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MULTI-JURISDICTIONAL GUIDE 2012/13
DISPUTE RESOLUTION
VOLUME 2: ARBITRATION

PRACTICAL LAW COMPANY®

Hungary

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USE OF ARBITRATION AND RECENT TRENDS

1. How is commercial arbitration used in your jurisdiction? What proportion of large commercial disputes is settled through arbitration? What are the recent trends? What are the general advantages and disadvantages of arbitration compared to court litigation in your jurisdiction?

Use of commercial arbitration

Since 1990, and particularly since the Act LXXI of 1994 on Arbitration (Arbitration Act) came into force, the use of arbitration has spread rapidly among larger companies, both in domestic and cross-border matters. However, the average number of requests for arbitration (although increasing) filed with the best known Hungarian arbitration court (the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (ACHCCI)) is only between 300 and 400 per year. In comparison, the Budapest Metropolitan Court handles around 13,000 new cases each year, although this figure includes family and other matters as well. About 20% to 30% of the cases submitted to arbitration involve parties outside Hungary.

Ad hoc arbitration is rarely used in Hungary. Parties and counsels favour permanent or institutional arbitration bodies to benefit from both:

- The pre-set rules of procedure, fees and a list of arbitrators.
- The secretariat managing the cases.

In addition to the ACHCCI, there are permanent arbitration courts in specific sectors such as:

- Agriculture (since 1997).
- Electronic communications (since 2008).
- Energy (since 2009).
- Securities and the stock exchange (since 2002).
- Sport (since 2001).

Some key Hungarian words to assist internet research are *választottbíróság* (court of arbitration), *szabályzat* (rules of arbitration) and *díj* (fee).

Recent trends

Although there is no statistical data available, it appears that the number of challenges against final arbitral awards has increased recently.

Advantages/disadvantages

Whether arbitration is to be favoured to litigation can only be decided on a case-by-case basis. In general, arbitration may better serve the parties' needs if:

- The parties are likely to have future dealings with each other and are therefore forced to co-operate both during and after the procedure.
- There is no more than one party on either side of the dispute.
- The parties to the dispute are companies with foreign shareholders, as they often choose to resolve their (internal) disputes by arbitration.
- The parties want to use:
  - a foreign language as the language of the proceedings; and/or
  - a lawyer licensed in a different jurisdiction.
- Facts can be evidenced primarily through documents in the evidencing party's possession.
- The case does not require a complicated evidence procedure, and the swift resolution of the dispute is a priority.
- Confidentiality is of high priority.

Hungarian law does not favour litigation over arbitration and case law also supports arbitration. Courts are reluctant to set aside or overrule arbitral awards, and the decisions that invalidate arbitral awards are few and easily accessible.

Some of the disadvantages of arbitration are the following:

- Arbitration is generally regarded as more expensive than domestic litigation.
- Interim measures are infrequently ordered by arbitral tribunals.
- Jurisdictional pleas, unless obviously lacking merit, slow down the proceedings.
- Involuntary liquidation of a party to arbitration renders the dispute inarbitrable.

Country Q&A

ARBITRATION ORGANISATIONS

2. Which arbitration organisations are commonly used to resolve large commercial disputes in your jurisdiction?

Currently the following permanent arbitration tribunals operate in Hungary:

- ACHCCI, a commercial arbitration body dealing with most cross-border disputes.
- Arbitration Court of Money and Capital Markets, specialising in securities and stock exchange disputes.
- Permanent Arbitration Court for Sport.
- Arbitration Court attached to the Hungarian Agricultural Chamber.
- Arbitration Court of Electronic Communications.
- Arbitration Court of Energy.

See also *box, Main arbitration organisations* and *Question 1, Use of commercial arbitration.*

LEGISLATIVE FRAMEWORK

Applicable legislation

3. What legislation applies to arbitration in your jurisdiction? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

The Arbitration Act regulates arbitration (*see Question 1, Use of commercial arbitration*). Before the passing of the Arbitration Act, the Civil Procedure Act (CPA) contained provisions relating to arbitration. The Arbitration Act closely follows the UNCITRAL Model Law but does not reflect the 2006 amendments. The Arbitration Act applies if the place (seat) of the ad hoc or permanent arbitration court is in Hungary. However, there is a specific chapter relating to international arbitration.

The following also apply:

- Certain procedural provisions in Law-Decree No. 13 of 1979 on International Private Law, mainly in relation to jurisdiction.
- International rules such as Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation).

