified by the parties in their arbitration agreement.⁴⁵ A party may challenge its appointed arbitrator only if the circumstances justifying such a challenge became known to the party after the appointment was made.⁴⁶

Procedure for challenging arbitrators

4.2.2 The parties are free to agree on the procedure to be followed to challenge an arbitrator’s appointment.⁴⁷ Failing such agreement, the challenging party must send a written statement containing the reasons for the challenge to the arbitral tribunal within 15 days of becoming aware of the constitution of the arbitral tribunal, or within 15 days of becoming aware of the circumstances under which a challenge may take place.⁴⁸

4.2.3 If the challenged arbitrator does not voluntarily withdraw from office, or if the other party does not agree to the challenge, the other members of the arbitral tribunal will decide on the merits of the challenge.⁴⁹ If the arbitrators cannot reach agreement, or if two arbitrators or the sole arbitrator have been challenged, the competent county court shall decide on the merits of the challenge upon the request of the challenging party.⁵⁰ While such a request is pending before the court, the arbitral tribunal – including the challenged arbitrator(s) – may continue the arbitral proceedings and make an award.⁵¹

4.2.4 In institutional arbitral proceedings before the Court of Arbitration, the Board of the Court of Arbitration will decide on the challenge if the arbitral tribunal cannot agree, or if two arbitrators or the sole arbitrator have been challenged.⁵²

⁴⁵ *Ibid.*, s 18(1).

⁴⁶ *Ibid.*, s 18(2).

⁴⁷ *Ibid.*, s 19(1).

⁴⁸ *Ibid.*, s 19(2).

⁴⁹ *Ibid.*, s 19(3).

⁵⁰ *Ibid.*, s 20.

⁵¹ *Ibid.*

⁵² Court of Arbitration Rules, art 19(4).

Appointment of a substitute arbitrator

- 4.2.5 If the mandate of an arbitrator terminates for any reason, a substitute arbitrator shall be appointed according to the same rules applicable to the appointment of the original arbitrator (see paragraphs 4.1.4–4.1.9 above).⁵³

Responsibility of arbitrators

- 4.2.6 The Hungarian Arbitration Act contains no provisions on the liability of arbitrators for breach of their duties. If the parties and the arbitrators want to introduce rules regarding the responsibility of the arbitrators, they must agree on what the consequences of a failure by the arbitrators to fulfil their mandate will be. In the case of proceedings before the Court of Arbitration, the Court of Arbitration Rules exclude any liability of the arbitrators, the Court of Arbitration and the employees of the Hungarian Chamber of Commerce and Industry.⁵⁴

4.3 Arbitration fees and expenses

- 4.3.1 The Hungarian Arbitration Act contains no provisions on the fees and expenses of the arbitrator(s). In institutional arbitral proceedings, the fees are typically set by the fee schedule of the arbitral institution. In ad hoc arbitral proceedings, the fees are determined based on the agreement between the parties and the arbitrators.

4.4 Arbitrator immunity

- 4.4.1 The Hungarian Arbitration Act does not contain any provisions relating to the immunity of arbitrators.

5. Jurisdiction of the arbitral tribunal

5.1 Competence to rule on jurisdiction

- 5.1.1 The jurisdiction of the arbitral tribunal is determined by the arbitration agreement made between the parties. The arbitral tribunal may rule on its own jurisdiction, including the existence or validity of the arbitration agreement.⁵⁵ As described above at paragraph 3.4.1, an arbitration clause which is part of another agreement is treated as an independent (and severable) arbitration agreement.⁵⁶

⁵³ Hungarian Arbitration Act, s 23.

⁵⁴ *Ibid.*, s 56.

⁵⁵ *Ibid.*, s 24(1).

