



PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2012/13

DISPUTE RESOLUTION VOLUME 1

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Hungary

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MAIN DISPUTE RESOLUTION METHODS

1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

The two main methods used to resolve large commercial disputes are civil procedure before courts and, if the parties agree, arbitration before various arbitration bodies. Civil procedure is regulated by Act III of 1952 on Civil Procedure as amended (CPA). The CPA is the backbone of the legal framework for all court procedures. It provides general rules on how a case moves through the courts, and also on specific procedures, such as small value disputes and judicial review of administrative orders.

A recent amendment, Act 2011:LXXXIX, added a new chapter to the CPA for cases where the amount claimed exceeded HUF400 million (as at 1 March 2012, US\$1 was about HUF220.4). The new rules aim to speed up proceedings in such matters.

COURT LITIGATION

Limitation periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

The statute of limitations is considered to be a matter of substantive law. Limitation of actions is regulated in the Civil Code and a general regime applies to most civil claims. As a general rule, the limitation period for breach of contract, property damage, economic loss and personal injury is five years. There is no difference between ordinary contracts and those made by deed. If the damage or personal injury is caused by a crime, the limitation period is the same as the period during which the crime is punishable, but is at least five years.

Some special rules provide for shorter limitation periods such as three years, one year or six months for special torts. Generally, the parties to a contract are also free to shorten the prescription period, provided this agreement is made in writing.

Where the claimant is not in a position to bring an action, for a reason that may be excused, his claim is not time barred for one year from the date on which the reason ceased to hinder the claimant, even if the limitation period has expired.

The limitation period commences on the date when service is due or the damage is done, irrespective of whether the obligee has knowledge of this fact. The limitation period is interrupted by:

- A written notice requesting the performance of a debt.
- The start of judicial proceedings.
- An amendment by the parties of the underlying contract.
- An acknowledgment of the debt by the debtor.

The limitation period recommences after interruption.

There is a different regime of very short ordinary and long-stop limitation periods (30 to 90 days) for lawsuits in connection with company law cases and the challenging of company resolutions. Special rules also apply to certain claims based on securities, such as a bill of exchange.

Court structure

3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

The Hungarian court system has four levels. There are:

- 111 local courts (105 in towns and six in the various districts of Budapest, the capital city).
- 20 county courts, including the Metropolitan Court of Budapest.
- Five courts of appeal operating in five major towns.
- The Supreme Court of the Republic of Hungary, recently renamed Curia.

The Constitutional Court, which reviews and annuls statutes that are contrary to the Constitution, is not part of the ordinary court system. However, a new Constitution (the Fundamental Law) and a new law on the Constitutional Court (Act CLI of 2011 on the Constitutional Court) have been introduced. These provide that every final court judgment can be challenged before the Constitutional Court if, in reaching its decision, the court applied legislation which allegedly violates the Constitution.

Civil procedure usually has two phases:

- The first instance procedure.
- The second instance appellate procedure.



Most claims generally start at local courts and the court of appeal is one of the county courts or the Metropolitan Court of Budapest. Claims exceeding HUF10 million and claims related to IP, company law, international transport and to the review of administrative orders, must be filed with county courts or the Metropolitan Court of Budapest. If the decision of the county court is appealed, one of the courts of appeal proceeds as the second instance forum.

Except for limited types of disputes, an application for review of judgments concerning pecuniary claims can be filed with the Supreme Court, if one of the county courts or court of appeal breached the law in a substantive or material procedural matter, and the amount in dispute exceeds HUF1 million.

Claims are distributed among civil, business, administrative, employment and criminal divisions. Within the divisions, judges tend to specialise in certain types of matters such as contract, tort, company law and family law.

At first instance, the trial is held by a single professional judge. However, in employment matters there are also two lay judges in the court. In every second instance procedure, there is a court of three professional judges. The jury system is unknown in Hungary. Once an action is brought, only a small proportion of cases are settled out of court, so there is nearly always a trial.