Mandatory legislative provisions

4. Are there any mandatory legislative provisions? What is their effect?

Unless otherwise provided by law, disputes can be settled by arbitration, provided the following conditions are met (*Arbitration Act*):

- At least one of the parties is professionally engaged in business activities and the legal dispute arises out of, or in connection with, the business activity.
- The parties are not barred by law, due to the subject matter of a dispute, from choosing arbitration (*see below*).
- Arbitration was stipulated in an arbitration agreement.

The arbitral tribunal cannot proceed *ex officio*, that is, it must only resolve the issues presented by the parties.

Further mandatory legislative provisions relate to the:

- Arbitrability of the case.
- Eligibility requirements of arbitrators.
- Independence and impartiality of arbitrators.
- Grounds on which awards can be set aside.
- Basic principles of the procedure in civil and commercial cases.

The following matters cannot be subject to arbitration:

- Marital disputes.
- Disputes in connection with fatherhood and biological origin.
- Termination of parental supervision.
- Guardianship actions.
- Procedures regarding prompt payment notices.
- Administrative procedures.
- Procedures regarding press remedies.
- Labour disputes and disputes arising from labour-like relations.

Since 1 January 2012 civil contracts that concern assets that qualify as national property, within the meaning of Act CXCVI of 2011 on national property, and that are located within the territory of Hungary cannot contain an arbitration clause. This ban on making any such assets subject to arbitration cannot be circumvented by the choice of foreign governing law.

In addition, the Brussels Regulation directly affects the interpretation of civil and commercial matters, including the scope of disputes that can be arbitrated. Finally, applicable case law concerning the subject area, especially with respect to insolvency proceedings should also be considered.

The law of limitation

5. Does the law of limitation apply to arbitration proceedings?

The statute of limitations applies to all contract and tort civil claims, irrespective of whether they are litigated or arbitrated. There is no general period of limitation but most contract and tort-related claims are barred after five years (*Civil Code*). In practice, a lawsuit must be tried within a reasonable time frame. Therefore, a lawsuit filed with the court on the last day of the fifth year (with the five-year limitation period) is not considered reasonable and this conduct will be considered by the court, in its discretion, when considering all other circumstances.

The time runs from the date when the service or obligation is due or the damage occurred, irrespective of whether the obligee has knowledge of this fact. Generally, the parties can agree on a shorter limitation period, provided this agreement is in writing.

The following events interrupt the limitation period:

- A written notice requesting performance of a debt.
- Starting judicial proceedings (lodging a complaint or prompt payment notice).
- Amendment by the parties of the underlying contract.
- The debtor's acknowledgment of the debt.

The period of limitation re-commences after interruption. Therefore, if it is interrupted in time, the limitation can be avoided.

ARBITRATION AGREEMENTS

Validity requirements

6. What are the requirements for an arbitration agreement to be enforceable?

Substantive/formal requirements

Except for the requirement that the agreement be in writing, there are no statutory requirements relating to the arbitration agreement.

An arbitration agreement can be concluded as part of another contract or in a separate agreement, but it must be in writing. The interpretation of the term "in writing" is not always straightforward but it is usually accepted as being in writing if the arbitration clause is signed by each party and faxed to the other. The signature must originate from a person duly authorised to represent the party (valid proxy). In many cases the validity of an arbitration clause is challenged on the grounds that the signing party was not an authorised representative.

Any correspondence or similar exchange of messages qualifies as an agreement made in writing. Hungarian law recognises electronic signatures (*Act XXXV of 2001 on Electronic Signatures*) but an arbitration clause agreed in an e-mail or a text message has not been raised as an issue yet.

An arbitration clause is often included in one of the party's standard terms and conditions. However, this type of arbitration clause forms part of the parties' agreement only if both:

- The party using the general terms and conditions specifically draws the attention of the other party to the arbitration clause.
- The other party expressly accepts the arbitration clause.

Generally, any claimant's allegation made in the statement of claim that an arbitration agreement was concluded, qualifies as an arbitration agreement if it is not disputed by the defendant in the statement of defence.

Separate arbitration agreement

An arbitration agreement can be concluded as part of another contract or in a separate agreement, but it must be in writing (*see above, Substantive/formal requirements*).

Separability

7. Does the applicable legislation recognise the separability of arbitration agreements?

Separability of arbitration agreements is recognised by the Arbitration Act. Any decision of the arbitral tribunal declaring a contract null and void must not, by itself, invalidate the arbitration clause (*Arbitration Act*).