⁵⁶ *Ibid.*

5.1.2 A plea that the arbitral tribunal does not have jurisdiction should be raised no later than at the time of submission of the defence on the merits.⁵⁷ A plea that the arbitral tribunal has exceeded its jurisdiction should be made without delay after the alleged excess of jurisdiction occurred.⁵⁸ However, the arbitral tribunal may rule on a plea raised at a later stage if it considers that the delay was justified.⁵⁹

5.1.3 The arbitral tribunal may rule on a plea of lack of jurisdiction either when the plea is raised or in its award on the merits.⁶⁰ If the arbitral tribunal rules that it has jurisdiction, any party may, within 30 days of receiving notice of such ruling, request the competent county court to rule on the jurisdiction of the arbitral tribunal.⁶¹ Regardless of such a request, the arbitral tribunal may continue the proceedings and make an award pending the decision of the county court on jurisdiction.⁶²

5.2 Power to order interim measures

5.2.1 Unless the parties agree otherwise, the arbitral tribunal may, upon request, order any party to comply with such interim measures as the arbitral tribunal considers appropriate in respect of the subject matter of the dispute.⁶³ However, the decisions or orders on interim measures issued by the arbitral tribunal are not enforceable (only final and partial awards are enforceable). The parties may also turn to the competent court to request interim measures.⁶⁴

5.3 Permanent Court of Arbitration of the Money and Capital Markets

5.3.1 Section 376 of the Capital Markets Act permits the trade organisations of exchange markets, credit institutions and investment enterprises to jointly establish and operate the Permanent Court of Arbitration of the Money and Capital Markets. On this basis the Permanent Court of Arbitration of the Money and Capital Markets was established on 30 June 2002 with its seat in Budapest. The provisions of the Hungarian Arbitration Act apply to the competence and the procedure of the Permanent Court of Arbitration of the Money and Capital Markets, with certain exceptions set out below.

⁵⁷ *Ibid.*, s 24(3).

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, s 25(1).

⁶¹ *Ibid.*

⁶² *Ibid.*, s 25(2).

⁶³ *Ibid.*, s 26.

⁶⁴ *Ibid.*, s 37(1).

5.3.2 The Permanent Court of Arbitration of the Money and Capital Markets has jurisdiction in disputes:

- (i) in connection with the offering of securities, investment services, services auxiliary to investment services and commodity exchange services falling within the scope of the Capital Markets Act;
- (ii) between investors in connection with financial instruments;
- (iii) in connection with shareholders' rights;
- (iv) in connection with exchange transactions;
- (v) regarding an investment firm's or credit institution's refusal to provide services to a client in connection with financial instruments;
- (vi) in connection with the stock exchange's internal regulations;
- (vii) in connection with the bylaws, standard service agreements and internal regulations of clearing corporations;
- (viii) clearing corporation financial services and activities auxiliary to financial services; and
- (ix) in connection with other services provided by investment and financial service providers, provided such services do not violate any exclusive rights.

5.3.3 The jurisdiction of the Permanent Court of Arbitration of the Money and Capital Markets applies provided that the parties concerned have stipulated to resort to arbitration in an arbitration agreement and the parties are able to freely dispose of the subject-matter of the proceedings.⁶⁵

5.3.4 In the cases defined in sub-paragraphs (i), (ii) and (iv)–(ix) in paragraph 5.3.2 above, the Permanent Court of Arbitration of the Money and Capital Markets will have exclusive jurisdiction for institutional arbitration proceedings seated in Hungary, including cases deemed "international" under Section 47 of the Hungarian Arbitration Act. However, the parties may choose the jurisdiction of another arbitral institution seated outside of Hungary or non-institutional proceedings.⁶⁶

6. Conduct of proceedings

6.1 Commencing an arbitration

6.1.1 Unless otherwise agreed by the parties, ad hoc arbitral proceedings are commenced when the other party receives the request for arbitration.⁶⁷

⁶⁵ Capital Markets Act, s 376.

⁶⁶ *Ibid*, s 376(5).

⁶⁷ Hungarian Arbitration Act, s 32(1).