Rights of audience

- 4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?**

Rights of audience/requirements

Members of any local Hungarian bar can appear before any court. There is no distinction among lawyers such as between solicitors and barristers in some common law jurisdictions.

Attorney candidates and European Community lawyers (see below), who are registered by the national bar but do not qualify as bar members, can only appear at local and county courts. In-house counsel, if registered in the in-house counsel's register with one of the county courts or the Metropolitan Court of Budapest, can also appear before courts.

Foreign lawyers who are nationals of the European Economic Area (EEA) and members of their local bar can apply for registration in local Hungarian bars as European Community lawyers.

Foreign lawyers

A European Community lawyer (see above, *Rights of audience/requirements*) if registered with a local Hungarian bar has the same right of audience as any Hungarian lawyer. If however he wants to appear in proceedings where legal representation is mandatory he must show that he is a party to a co-operation agreement between him and a Hungarian lawyer or a Hungarian law office.

FEES AND FUNDING

- 5. What legal fee structures can be used? Are fees fixed by law?**

Client and counsel are free to agree on any fee arrangement. In practice, task-based billing is the most common in litigation matters, often combined with a success fee. A contingency fee can also be agreed, but in practice it is not frequently used. If legal counsel does not disclose his agreement with his client, which is very often the case, the court determines legal fees and costs on the basis of statutory provisions.

- 6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?**

Funding

The parties to the litigation advance, and very often pay, the costs of litigation. Third-party funding is theoretically possible, but in practice is not available on a commercial level.

In the case of success fee arrangements the client is usually still asked to pay the costs of the procedure, such as stamp duties and filing fees.

Insurance

Generally, insurance is available for litigation costs only as a part of liability insurance. Otherwise it is not known or applied in Hungary.

COURT PROCEEDINGS

- 7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?**

Generally, court hearings are public. Since 2007, all judgments of higher courts are, after deleting the parties' names and other sensitive information, made available online. Upon request or *ex officio*, the court can try the case in closed hearing or protect the confidentiality of sensitive information in other ways. Apart from the hearings, the court procedure is not public. Pleadings, motions and other submissions, as well as court orders, are only accessible to the parties to the lawsuit.

- 8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?**

As an attempt to reduce the courts' workload, until a recent amendment of the CPA, legal entities had to try to settle their business-related disputes before bringing an action. This requirement included the exchange of letters setting out their position in detail. The parties had to attach this correspondence to the statement of claim.

Since August 2010, the CPA no longer contains rules concerning the parties' pre-action conduct. However, if any voluntary mediation procedure was in progress between the parties, this fact must be referred to in the statement of claim.

9. What are the main stages of typical court proceedings?

Starting proceedings

An action is started with the submission of a statement of claim to the appropriate court (see *Question 3*). The statement of claim must be addressed to the appropriate court and must:

- Contain the name and address of the parties, a concise statement of the nature of the case, and a statement of value.
- Specify the remedies the claimant seeks.
- Indicate particulars such as facts and supporting evidence.

A filing fee must also be paid, the amount of which is based on the value of the claim. In monetary claims or claims for handover of tangible assets, an action can (or must in the case of claims under HUF1 million) be started by a request for the issuance of an order to pay. The relevant stamp duty is only 3% of the value claimed and the court issues the order to pay within 15 days.

Notice to the defendant and defence

The court then has 30 days to decide whether the claim is suitable for trial. If the claimant omits necessary elements of the claim the court is bound to reject the claim *ex officio*. The omission of certain other elements of the claim may give grounds to order the claimant to submit further particulars. If no further particulars are necessary, or if the claimant submits the missing particulars, the court sets the date of the first hearing, issues a summons and simultaneously forwards the claim to the defendant.

The summons and the claim must be duly served on the defendant, which is done by the court by post to the address indicated by the claimant in the claim. The proceedings between the claimant and the defendant start officially at the moment when the summons is served. Proceedings are often drawn out as summons cannot be duly served for various reasons.