Separability of arbitration agreement is accepted also by the Rules of Proceedings of permanent arbitration courts. For example, the ACHCCI rules state that a decision of the arbitral tribunal according to which a contract is considered as invalid does not mean that an agreement to submit a legal dispute to arbitration is invalid.

Joinder of third parties

8. In what circumstances can a third party be joined to an arbitration, or otherwise be bound by an arbitration award?

The Arbitration Act does not contain any provisions relating to the joinder of third parties to arbitration. However, the procedural rules of some arbitration courts deal with this matter. For example, the ACHCCI rules enable the claimant to extend the claim to a third party if the conditions for arbitration are fulfilled, that is, there is a valid arbitration agreement.

It is also possible to join a third party if the claimant extends its statement of claim to a third party and the third party accepts, expressly or impliedly, the arbitration tribunal's competence. However, if there was no existing arbitration clause between the parties to the dispute then the third party cannot be joined to the arbitration against its will. If a third party is joined to the arbitration, the award is also final and binding in relation to the third party.

In addition, an intervening party can join the arbitration if the arbitration panel so decides and all parties consent to it.

It is common in practice that certain parties, who are often involved only indirectly, must also be involved in the lawsuit. In these circumstances, the arbitration court cannot proceed and the complaint must be presented to a civil court, irrespective of the arbitration clause between the two parties to the dispute.

ARBITRATORS

Number and qualifications/characteristics

9. Are there any default provisions in the legislation relating to the number and qualifications/characteristics of arbitrators?

The number of the arbitrators must be an odd number and, unless otherwise agreed by the parties, is three (*Arbitration Act*). In practice, an arbitration agreement usually refers to the rules of a given arbitration institution, which override the Arbitration Act. If reference is only made to an institutional arbitration court, the rules of that court apply. If the parties specify the number of arbitrators, it must also be an odd number.

An arbitrator does not need to have a law degree and the law does not regulate the arbitrators' professional experience. However, in practice 95% of the arbitrators are lawyers (economists with legal experience also sometimes act as arbitrators).

The following categories of persons cannot act as arbitrators (*Arbitration Act*):

- Persons under 25 years of age.
- Persons barred from public affairs by final court order.
- Persons placed under guardianship or conservatorship by final court order.
- Persons sentenced to imprisonment by final court order, until the criminal record is expunged.

Independence/impartiality

10. Are there any requirements relating to independence and/or impartiality of arbitrators?

Hungarian law matches international practice in this respect. Arbitrators must be independent and impartial, and cannot be instructed by the parties. A proposed or appointed arbitrator must disclose to the parties all information that may give rise to any justifiable doubts as to his independence or impartiality. The arbitrators appointed to a permanent arbitration court must make a written statement of independence and impartiality.

To secure the appointment of an independent and impartial arbitrator, it is necessary to observe both:

- The requirements set out in the parties' agreement concerning the arbitrator's qualifications.
- Any other considerations, such as statutory rules and any applicable rules of the arbitration institution.

Arbitrators cannot act as legal representatives in the course of commercial arbitration either (*section 13(3), Rules of ACHCCI*):

- In the course of an arbitration before the Arbitration Court.
- Within six months following the cessation of duties as arbitrator before the Arbitration Court.

Lack of independence or impartiality is a ground to challenge arbitrators in the arbitration procedure set out in the Arbitration Act. If the arbitral panel or the arbitration institute does not accept the challenge, it can be brought before a civil court. In a recent case (2010) the Supreme Court annulled an arbitral award on the grounds of the composition of the arbitral tribunal with reference to the IBA Guidelines on Conflict of Interest in International Arbitration.

Appointment/removal

11. Does the applicable legislation contain default provisions relating to the appointment and/or removal of arbitrators?

Appointment of arbitrators

The Arbitration Act provides default rules on the appointment and removal of arbitrators, as well as the start of arbitral proceedings. However, these provisions, except for certain mandatory rules, such as disqualification (*see Question 4*), only apply if the parties have not:

- Agreed otherwise.
- Chosen a permanent arbitration court, whose procedural rules regulate these issues in detail.