6.1.2 If the parties have agreed to the jurisdiction of an arbitral institution, the proceedings typically commence when the statement of claim is filed with the arbitral institution.⁶⁸ In the case of the Court of Arbitration, proceedings are commenced when the statement of claim is filed with the Secretariat of the Court of Arbitration.⁶⁹

6.2 General procedural principles

6.2.1 Unless the parties agree otherwise and subject to the provisions of the Hungarian Arbitration Act, the arbitral tribunal may determine the rules of procedure at its own discretion.⁷⁰ The chair of the arbitral tribunal shall decide questions of procedure if so authorised by the parties or by the other members of the arbitral tribunal.⁷¹

6.2.2 In institutional arbitral proceedings before the Court of Arbitration, the arbitrators will apply the procedural provisions set out in the Court of Arbitration Rules. If the Court of Arbitration Rules do not cover a specific issue, and if the parties do not agree otherwise, the arbitrators are free to determine the applicable rules.⁷²

6.2.3 During the proceedings, due respect shall be paid to the principles of equal rights and treatment of the parties and to the right of each party to familiarise themselves with the documents of the arbitral proceedings, the documents filed and evidence submitted by other parties and the procedural actions taken by the arbitral tribunal. Each party shall have the right to set forth their standpoint orally or in writing in the course of the arbitral proceedings.⁷³

6.3 Seat and language of arbitration

6.3.1 The parties are free to agree on the seat of arbitration in both ad hoc and institutional arbitral proceedings.⁷⁴ Failing such agreement, in an institutional arbitration, the proceedings shall take place at the seat of the relevant court of arbitration (which is Budapest in the case of the Court of Arbitration),⁷⁵ while in the case of an ad hoc arbitration, the seat shall be determined by the arbitral tribunal, having regard to the circumstances of the case.⁷⁶

⁶⁸ *Ibid*, s 32(2).

⁶⁹ Court of Arbitration Rules, art 21(1).

⁷⁰ Hungarian Arbitration Act, s 28.

⁷¹ *Ibid*, s 38(2).

⁷² Court of Arbitration Rules, art 17(1).

⁷³ *Ibid*, art 17(2).

⁷⁴ Hungarian Arbitration Act, s 31(1).

⁷⁵ *Ibid*, s 7.

⁷⁶ *Ibid*, s 31(1).

6.3.2 The Hungarian Arbitration Act allows the parties to determine the language of the proceedings at any time before the commencement of the arbitration.⁷⁷ Failing such agreement, the proceedings shall either be conducted in the Hungarian language,⁷⁸ or, in the case of an international arbitration, the language(s) shall be determined by the court of arbitration.⁷⁹

6.4 Multi-party issues

6.4.1 Neither the Hungarian Arbitration Act, nor the Court of Arbitration Rules provide for the possibility of intervention by a third party in arbitral proceedings. However, where there is a mutually agreed and proper arbitration agreement in place, it is possible to initiate arbitration against multiple respondents or to have multiple claimants in the proceedings. In such circumstances, multiple parties may appoint arbitrators jointly, e.g. in an arbitration with three arbitrators, multiple claimants can agree on one person as claimant-appointed arbitrator.

6.5 Submissions

6.5.1 In ad hoc arbitral proceedings, the Hungarian Arbitration Act provides that the claimant must state its claim, the facts supporting it, and the points in issue in its statement of claim.⁸⁰ The parties may submit with their statements of claim and defence the documents which they consider to be relevant.

6.5.2 The Hungarian Arbitration Act contains no other provisions on the format, content or timetable for the parties' submissions, but requires the parties to name their arbitrator(s) in the statement of claim and the statement of defence. However, the Hungarian Arbitration Act requires that all submissions to the arbitral tribunal by one party must be communicated to the other party.⁸¹

6.5.3 In ad hoc arbitral proceedings, the arbitral tribunal will give directions and set the timetable for the parties' submissions, unless otherwise agreed by the parties. In institutional arbitral proceedings, the arbitral tribunal will follow the procedural rules of the institution in relation to submissions.