The first hearing should be within four months from the date on which the claim was filed with the court. The defendant submits its defence at the first hearing at the latest. The defendant can request the court to dismiss the claim and end proceedings on procedural grounds, or reject the claim on its merits. In this case, the court usually rules on the procedural issue first, but the court can also hear the parties on the merits of the case.

Subsequent stages

If the case proceeds to substantive issues, the court notifies the parties of the facts that must be evidenced and the burden of proof. The case then proceeds through the phase of presenting evidence for the case (evidencing phase). Hearings are held in a time frame of one to four months, depending on the court workload. Oral evidence is produced in hearings and written evidence can be submitted at any time until the evidencing phase is over. Parties must act in good faith and produce evidence in a timely manner.

When the court is satisfied that the evidencing phase has come to its end it informs the parties that it intends to close the trial. This is usually done at the last court hearing. After closing the trial, the court gives judgment. No time limit is set for the court to give judgment. The first instance phase of an action takes usually one to three years.

The defendant can file procedural objections as to, for example, lack of jurisdiction or lack of legal capacity (see *Question 10*). In addition, as to the merits of the case, the defendant can file a request to set off, in part or in whole, the claimed amount, or can file a counterclaim until the closing of the trial. Any request or counterclaim must not delay the proceedings.

Submitting new evidence on appeal is generally not allowed. The second instance procedure lasts usually six months to one year. The second instance court can approve or alter the first instance judgment, hold a new trial or request a new first instance proceeding.

Special rules apply to low value lawsuits (that is, less than HUF1 million), including the possibility of an expedited procedure.

INTERIM REMEDIES

10. What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?

If the claim is not rejected on procedural grounds by an order of the court *ex officio*, the case is tried (see *Question 9*). Even preliminary procedural matters are dealt with at hearings.

The defendant can request the court to dismiss the claim and end the proceedings on certain procedural grounds, such as:

- Lack of jurisdiction.
- Lack of a party's legal capacity.
- Premature claim.
- Non-litigious claims (for example, claims resulting from gaming or gambling, except for gaming and gambling activities authorised by the state).

If a defendant submits such a request, the court usually rules on this issue first before deciding on the merits of the case. However, the court can consider the merits of the case while dealing with procedural issues.

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

A defendant can only apply for an order for the claimant to provide security for its costs if the claimant is a foreign person outside the EU. The court rejects the application in any of the following circumstances:

- Where foreign persons are allowed by an international treaty to bring an action without providing security for costs, or if Hungarian nationals can bring an action without securing the costs in the country of the foreign claimant (reciprocity).



- A part of the claimed amount is uncontested by the defendant and therefore serves as appropriate security for costs.
- The claimant is exempted by the court from all litigation costs.

On the other hand, the courts can order the deposition of a security as a condition of ordering a preliminary injunction (see *Question 12, Availability and grounds*).

12. What are the rules concerning interim injunctions granted before a full trial?

Availability and grounds

Interim injunctions granted before full trial are available, but only if the claim (or counterclaim) is filed before, or simultaneously with, the application. The court grants an interim injunction if both:

- Instant damage is threatening, the status quo should be maintained, or it is justified by the special circumstances of the applicant.
- The advantage to be attained exceeds the disadvantage caused.

The applicant is required to show that the underlying facts are probable but does not normally need to evidence them. The court can request a bond or other security from the applicant in proportion to the disadvantage that the interim injunction is likely to cause. The courts can order the deposition of a security as a condition of ordering the preliminary injunction.

Prior notice/same-day

An interim injunction is normally granted only after a hearing of the parties, unless the case is of extreme urgency, which is rare in commercial matters. Although the court must act promptly, same-day orders are in practice not available.