Removal of arbitrators

See above, *Appointment of arbitrators.*

PROCEDURE

Commencement of arbitral proceedings

12. Does the applicable legislation provide default rules governing the commencement of arbitral proceedings?

The Arbitration Act provides default rules governing the commencement of arbitral proceedings. The proceedings of an ad hoc arbitration tribunal start on the day on which the respondent receives the request to refer the dispute to arbitration, unless the parties have agreed otherwise.

If the parties have stipulated the jurisdiction of a permanent arbitration court, the proceedings start on the day when the statement of claim is received by the relevant arbitration court.

Applicable rules

13. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the legislation provide any default rules governing procedure?

Applicable procedural rules

Except for certain mandatory provisions of the Arbitration Act (*see Question 4*) and general principles of civil procedure, the parties can freely:

- Agree the procedural rules to be observed by the arbitral tribunal. (Permanent arbitration courts are free to establish their procedural rules within the boundaries of the Arbitration Act. Their rules must be respected, and the infringement of these rules can be a ground to invalidate the award.)
- Stipulate the use of an arbitration institution's rules.

In the default of the parties' agreement, an arbitral tribunal can determine the procedural rules at its own discretion, within the framework of the default rules provided by the Arbitration Act.

The Arbitration Act does not cover all procedural rules. Therefore, additional legislation may apply, for example, the CPA. The procedural principles, whether of constitutional or other nature, must also be respected in arbitration. These principles include:

- The principle of independence and impartiality.
- The principle of equal treatment of the parties.
- The right of each party to familiarise itself with the:
  - documents of the arbitral proceedings;
  - documents filed and evidence submitted by other parties;
  - procedural actions taken by the arbitral tribunal.

- The right of each party to state his version of events orally or in writing in the course of arbitral proceedings. The right to put forward a case includes the right to be able to comment on the views of the arbitral tribunal if it intends to apply mandatory provisions of law. (This has been confirmed in a recent case where an award was set aside after failure by the tribunal to comment about the recharacterisation of an agreement.)

It is debatable whether or not the procedural provisions of a foreign state can be applied by the arbitration court. Some commentators believe the procedural laws cannot be chosen by the parties because of their public law nature.

Default rules

The Arbitration Act provides default rules, although it does not cover all procedural rules, and additional legislation may apply (*see above*, *Applicable procedural rules*).

Arbitrator's powers

14. What procedural powers does the arbitrator have? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

Based on the parties' agreement or its own discretion, the arbitral tribunal can order either party to disclose documents or order the attendance of factual and expert witnesses. However, discovery in the common law sense (that is, a "fishing expedition"), is not recognised and, therefore, Hungarian arbitrators are reluctant to order full discovery. They may simply require a party to present a certain document. In theory, these orders can be enforced with the state courts' assistance, if they are not complied with voluntarily.

If a party does not comply with the tribunal's orders and requests, this may result in a negative inference against it when the tribunal evaluates evidence and facts.

EVIDENCE

15. What documents must the parties disclose to the other parties and/or the arbitrator(s)? How, in practice, does the scope of disclosure compare with disclosure in litigation? Can the parties determine the rules on disclosure?

Scope of disclosure

Requests by the evidencing party about the production of certain specified documents by the other party can lead to an order to that effect. However, if such orders are not complied with, they are rarely enforced. Tribunals tend to see it as an unsuccessful attempt to prove the related complaint.

Discovery, as understood in common law jurisdictions, is not recognised either in Hungarian litigation or arbitration. In litigation, if disclosure is ordered on a party's request, the other party must disclose only the documents that the other party is entitled to possess, or learn the content of, based on the substantive rules of civil law.

In practice, it is extremely easy to not present a document by referring to a business secret that must be kept confidential. The CPA has specific provisions regulating this.

Parties' choice

In arbitration, the parties can provide for a broader disclosure. However, in practice, except for specific cases (for example, acknowledgment of debt), the claimant has the burden of proof and can generally not secure full disclosure. Unlike the CPA, the Arbitration Act does not regulate disclosure of business secrets.

CONFIDENTIALITY

16. Is arbitration confidential?

The arbitration procedure and all related information are private and confidential. Arbitrators must keep confidential all information they receive when discharging their obligations during and after the termination of the proceedings. Both arbitrators in ad hoc tribunals and those elected to a permanent arbitration tribunal must submit a written statement on keeping all information confidential.

If confidentiality is a high priority for the parties, it is advisable to include a confidentiality clause in the arbitration agreement.