6.5.4 In arbitral proceedings before the Court of Arbitration, the Court of Arbitration Rules are more specific. Article 22 requires the claimant to provide the following information in its statement of claim:

⁷⁷ *Ibid.*, s 30(1).

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, s 48(1).

⁸⁰ *Ibid.*, s 33(1).

⁸¹ *Ibid.*, s 34(3).

- the names and addresses of the parties;
- any record establishing the jurisdiction of the Court of Arbitration;
- the claim;
- the legal grounds of the claim;
- the facts on which the claim is based;
- reference to any documents and evidence;
- the amount in dispute;
- the claimant's appointed arbitrator or a request for the Court of Arbitration to appoint the arbitrator; and
- a list of documents attached to the statement of claim.

6.5.5 Article 25 of the Court of Arbitration Rules contains provisions in relation to the statement of defence and extends the provisions applicable to the statement of claim to the contents of the statement of defence, where appropriate.

6.6 Oral hearings and written proceedings

6.6.1 Subject to any contrary agreement, the parties are given the opportunity to make oral submissions to the arbitral tribunal.⁸² The tribunal will also hear the evidence of witnesses and experts (if the experts are summoned to explain their written reports upon the request of the parties).⁸³ The parties are to be given sufficient prior notice of any hearings or any procedural action of the arbitral tribunal which involves the inspection of property or documents.⁸⁴ The arbitral tribunal will prepare minutes of the proceedings and provide copies of such minutes to the parties.⁸⁵

6.7 Default by one of the parties

6.7.1 Pursuant to the Hungarian Arbitration Act, unless the parties agree otherwise, the arbitral tribunal shall terminate the proceedings if the claimant fails to present its statement of claim without giving sufficient or satisfactory reasons for its failure.⁸⁶ If the respondent fails to present its statement of defence, the arbitral tribunal shall continue the proceedings without considering such failure in itself as acceptance of the claimant's allegations.⁸⁷ If any of the parties fail to attend any of the hearings

⁸² *Ibid.*, s 34(1).

⁸³ *Ibid.*

⁸⁴ *Ibid.*, s 34(2).

⁸⁵ *Ibid.*, s 34(4).

⁸⁶ *Ibid.*, s 35(1).

⁸⁷ *Ibid.*, s 35(2).

before the arbitral tribunal, or fail to produce evidence, the arbitral tribunal may continue the proceedings and make an award on the basis of the evidence it has before it.⁸⁸

6.8 Taking of evidence

6.8.1 There is no specific provision in the Hungarian Arbitration Act dealing with the taking of evidence. The parties are free to prove their respective case by the usual means of documentary, witness or expert evidence. Section 34(1) of the Hungarian Arbitration Act clarifies that the arbitral tribunal has no power to compel witnesses to attend and give evidence before it.⁸⁹ In arbitral proceedings before the Court of Arbitration, Article 35 of the Court of Arbitration Rules contains specific procedural rules in relation to the taking of evidence.

6.9 Appointment of experts

6.9.1 Unless otherwise agreed by the parties, the arbitral tribunal has the power to appoint one or more experts to report on specific issues.⁹⁰ The arbitral tribunal may require any party to provide such expert(s) with relevant information or documents.⁹¹

6.10 Confidentiality

6.10.1 The Hungarian Arbitration Act contains an express provision that arbitral proceedings (including any award) are private and not open to the public unless otherwise agreed by the parties.⁹²

6.10.2 In the case of proceedings to set aside an award, the anonymised decision of the ordinary court will be made public.

6.11 Court assistance in the taking of evidence

6.11.1 The arbitral tribunal may request the assistance of the local court (in Budapest, this would be the Central District Court of Pest) in relation to the production of evidence or the examination of witnesses, where the arbitral tribunal would encounter considerable difficulties or costs in doing so, or if the application of coercive means is necessary to obtain evidence.⁹³

⁸⁸ *Ibid*, s 35(3).

⁸⁹ However, in respect of court assistance in the taking of evidence see paragraph 6.11.1 below.

⁹⁰ Hungarian Arbitration Act, s 36(1)(a).