Mandatory injunctions

An interim injunction takes the form of an order and the court is free to request the respondent to do, to refrain from doing, or to stop doing, anything. If the respondent does not comply with the order, the order can be enforced. The order is enforceable irrespective of whether an appeal was submitted against it and remains in force until it is overruled by the court.

13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

Availability and grounds

Although issued exceptionally in civil litigation, attachment orders are available generally in judicial enforcement. This is a procedure that is not part of civil court procedure and is managed by a registered bailiff. Interim attachment orders are therefore available only through enforcement of an interim injunction (see *Question 12, Mandatory injunctions*). A bailiff can issue an attachment order.

An attachment order is usually issued if it seems the most effective way to enforce the interim injunction order or other enforceable

decision. From the date of issuance of an interim injunction order, it can take several days or weeks to have an interim attachment order issued.

Prior notice/same-day

Attachment orders are normally granted only after hearing the parties, unless the case is of extreme urgency, which is rare in commercial matters. Although bailiffs must act promptly, same-day orders are in practice not available.

Main proceedings

Enforceable foreign orders or judgments (for example, orders or judgments issued in an EU member state) can be enforced if recognised by the appropriate Hungarian court. Therefore, the main proceedings do not have to be in the same jurisdiction.

Preferential right or lien

The attachment does not create any preferential right or lien in favour of any party. The attached assets cannot be alienated, charged or encumbered in any way, and must be preserved in good condition, usually by the respondent or occasionally by a trustee.

Damages as a result

The claimant is not liable for the damages suffered as a result of the attachment, but it can be liable for damages suffered as a result of the interim injunction.

Security

The court can require that the applicant provide security for any damage an interim injunction may cause, but no security can be required in the enforcement procedure for the issue of an attachment order.

14. Are any other interim remedies commonly available and obtained?

The court can order any interim measures it deems appropriate (see *Question 12*). Any measure ordered must be capable of being enforced. Under the interim injunction, the court can order the preliminary performance of the claim stated in the complaint, if this is necessary on the basis of equity to either:

- Avert the occurrence of damages.
- Maintain the conditions underlying the dispute.

FINAL REMEDIES

15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

Depending on the circumstances of the case, the remedies sought and the substantive provisions of law, final remedies can take any form the court considers appropriate, including:

- Specific performance.
- Compensatory damages.
- Injunctions.
- Declarations.
- In special cases, conclusion or amendment of contracts.

However, the court cannot apply a remedy that the claimant did not specify in the statement of claim as a relief sought.

Punitive damages are not awarded.

EVIDENCE

Disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

Discovery as understood in common law jurisdictions is unknown in Hungary. The court can only order production of those documents that the defendant must, by substantive provisions of civil law, give the claimant access to. Certain types of claims are consequently difficult to prove.

The court can obtain numerous documents *ex officio*. Government bodies, for example the Revenue Office and Social Security Office, must comply with the court's request.

The prospective claimant must also file the documents:

- To which he refers.
- Which prove the jurisdiction and competence of the court.
- Which certify the facts to be taken into account *ex officio*.

Third party private individuals or companies are not obliged to provide documents and there are no penalties for not doing so. However, courts often approach them to do so.

Privileged documents

17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

Privileged documents

Legal privilege (attorney-client or legal professional privilege) as known in common law jurisdictions is not recognised by statutes as an obstacle to the disclosure of a document. Attorneys can refuse to be heard as a witness (*CPA*) and this rule has been extended by legal practice to attorney-client documents as well. Similar rules apply to relatives, doctors, priests and persons who hold business secrets.

There are certain areas of law, for example competition law, where the concept of legal privilege is accepted by statute. However, documents written by in-house counsel are not privileged, even in this context. In other areas of law, privilege can be used as an argument but the principle itself is not established in court practice. However, disclosure obligations cover only a very narrow field of documents (see *Question 16*). In addition, the *CPA* provides specific rules concerning confidentiality of information.