COURTS AND ARBITRATION

17. Will the local courts intervene to assist arbitration proceedings?

State courts can assist with the following:

- Appointment or disqualification of arbitrators (on the parties' request).
- Granting during the ongoing arbitration (on the parties' request):
  - interim measures and injunctions;
  - protective measures, if the requesting party can produce an authentic instrument or private document of full probative force to prove the creation, quantity and expiry of the claim. (This is usually requested if a party fears that the other party may not be able to pay or would transfer its assets to stop foreclosure and enforcement. The court can request a party to make a deposit of the litigated amount.)
- Taking evidence. On the arbitral tribunal's request, local courts can apply coercive measures necessary to present evidence (for example, securing witness attendance at hearings or preserving evidence).

However, the courts are not frequently requested to exercise these powers.

18. What is the risk of a local court intervening to frustrate the arbitration? Can a party delay proceedings by frequent court applications?

Risk of court intervention

Local courts' competence in relation to arbitration is limited to a small number of issues (*see Question 17*).

Delaying proceedings

Although local courts' competence is limited to a small number of issues (*see above, Risk of court intervention*) there is a small risk of a party using a court application to delay arbitral proceedings. In practice, every attempt to file a lawsuit with a civil court can postpone the closing of the arbitration by two to five months. Apart from this delay, filing a lawsuit can cause further procedural concerns and complications. For example, if an appeal is filed against a civil court's judgment, the parties must wait at least one year for the appellate court's decision.

19. What remedies are available where a party starts court proceedings in breach of an arbitration agreement, or initiates arbitration in breach of a valid jurisdiction clause?

Court proceedings in breach of an arbitration agreement

If court proceedings are started in breach of an arbitration agreement, the state court must declare that it is not competent to hear the case and not proceed. Further, this breach may result in a claim for damages, if starting the court proceedings is a wilful misconduct.

Arbitration in breach of a valid jurisdiction clause

If a party starts arbitration in breach of a valid jurisdiction clause, the arbitral tribunal must establish its lack of jurisdiction to hear the dispute. If the tribunal confirms its jurisdiction in breach of a valid jurisdiction clause, the parties can challenge this decision by approaching the competent civil court to rule on the jurisdiction of the tribunal within 30 days.

20. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

Under Hungarian law, an injunction to restrain overseas proceedings in breach of an arbitration agreement is not available. The European Court of Justice (whose decisions are binding rulings under Hungarian law) has also ruled that an anti-suit injunction is not compatible with the Brussels Regulation (*Allianz SpA (formerly Riunione Adriatica Di Sicurta SpA) and Others v West Tankers Inc (C-185/07)*).

21. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

The concept of kompetenz-kompetenz is recognised. An arbitral tribunal can, on its own initiative, make a decision concerning its jurisdiction and competence (*Arbitration Act*). If the arbitral tribunal establishes its jurisdiction, the parties can challenge this decision. In addition, either party can challenge the arbitral tribunal's jurisdiction and/or competence at any time during the proceedings.

An arbitral tribunal can deal with any objection in relation to its jurisdiction. Any tribunal's award on this issue can be challenged in a state court within 30 days. A petition for review of the court's decision can be submitted to the Supreme Court. This procedure does not suspend or delay the arbitration, which can run simultaneously with pending litigation relating to the tribunal's competence.

It is standard practice of the tribunals to call on the parties, at the first hearing, to state both:

- Whether or not they accept the tribunal's jurisdiction.
- If they have any objection to the tribunal's members.

This helps to avoid subsequent challenges of the tribunal's jurisdiction.

Under Hungarian law, there is a difference between the notions of jurisdiction (*illetékesség*) and competence (*hatáskör*). Competence determines the level of the courts (for example, local or county courts) that can hear a specific legal dispute, whereas jurisdiction determines which court (geographically) from the same-level courts can hear the dispute. However, if the parties provide for the exclusive jurisdiction (*illetékesség*) of the arbitral tribunal, the tribunal usually accepts this provision to grant it both exclusive jurisdiction and competence.

REMEDIES

22. What interim remedies are available from the tribunal?

Security

Unless otherwise agreed by the parties, the arbitral tribunal can, on request, order interim measures, if the tribunal considers it necessary in relation to the dispute. This can include an appropriate security, usually to secure the amount in dispute and/or the costs of the proceedings (for example the cost of tribunal-appointed experts).

A decision in relation to interim measures is valid until either:

- The new tribunal's decision is adopted to replace it.
- An award is made.

However, these interim measures are only enforceable by courts. In practice, they are very rare in Hungary.