⁹¹ *Ibid*, s 36(1)(b).

⁹² *Ibid*, s 29.

⁹³ *Ibid*, s 37(3).

7. Making of the award and termination of proceedings

7.1 Choice of law

7.1.1 In international arbitral proceedings, the parties are free to determine the applicable substantive law according to which the arbitral tribunal must make its award.⁹⁴ If the parties fail to determine the applicable law, it shall be determined by the arbitral tribunal.⁹⁵

7.1.2 The parties may also authorise the arbitral tribunal to make its decision *ex aequo et bono*.⁹⁶

7.1.3 The arbitral tribunal shall decide the dispute in accordance with the terms of the contract. It will also take into account the trade practices applicable to the transaction in issue.⁹⁷

7.2 Timing, form, content and notification of award

Timing

7.2.1 The Hungarian Arbitration Act does not stipulate an express time limit within which the tribunal must render its decision, but the arbitral tribunal should make its decision as soon as possible. In arbitral proceedings before the Court of Arbitration, the award and the reasons on which it is based shall be delivered in writing to the parties within 30 days (or 60 days if the arbitral tribunal includes a foreign arbitrator) from the closing of the oral hearing.⁹⁸

7.2.2 If the arbitral tribunal consists of more than one arbitrator, it shall make its decision by a majority of votes, unless the parties agree otherwise.⁹⁹ Failing a majority, the chair of the panel shall make the decision.¹⁰⁰

Form

7.2.3 The award must be in writing and be signed by all of the arbitrators.¹⁰¹ However, in arbitral proceedings with more than one arbitrator, it is sufficient that the award

⁹⁴ *Ibid*, s 49(1).

⁹⁵ *Ibid*, s 49(2).

⁹⁶ *Ibid*, s 49(3).

⁹⁷ *Ibid*, s 50.

⁹⁸ Court of Arbitration Rules, art 41(1).

⁹⁹ Hungarian Arbitration Act, s 38(1).

¹⁰⁰ Hungarian Arbitration Act, s 38(1) and Court of Arbitration Rules, art 39(2).

¹⁰¹ Hungarian Arbitration Act, s 40.

is signed by a majority of the arbitrators, provided that the award states the reason why the other signatures are missing.¹⁰² The award must also state the date on which it is made and the place of the arbitration.¹⁰³

Content

- 7.2.4 The Hungarian Arbitration Act requires that the award must state the reasons on which it is based, unless it is an award on agreed terms.¹⁰⁴
- 7.2.5 In addition, the arbitral tribunal shall decide on the amount and the allocation of the procedural costs and such decision shall be included in the award.¹⁰⁵
- 7.2.6 Article 40 of the Court of Arbitration Rules contains similar provisions as to the form and content of an award in institutional proceedings before the Court of Arbitration.

Notification

- 7.2.7 A signed copy of the award shall be served on each of the parties.¹⁰⁶
- 7.2.8 In the case of proceedings before the Court of Arbitration, the award shall be delivered in writing to the parties within 30 days (or 60 days if the arbitral tribunal includes a foreign arbitrator) from the closing of the oral hearing.¹⁰⁷

7.3 Settlement

- 7.3.1 If the parties settle their dispute, the proceedings will be terminated by an order for termination issued by the arbitral tribunal.¹⁰⁸ The arbitral tribunal must record the settlement in the form of an award on agreed terms if so requested by the parties, provided that the arbitral tribunal considers that the settlement is in accordance with the law.¹⁰⁹ An award on agreed terms has the same effect as any other award made by an arbitral tribunal.¹¹⁰

¹⁰² *Ibid.*

¹⁰³ *Ibid.*, s 41(3).

¹⁰⁴ *Ibid.*, s 41(2).

¹⁰⁵ *Ibid.*, s 41(1).

¹⁰⁶ *Ibid.*, s 41(4).

¹⁰⁷ Court of Arbitration Rules, art 39(2).

¹⁰⁸ Hungarian Arbitration Act, s 39(1).