Other non-disclosure situations

Classified information, for example state secrets, must not be disclosed. If a third party's business secret or professional confidence is affected, and the third party does not consent to

disclosure, the document cannot be used as evidence. If the court deems that the content of a submitted document concerns business or professional secrets, it must approach the person or entity entitled to approve the use of the secret (secret holder) to obtain approval. If the secret holder does not respond within eight days or gives its consent, the secret can be used.

Examination of witnesses

18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

Oral evidence

Similarly to other civil law jurisdictions, affidavits and depositions are unknown in Hungarian civil procedure. Court witnesses of fact usually only give oral evidence in person, in court before the judge. Written evidence is generally treated as a document and not as witness testimony. In many cases, the notary public puts the witness statement in writing as a statement of facts and the notarised document is submitted. The probative value of these notarised documents is disputed.

Right to cross-examine

Witnesses of fact are usually first heard by the court, then by the party who called the witness, and then by the other party, all at the same hearing. Cross-examination is possible but it is different from cross-examination in common law courts. It is disputed whether it is appropriate for a witness to be prepared by counsel to give oral evidence at trial. Judges usually view such preparation negatively.

Third party experts

19. What are the rules in relation to third party experts?

Appointment procedure

The court usually appoints experts on the request of a party. The court's first choice will always be someone registered as a judicial expert and preferably a member of the local chamber of judicial experts or of a state owned expert institute. The parties can agree on a specific expert. If so, the court will probably appoint that expert.

Any party is free to submit expert opinions. However, these opinions are treated by the court as documentary evidence or a statement of that party, and not as an expert opinion.

Role of experts

Court-appointed experts provide expert opinion on a certain set of non-legal questions. They do not represent the interests of the parties. They should be independent from the parties and should act impartially.

Right of reply

There is a right to reply to expert evidence and if the written expert opinion is unclear, there is also a right to hear and cross-examine the expert. The court can also order the expert to supplement his opinion. The appointment of new or further experts can also be suggested, but the court has a discretionary right to grant the request or appoint a new expert *ex officio*.



Fees

Expert fees must be advanced by the party who requested his appointment or whose case is to be evidenced by an expert opinion. However, in special cases the court can order the other party to advance, in part or in whole, the expert fee. Court-appointed experts' fees qualify as litigation costs and are borne by the unsuccessful party.

APPEALS

20. What are the rules concerning appeals of first instance judgments in large commercial disputes?

Which courts

If the case started at a local court, an appeal is decided by the appropriate county court. If the case started before a county court (for example, before the Metropolitan Court in Budapest), the second instance forum is the appropriate court of appeal.

Grounds for appeal

An appeal can be brought on certain grounds, including:

- Lack of clarification of the facts, or of examination of all relevant evidence.
- Procedural error.
- Misinterpretation of the applicable substantive provisions of law.
- Faulty application of law.
- False assessment of facts or the evidence presented.
- Granting of unsought relief.

However, new statements of facts or new evidence are not allowed in the appeal or during the second instance procedure, except in special circumstances.

Time limit

The appeal must be filed with the court that issued the judgment within 15 days from the date of receipt of the judgment.

CLASS ACTIONS

21. Are there any mechanisms available for collective redress or class actions?

The CPA does not provide a special proceeding for complex class action litigation similar to that of certain common law jurisdictions. In early December 2009, a proposal to introduce a broad class action model was submitted to Parliament and the bill was adopted in February 2010. The Hungarian President, however, refused to sign the bill. The new government that came into power in April 2010 has not dealt with this matter yet, and is unlikely to address it in the near future.

However, the Civil Code and, more generally, consumer protection and competition laws entitle the following to bring an action against any party causing substantial harm to a wide range of consumers

by illegal activities, aimed at enforcing the interests of consumers, even if the identity of the injured consumers cannot be determined:

- Hungarian consumer protection and competition authorities.
- Hungarian and EU non-governmental organisations for the protection of consumers' interests.
- The public prosecutor.