Other interim measures

The arbitral tribunal can order interim measures unless the parties have agreed otherwise (*see above, Security*). In practice however, interim measures are not often ordered and if ordered may be subject to appropriate security.

23. What final remedies are available from the tribunal?

The tribunal can grant the same remedies as courts in commercial matters, including:

- Specific performance.
- Damages.
- Injunctions.
- Declarations.
- Costs and interest.
- All of the above at the same time.

Awards are enforced by the civil courts.

Country Q&A

MAIN ARBITRATION ORGANISATIONS

Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (ACHCCI)

Main activities. This is a national and international centre for resolving commercial disputes, established more than 60 years ago.
W *www.mkik.hu*

Arbitration Court of the Money and Capital Market (AMCM)

Main activities. The AMCM has jurisdiction in business disputes, particularly disputes:

- Relating to:
  - offering securities, investment and commodity exchange services;
  - activities auxiliary to investment services falling in the scope of the Act on Capital Markets;
  - shareholder rights and exchange transactions.
- Between investors over investment instruments.

The broader competence of AMCM (over any business matters) has been accepted by the Supreme Court of Hungary.
W *www.valasztottbirosag.hu*

Permanent Arbitration Court for Sport

Main activities. This body specialises in resolving sport disputes by arbitration in Hungary.
W *www.nssz.hu*

Arbitration Court, Agricultural Chamber (AAC)

Main activities. AAC provides a forum for arbitrating disputes, particularly between persons engaged in agricultural activities.
W *www.agrarkamara.hu*

Arbitration Court of Electronic Communications (ACEC)

Main activities. The ACEC is entitled by law to resolve disputes between service providers engaged in electronic communications.
W *www.nhh.hu*

Arbitration Court of Energy (ACE)

Main activities. The ACE, established in 2009, is entrusted by law to resolve disputes between companies licensed under the Electricity Act.
W *www.gov.eh.hu*

APPEALS

24. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties effectively exclude any rights of appeal?

Rights of appeal/challenge

Arbitral awards are final and not appealable. However, a party to the arbitration and any third person affected by the award can file an annulment action with a court within 60 days of the date of delivery of the award.

Grounds and procedure

Grounds for the automatic annulment are as follows:

- Any of the parties to the arbitration agreement lacked legal capacity.
- The arbitration agreement is invalid under the law the parties have chosen, or in the absence of this choice, under Hungarian law.
- A party was not given proper notice of the arbitrator's appointment or of the arbitration proceedings, or was unable to present his case due to other reasons.
- The award was made in a legal dispute to which the arbitration clause did not apply or that was not covered by the arbitration agreement. If the award contains decisions on matters beyond the scope of the arbitration agreement, and decisions on matters validly submitted to arbitration can be separated from them, only the part of the award containing decisions not validly submitted to arbitration can be annulled.
- The composition of the arbitral tribunal or the arbitration procedure did not comply with the arbitration agreement, unless the agreement was in conflict with any provisions of the Arbitration Act from which the parties cannot derogate, or the agreement was not in accordance with the Arbitration Act.
- The matter of the dispute cannot be subject to arbitration under Hungarian law (*see Question 4*).
- The award violates Hungarian public policy.

The following may invalidate the award during the annulment proceedings:

- Breach of the arbitral institution's rules.
- Breach of the parties' agreement (including the procedural rules), unless the agreement conflicts with any mandatory provision of the Arbitration Act.
- The tribunal proceeded in a case where there was no arbitration clause.

In addition, an arbitral award must respect the case law of the Hungarian civil courts, including but not limited to the publicised judgments of the Supreme Court. If the arbitral award contradicts the case law, this can be a ground for annulment, if the contradiction also amounts to a breach of the Hungarian public policy.

Excluding rights of appeal

Under Hungarian law the statutory right to challenge an award, on the limited grounds set out in the law, cannot be excluded. Where proceedings for the annulment of an award are brought, it is debatable whether Hungarian courts, would give effect to the choice of a foreign law under which such an exclusion is possible.

COSTS

25. What legal fee structures can be used? Are fees fixed by law?

The arbitration costs and legal fees are not regulated by law, and are a matter of custom. Any fee structure can be used, including a reasonable contingency fee. Generally, the basis of the legal fee is around 5% of the litigated amount, subject to adjustments based on the value or complexity of the case. Generally, it is a matter of the arbitrators' discretion and any applicable procedural rules.