¹⁰⁹ *Ibid.*, s 39(2).

¹¹⁰ *Ibid.*, s 39(3).

7.4 Power to award interest and costs

7.4.1 Under Hungarian law, an arbitral tribunal is generally entitled to award default interest, calculated pursuant to the relevant provisions of the applicable substantive law. In its final award, the arbitral tribunal must render a decision on the costs of the proceedings, including the remuneration of the tribunal, and must state which party has to pay the costs.¹¹¹ In practice, the losing party is usually ordered to pay the costs of the proceedings. However, if the winning party is successful only in part, the arbitral tribunal may require the parties to pay the costs in proportion to their relative success or failure.

7.5 Termination of the proceedings

7.5.1 The arbitration can be terminated by a final award on the merits or by an order for termination of the arbitration.¹¹² The arbitral tribunal shall issue an order for termination if:¹¹³

- the claimant fails to submit its statement of claim;
- the claimant withdraws its statement of claim, unless the respondent objects thereto and the arbitral tribunal accepts that the respondent has a legitimate interest in obtaining a final award;
- the parties agree to terminate the proceedings; or
- the arbitral tribunal finds that continuing the proceedings has become unnecessary or impossible for any other reason.

7.5.2 Article 44 of the Court of Arbitration Rules contains similar provisions on the termination of arbitral proceedings before the Court of Arbitration without a final award on the merits.

7.5.3 Save for the subsequent correction or interpretation of the award or the making of an additional award, the mandate of the arbitral tribunal comes to an end when the proceedings terminate.¹¹⁴

7.6 Effect of an award

7.6.1 The award is final and binding and the parties cannot agree otherwise. The award has the same effect as a final and binding court judgment and can be enforced with the assistance of the courts.

¹¹¹ Hungarian Arbitration Act, s 41(1) and Court of Arbitration Rules, art 40(1).

¹¹² Hungarian Arbitration Act, s 42(1).

¹¹³ *Ibid*, s 42(2).

¹¹⁴ *Ibid*, s 42(3).

7.6.2 If the parties agree, or the applicable rules of proceedings make it possible, the arbitral tribunal may also render a partial award if it decides that there is no need for further hearings on a particular issue.¹¹⁵ A partial award has the same legal effect as a final award of the arbitral tribunal.

7.7 Correction, clarification and issuance of a supplemental award

7.7.1 The relevant rules are set out in Sections 43–45 of the Hungarian Arbitration Act. At the request of either party, or on the arbitral tribunal's own initiative, the arbitral tribunal may correct any change or error in names, error in numbers or computation, spelling mistakes or any other typographical errors of a similar nature in the award.¹¹⁶

7.7.2 At the request of either party, subject to the agreement of the other parties, the arbitral tribunal may interpret a specific part or point of the award.¹¹⁷

7.7.3 Either party may request a supplemental award if the arbitral tribunal failed to make an award on any claim presented in the arbitral proceedings.¹¹⁸

7.7.4 A request for correction or interpretation of the award, or for an additional award, must be submitted to the arbitral tribunal within 30 days of receipt of the award unless the parties agree otherwise. However, the arbitral tribunal may extend this deadline if it deems it to be necessary. Any such request must be notified to the other party.

8. Role of the courts

8.1 Jurisdiction of the courts

8.1.1 If a valid and binding arbitration agreement exists between the parties, the ordinary courts are excluded from assuming jurisdiction over the subject matter specified in the arbitration agreement. The Hungarian Arbitration Act expressly provides that the courts shall not intervene in arbitral proceedings except where so provided by the Hungarian Arbitration Act.¹¹⁹

¹¹⁵ See, for example, Court of Arbitration Rules, art 38(3).

¹¹⁶ Hungarian Arbitration Act, s 43(1)(a).

¹¹⁷ *Ibid*, s 43(1)(b).

¹¹⁸ *Ibid*, s 44.

¹¹⁹ *Ibid*, s 7.