In its judgment the court may authorise the party enforcing the claim to publish the court's decision in a national newspaper at the cost of the infringing party. The judgment does not affect the right of the consumer to have his claims enforced against that infringing party in accordance with the provisions of civil law.

In the last decade, the issue of collective redress has also been considered in the area of public law. Most importantly, the laws on equal treatment of citizens enable particular non-governmental organisations to bring a claim against a person who breached the requirement of equal treatment, irrespective of the person who sustained the injury. In addition, different statutes provide the possibility of collective redress in other areas, such as animal protection, environmental protection and conservation.

COSTS

22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

Costs paid in advance in the procedure, procedural fees and expert costs are usually borne by the unsuccessful party in proportion to the winning/losing ratio. In allocating the costs, the court can consider other factors such as delaying tactics and actions of the parties violating the good faith principle in relation to proceedings. However, the court does not normally consider factors outside the proceedings. In practice, legal fees, although part of the costs, are frequently not recovered in full for various reasons. In addition, courts often reduce the costs incurred in connection with the lawsuit.

Any other costs which arose out of the litigation are only enforceable in narrow circumstances, except for pre-action legal and expert fees.

23. Is interest awarded on costs? If yes, how is it calculated?

Interest is not awarded on procedural costs. Costs are usually payable within 15 days from the date on which the final judgment is received. If Hungarian law applies, late payment triggers default interest under substantive provisions of the Civil Code.

ENFORCEMENT OF A LOCAL JUDGMENT

24. What are the procedures to enforce a local judgment in the local courts?

Enforcement is a separate, stand-alone court procedure. It is governed by Act LIII of 1994 on Judicial Enforcement (Enforcement



Act). The Enforcement Act covers all methods of enforcement and applies to domestic or foreign judgments, and to agreements made in notarial deeds and other enforceable documents.

If the due date set in a final judgment has passed and the unsuccessful party has not performed, the other party can apply for enforcement to the local court with jurisdiction. The local court then seals the judgment as enforceable and, if requested, instructs a judicial bailiff (a registered official enforcement agent) to enforce it. The applicant has a right to choose the method of enforcement, subject to certain limits.

Enforcement for the recovery of sums of money takes one of the following forms:

- Attachment of goods and financial assets, including bank assets, shareholdings, and outstanding claims.
- Assignment of earnings.
- Execution against real property.
- Imposition of fines.

CROSS-BORDER LITIGATION

25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

Two Hungarian contracting entities cannot agree on foreign law application to their contract. If the parties choose the governing law for a contract, it is applied. However, the choice is not accepted if it is either:

- Contrary to Hungarian public policy.
- Based on a foreign element included artificially (false classification) and only with the purpose of circumventing legal provisions that would have been otherwise applicable.

Several areas of law have mandatory rules that may apply to a contract or its performance despite a chosen foreign law, including company law, securities law, employment law and consumer protection law.

26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

Hungary joined the EU in 2004, and therefore the following applies in relation to choice of jurisdiction within the EU and the European Free Trade Association (EFTA) states other than Liechtenstein:

- Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation).
- Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (New Lugano Convention).

See also *Question 29*.

The parties are normally free to choose the jurisdiction of a specific court or the courts of a specific country. However, statute provides for the exclusive jurisdiction of Hungarian courts in a number of cases, including:

- Actions relating to real property located in Hungary.
- Civil actions against the state or Hungarian government agencies.
- Actions in connection with intellectual property rights granted in Hungary.
- Actions in company law matters, for example, judicial review of a resolution of a shareholders' meeting against a company registered in Hungary.
- Actions concerning the registration of a right, facts or data in official records in Hungary.
- Actions in connection with the enforcement of judgments in Hungary.
- Certain cases to protect employees and consumers.

27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?

EU member states

Regulation (EC) 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (EU Service Regulation) applies between Hungary and other EU member states.