In a widely cited case (*BH 2003.127.*) the arbitration tribunal set the lawyer's fees at less than 1% of the litigated amount, which amounted to nearly US$1 million (as at 1 March 2012, US$1 was about EUR0.7). The Supreme Court considered that this fee was unreasonably high and that it violated public policy. Therefore, it annulled this part of the award. Many have criticised this Supreme Court judgment as there is no right to annul awards on the grounds of legal fees and the arbitration tribunal respected the 5% limit applied by civil courts.

26. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost allocation

The losing party typically bears the:

- Arbitration costs, including the registration fee.
- Fees of the arbitration (including the arbitrators' fees).
- Fees and costs of the legal representatives.

If it is difficult to decide who won, or both parties were equally successful and unsuccessful, each party bears its own costs and legal fees. The arbitral tribunal can also decide that a party must pay surplus costs because of delaying techniques, or unreasonable or bad faith acts.

Cost calculation

These issues are not regulated, and the arbitrators have absolute discretion.

Factors considered

The arbitrators have absolute discretion. The tribunal can consider such factors as the amount and quality of the lawyers' work, and the professional quality of the applications.

ENFORCEMENT OF AN AWARD

27. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

The enforcement of arbitral awards is subject to substantive rules. An arbitral award has the same effect as a final court judgment (*Arbitration Act*). Therefore, it is final and enforceable. However, a court will refuse to execute an arbitral award if, in its judgement, the matter in dispute cannot be subject to arbitration under Hungarian law (*see Question 4*).

The enforcement procedure for domestic arbitral awards is regulated by the Arbitration Act and the Act on Judicial Execution. A party that makes reference to an arbitral award or applies for its enforcement must supply the original award or a certified copy of it. An execution sheet is then filled out by the court based on the arbitral award, and is sent to the judicial executor (bailiff) (*Act on Judicial Execution*). Following that, an award is executed by the civil court under the general rules of the Act on Judicial Execution.

28. To what extent is an arbitration award made in your jurisdiction enforceable in other jurisdictions? Is your jurisdiction party to international treaties relating to this issue such as the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Hungary acceded to the 1958 New York Convention in 1962 and to the European Convention on International Commercial Arbitration 1961 (Geneva Convention) in 1964. Under the New York Convention, arbitral awards made in Hungary are enforceable in other member states of the New York Convention, save for the grounds listed in Article V of the New York Convention. In certain jurisdictions local rules might further limit the enforceability of awards made in Hungary.

29. To what extent is a foreign arbitration award enforceable in your jurisdiction?

When joining the New York Convention, Hungary made the reservation that Hungary will only recognise and enforce awards made in countries that are signatories to the New York Convention relating to a dispute arising from an activity that qualifies under Hungarian law as a business activity.

An out-dated ministerial decree gives a very narrow definition to the term "duly certified copy" (of the original arbitral award) in Article IV (1)(b) of the New York Convention that often causes difficulties in the recognition of proceedings.

The party applying for recognition and enforcement must:

- Send the following to the competent local Hungarian court:
  - an application for recognition and enforcement, together with official translations of all foreign language documents into Hungarian; and
  - the original or a certified copy of the award and arbitration agreement.
- Prove that the statement of claim and the award were duly served on the other party.

On receipt of the application, the local court must issue a recognition certificate, provided the award complies with the Hungarian procedural rules, that is:

- The award is construed as final and non-appealable by the law of the state in which it was made.
- The award contains an obligation (ruling against the judgment debtor).
- The award is enforceable or is subject to preliminary enforcement and the deadline of performance has expired.

In practice, the courts tend to notify the debtor about the application, to offer it an opportunity to raise an objection under the New York Convention. The recognition takes the form of a court order and can be appealed. The second instance decision is then final and enforceable.

A recognised foreign award can be enforced as a local judgment (*see Question 27*). Methods of enforcement vary, based on the relief granted and the type of the debtor's assets.

30. How long do enforcement proceedings in the local court take? Is there any expedited procedure?

Recognition proceedings take two to three months without delays to the process. In extreme cases, recognition may require over 18 months. After recognition, the duration of the enforcement depends on the method of enforcement and the debtor's behaviour during the enforcement procedure.

No expedited procedure is available for the enforcement of awards.

REFORM

31. Is the legal framework in relation to the above likely to change in the next decade?

The legal framework in relation to arbitration is unlikely to change in the next decade.

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