8.1.2 The Hungarian Arbitration Act gives the courts a limited jurisdiction in certain circumstances to provide legal assistance to the arbitral proceedings. In addition to the courts' powers in relation to the appointment and challenge of arbitrators, the courts have further powers outlined below at sections 8.2, 8.4 and 8.5.

8.2 Stay of court proceedings

8.2.1 In the event a matter that falls under an arbitration agreement is brought before the court, the court must reject the claim without issuing a writ of summons or terminate the proceedings upon the request of a party, unless it finds the arbitration agreement to be null and void, inoperative or incapable of being performed.¹²⁰ The objection to the jurisdiction of the court must be raised no later than in the respondent's response on the merits.¹²¹

8.2.2 Therefore, the court has jurisdiction to determine the validity of the arbitration agreement before dismissing the claim. The court also has jurisdiction to review the arbitral tribunal's assumption of jurisdiction on the application of a party.

8.3 Preliminary rulings on jurisdiction

8.3.1 If the arbitral tribunal finds, pursuant to Section 24 of the Hungarian Arbitration Act, that it has jurisdiction, within 30 days of receiving notice of the ruling, any party may request that the competent county court decide on the jurisdiction of the arbitral tribunal.¹²²

8.3.2 Until such decision has been made by the competent county court, the arbitral tribunal may continue the arbitral proceedings.¹²³

8.4 Interim protective measures

8.4.1 As explained,¹²⁴ an arbitral tribunal may issue non-binding interim protective measures. Additionally, any party may, at any stage during arbitral proceedings, apply to the competent county court for interim measures which, if ordered, are enforceable.¹²⁵ The Hungarian Arbitration Act expressly provides that such applications are permitted despite the existence of an arbitration agreement.¹²⁶

¹²⁰ *Ibid*, s 8(1).

¹²¹ *Ibid*.

¹²² *Ibid*, s 25(1).

¹²³ *Ibid*, s 25(2).

¹²⁴ See further explanation above at paragraph 5.2.1.

¹²⁵ Hungarian Arbitration Act, s 37(1).

¹²⁶ *Ibid*.

8.4.2 The court may order measures to safeguard the claim of one party (e.g. by freezing a bank account) in a case pending before an arbitral tribunal if the party requesting such measure provides sufficient grounds for the measure to be granted and the claim is supported by appropriate documentary evidence (i.e. authentic instruments or private documents with full probative force).¹²⁷

8.5 Obtaining evidence and other court assistance

8.5.1 The local courts have jurisdiction to assist the arbitral tribunal with obtaining evidence if the production of evidence before the arbitral tribunal is likely to entail considerable difficulties or disproportionately high additional costs or if means of coercion are required to obtain evidence.¹²⁸

9. Challenging and appealing an award through the courts

9.1.1 There is no appeal against an award. However, the Hungarian Arbitration Act provides specific circumstances in which a party can apply to the competent county court to set aside an award.¹²⁹ The request of the party to set aside an award must be filed within 60 days from the delivery of the award.

9.1.2 A party may apply to the competent county court for the award to be set aside for the following reasons:

- the party which concluded the arbitration agreement did not have legal capacity;
- the arbitration agreement is not valid under the law which the parties have chosen, or failing any indication thereon, under Hungarian law;
- a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case;
- the award was made in relation to a dispute not contemplated by or outside the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration (provided that if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions not submitted to arbitration may be set aside); or

¹²⁷ *Ibid*, s 37(2).

¹²⁸ *Ibid*, s 37(3).

¹²⁹ *Ibid*, s 54.