All means of transmission provided in the EU Service Regulation can be applied except direct service. In practice, direct postal service and transmission with the assistance of receiving authorities are used. Application for and certificate of service is facilitated by standard forms. The designated receiving agency in Hungary is the Ministry of Justice. If the addressee does not understand the language of the document, he can refuse to accept it.

Other countries

Hungary has signed, with reservations, and ratified the HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention). It was promulgated in Act XXXVI of 2005.

Documents are sent between states with the assistance of and through the designated authorities (in Hungary, the Ministry of Justice) and within Hungary by post. Application should be made by filling in the appropriate form annexed to the Hague Service Convention. The certificate regarding receipt of the document by the addressee is forwarded directly to the applicant.

On the basis of international treaties or reciprocity, documents can be sent directly from a foreign court to designated courts in Hungary.

In addition, Hungary has signed numerous bilateral agreements on judicial assistance which also provide for the service of documents (for example, with Albania, Algeria, Austria, Bulgaria, Cyprus, Czech Republic, Egypt, Finland, France, Greece, Croatia,



Serbia, China, Iraq, North Korea, Cuba, Poland, Macedonia, Mongolia, Great Britain, Romania, Russia, Syria, Slovak Republic, Slovenia, Turkey, Tunisia and Ukraine, among others).

28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

EU member states

Regulation (EC) 1206/2001 on co-operation between the courts of the member states in the taking of evidence in civil or commercial matters (EU Evidence Regulation) applies to the procedure to take evidence from a witness in Hungary, for use in proceedings in another EU member state.

The foreign court before which the case was brought can seek the direct assistance of the court with jurisdiction over the witness to be heard. Jurisdiction is based on the domicile of the witness. Forms annexed to the EU Evidence Regulation facilitate the procedure.

Other countries

Hungary has signed (with reservations) and ratified the HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970 (Hague Evidence Convention). It was promulgated in Act CXVI of 2004. Hungary is also a member of the 1905 and 1954 Hague Conventions on civil procedure, parts of which were replaced by the Hague Evidence Convention.

On the basis of international treaties or reciprocity, foreign courts can directly seek legal assistance from courts in Hungary.

Enforcement of a foreign judgment

29. What are the procedures to enforce a foreign judgment in the local courts?

EU member states

The Brussels Regulation applies to the enforcement in Hungary of judgments passed by a court in another EU member state.

Under the Brussels Regulation, a judgment given in an EU member state (such as the UK) is recognised in Hungary without any special procedure being required. Judgment means any judgment given by a court or tribunal of a member state, whatever the judgment may be called, including a decree, order, decision or writ of execution. In no circumstances can a foreign judgment be reviewed as to its substance.

A judgment will not be recognised if:

- Recognition is manifestly contrary to Hungarian public policy.
- The defendant was not served with the document which started the proceedings in sufficient time and in such a way as to enable the defendant to arrange for his defence.
- It is irreconcilable with a judgment given in a dispute between the same parties in Hungary.

- It is irreconcilable with an earlier judgment given in another EU member state or in a third state involving the same cause of action and between the same parties.

Recognition is normally a question of formalities as provided under the Brussels Regulation. A judgment is enforced when, on the application of the interested party, it has been declared enforceable in Hungary. The application for enforcement should be submitted to the competent court in Hungary with jurisdiction. Jurisdiction is based on the place of domicile of the debtor or on the place where the judgment should be enforced, typically the place where relevant real estate is located. The judgment is then enforced in the same way as a domestic judgment (*see Question 24*).

Other countries

Similar rules as under the Brussels Regulation apply between Hungary and the EFTA countries, other than Liechtenstein, under the New Lugano Convention (*see above, EU member states*).

A judgment adopted by courts of non-EU countries will be recognised in Hungary if:

- The jurisdiction of the foreign court in question is found legitimate under the rules of jurisdiction of Hungarian law.
- The decision is final and enforceable in the country in which it was made.
- There is reciprocity between Hungary and the foreign country in question. (There is no reciprocity with the US, for example).