- the constitution of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a mandatory provision of the Hungarian Arbitration Act, or, failing such agreement, the constitution of the arbitral tribunal or the arbitral procedure was not in accordance with the Hungarian Arbitration Act.¹³⁰

9.1.3 The setting aside of the award may also be requested if:

- the subject matter of the dispute is not capable of settlement by arbitration under Hungarian law; or
- the award is in conflict with the rules of Hungarian public policy.¹³¹

9.1.4 The court may suspend the enforcement of the award during the proceedings to set aside.¹³² The Hungarian Arbitration Act requires that the judgment of the court be confined exclusively to the setting aside of the award of the arbitral tribunal.¹³³

10. Recognition and enforcement of awards

10.1 Domestic awards

10.1.1 The effect of an award is the same as that of a final and binding non-appealable court judgment.¹³⁴ The court which has jurisdiction for enforcement is the county court located where the respondent has its seat or place of business or where it has sellable assets, or in the case of foreign entities the seat of the Hungarian branch or commercial representation.¹³⁵ The enforcement is governed by the local legal rules on enforcement. The court may only refuse enforcement of the award if the subject matter of the dispute is not arbitrable under Hungarian law, or if the award is contrary to the rules of Hungarian public policy.¹³⁶

10.2 Foreign awards

10.2.1 Awards issued outside Hungary are enforceable in Hungary pursuant to the provisions of multilateral conventions or bilateral treaties ratified by Hungary. The most important arbitration convention to which Hungary is a party is the New York Convention.

¹³⁰ *Ibid*, s 55(1).

¹³¹ *Ibid*, s 55(2).

¹³² *Ibid*, s 56(1).

¹³³ *Ibid*, s 56(2).

¹³⁴ *Ibid*, s 58.

¹³⁵ Act LIII of 1994 on the Judicial Enforcement Proceedings (**Enforcement Act**), s 16(d).

¹³⁶ Hungarian Arbitration Act, s 59.

- 10.2.2 If there is an international treaty under which the award may be enforced, the competent court for enforcement of the foreign award is the same as described above, i.e. the county court where the respondent has its seat or place of business or where it has sellable assets or in the case of foreign entities the seat of the Hungarian branch or commercial representation.¹³⁷ The party applying for enforcement must supply the original award and the original arbitration agreement or certified copies of these documents, and upon the request of the court must attach a Hungarian translation of such documents if issued in a foreign language.
- 10.2.3 The rules of the treaty pursuant to which the foreign award is enforceable in Hungary shall be applied by the courts to the enforcement (or to the refusal of the enforcement) of the award. Any questions which are not handled by the applicable treaty shall be governed by the local law on enforcement.

11. Special provisions and considerations

11.1 Consumers

- 11.1.1 There are no special provisions regarding arbitral proceedings involving consumers. Nevertheless, it should be noted that an arbitration clause sought to be applied by the business party of a consumer contract, where the contract has not been individually negotiated but is incorporated into the general terms and conditions, may be null and void, if such clause is unfair.¹³⁸ This is the case if it is contrary to the requirements of good faith, or if it causes significant and unjustifiable imbalance of the parties' rights and obligations arising under the contract.¹³⁹ Nullity may only be referred to for the benefit of the consumer.

11.2 Employment law

- 11.2.1 According to the Hungarian Arbitration Act, no arbitration may take place in relation to employment issues.¹⁴⁰

12. Concluding thoughts and themes

- 12.1.1 Arbitration has a long tradition in Hungary but until the change of regime in 1990 it was not a popular method of dispute resolution and had no comprehensive legal

¹³⁷ Enforcement Act, s 16(d).

¹³⁸ Act IV of 1959 on the Civil Code (**Civil Code**), s 209/A(2).

¹³⁹ Civil Code, s 209(1).

¹⁴⁰ Hungarian Arbitration Act, s 4.

framework. The previous legal system did not recognise ad hoc arbitration and only foreign trade disputes could be arbitrated in Hungary.

12.1.2 The Hungarian Arbitration Act, which is based on the Model Law (1985) now provides a modern framework for arbitration and ensures the autonomy of the parties and the arbitration process. In accordance with the Hungarian Arbitration Act, new permanent arbitral institutions have been established to deal with general and specific issues (e.g. e-commerce, stock and commodity exchange disputes). The most popular permanent arbitral institution in Hungary is the Court of Arbitration, which is used by both Hungarian and international companies.

13. Contacts

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