Recognition of the judgment can be refused if:

- It violates Hungarian public order.
- The defendant to the judgment did not attend the proceedings in person (or through a representative) because the document on the basis of which the proceedings were initiated was not served at his domicile or residence properly or in a timely fashion in order to allow adequate time to prepare his defence.
- It was based on the findings of a procedure that seriously violates the basic principles of Hungarian law.
- The prerequisites for litigation for the same right from the same factual basis between the same parties in front of a Hungarian court or another Hungarian authority have materialised before the foreign proceeding was initiated.
- A Hungarian court or another Hungarian authority has already resolved a case by a final decision concerning the same right arising on the same factual basis between the same parties.

The party wishing to enforce judgment can request a special court procedure for the recognition of an official foreign judgment in Hungary. The judgment is then enforced in the same way as domestic judgments (*see Question 24*).

US judgments (save for some family matters under special international treaties), cannot be enforced in Hungary.

Under Hungarian law there are no specific blocking statutes that prohibit enforcement of certain foreign judgments.



ALTERNATIVE DISPUTE RESOLUTION

30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

The main ADR method used in Hungary is arbitration. Arbitration is used in almost all industries, particularly in banking, insurance, aviation and shipping. Arbitration is regulated by Act LXXI of 1994 on Arbitration (Arbitration Act) which closely follows the UNCITRAL Model Law on International Commercial Arbitration 1985. Ad hoc arbitration is not a frequent choice of parties and counsel. If not resolved at court, commercial disputes are resolved through institutional arbitration before one of the several permanent arbitration courts.

Although available, mediation has not yet become popular for large commercial disputes.

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

ADR does not form part of the court procedures. ADR, such as arbitration and mediation, only apply if the parties agree to it. Courts cannot compel the use of ADR.

32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

The method of giving evidence in arbitration is similar to civil litigation. However, documents are used more frequently than other types of evidence.

Evidence used in arbitration can be protected from later disclosure through appropriate confidentiality agreements. However, disclosure would only constitute breach of contract and would not make the documents inadmissible as evidence in civil litigation.

The Arbitration Act and the rules of procedure of the permanent arbitration courts require arbitrators to keep all information confidential. Although the parties to arbitration are not required by statute to keep matters confidential, in practice arbitration is treated as confidential. A confidentiality clause may still be advisable in arbitration agreements.

33. How are costs dealt with in ADR?

The legal fees and costs of arbitration are not fixed by law. Any fee structure (hourly billing, task-based, contingency and so on) can be used. As a rule of thumb, the basis of the legal fee is about 5% of the amount in dispute, subject to adjustments on the basis of the value or complexity of the case.

34. What are the main bodies that offer ADR services in your jurisdiction?

The main arbitration organisations are the:

- Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (ACHCCI) (www.mkik.hu).
- Arbitration Court of the Money and Capital Market (AMCM) (www.valasztottbirosag.hu).
- Arbitration Court attached to the Hungarian Agricultural Chamber (AAC).
- Arbitration Court of Electronic Communications (ACEC) (www.nhh.hu).
- Arbitration Court of Energy (ACE) (www.gov.eh.hu).

PROPOSALS FOR REFORM

35. Are there any proposals for dispute resolution reform? If yes when are they likely to come into force?

Certain amendments have been introduced to the CPA, which came into force on 1 January 2011, including widening the rights of deaf people during trial and amending the rules of procedure for press corrections (see *Question 1*).

There have been amendments to the CPA concerning electronic filing and court management of documents electronically. Temporary rules concerning electronic management of documents have applied since 1 January 2011. From 1 July 2012, electronic management of documents becomes mandatory. Transitional rules on electronic filing of documents have applied from 1 July 2011. Mandatory rules will apply from 31 June 2012, which will make electronic filing obligatory in certain circumstances.

In relation to the reforms concerning class actions, see *Question 21*.

CONTRIBUTOR DETAILS



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