



# Arbitration

in 57 jurisdictions worldwide

Contributing editors: Gerhard Wegen and Stephan Wilske

# 2012



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# Hungary

**Chrysta Bán\***

Bán, S Szabó & Partners

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## Laws and institutions

### 1 Multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Hungary is a contracting state to the New York Convention, which has been in force in Hungary since 3 June 1962. Hungary applies the Convention only to recognition and enforcement of awards made in the territory of another contracting state and only to disputes that qualify as commercial relationships, whether contractual or not, under the national law.

Hungary is also a party to the following multilateral conventions:

- the European Convention on International Commercial Arbitration of 1961;
- the International Convention on the Settlement of Investment Disputes between States and Nationals of other States of 1965;
- Convention on Conciliation and Arbitration within the OSCE of 1992; and
- the Energy Charter Treaty of 1994.

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### 2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

As of 1 June 2011, Hungary has signed 58 bilateral investment treaties (BITs).

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### 3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary source of law relating arbitral proceedings is Act LXXI of 1994 on Arbitration (the Arbitration Act). The Hungarian and English texts of the Arbitration Act can be found at [www.mkik.hu/index.php?id=53](http://www.mkik.hu/index.php?id=53). The Arbitration Act should be applied for all domestic and international arbitration proceedings before an ad hoc arbitration or arbitral tribunal seated in Hungary. Recognition and enforcement of foreign judgments and arbitral awards are also regulated by the Law Decree No. 13 of 1979 on International Private Law (the Conflicts Code), and the rules of the New York Convention. The law on enforcement of arbitration awards is the same as enforcement for final and binding court judgments.

Based on the Arbitration Act, an arbitration proceeding qualifies as international if:

- the registered offices or places of business of the parties are in different states; or
- the place of the arbitration determined by the parties in the arbitration agreement, or the place where a substantial part of the obligation of the parties has to be performed, or the subject matter of the dispute is situated outside the state where the registered office (place of business) of the parties is.

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### 4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The Arbitration Act is based on the UNCITRAL Model Law, with some minor differences. For example:

- a case may only be subject to arbitration if the parties may dispose freely over the subject matter of the proceedings;
- the number of the chosen arbitrators can only be odd;
- the presiding arbitrator has a privileged role as he or she is entitled to decide on the merit of the case in lack of majority opinion;
- arbitral proceedings are confidential unless the parties agreed otherwise; and
- in international cases the arbitration court of the Hungarian Chamber of Commerce and Industry (the HCCI), as a standing arbitration tribunal, shall function exclusively in Hungary, unless law stipulates another standing arbitration court as exclusive jurisdiction.

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### 5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

There are very few mandatory provisions under Hungarian law; they are mostly related to the minimum standards of due process and equal treatment of the parties, the right to request interim measures and procedural assistance from the regular courts and rules on denial of recognition and enforcement of the awards. Certain domestic matters, if arbitrated, have to be delegated to different standing arbitral tribunals organised in Hungary.

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### 6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Pursuant to section 49 of the Arbitration Act, in case of international arbitration proceedings the arbitral tribunal should decide the dispute in accordance with the substantive law that has been chosen by the parties for the dispute. If no such substantive law has been

chosen by the parties, the applicable law shall be determined by the arbitral tribunal. According to the HCCI Rules, failing stipulation by the parties, the arbitral tribunal shall apply the law that it considers to be applicable according to international treaties, or in lack of such treaty, according to the rules of the Hungarian private international law (conflicts rules). The Conflicts Code renders to apply, when otherwise applicable, Regulation (EC) 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations. When such Regulation does not apply the conflicts rules of sections 25 and 26 of the Conflicts Code are applicable. In the event the law cannot be identified under such rules, the law that is in the closest relationship with the case shall apply, taking into consideration the most characteristic elements of the case.

Generally, an arbitration tribunal shall adopt its decision in accordance with the terms of the contract as well as by taking into account the trade practices applicable to the transaction. An arbitration panel may render its decision on the basis of equity (*ex aequo et bono*) or as an *amiable compositeur* only, if it has been expressly authorised to do so by the parties.

## 7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

### Arbitration Court attached to the Hungarian Chamber of Commerce and Industry

Kossuth Lajos tér 6-8  
1055 Budapest  
Hungary  
Tel: +36 1 474 5100  
Fax: +36 1 474 5105  
mkik@mkik.hu  
www.mkik.hu

This standing arbitral tribunal may be selected for any domestic or foreign arbitration proceedings. The list of arbitrators is only indicative, the parties may elect persons not on the list as arbitrators.

### Money and Capital Markets Arbitration Court

Markó utca 25  
1055 Budapest  
Hungary  
Tel/Fax: +36 1 354 6213  
valasztottbirosag@t-online.hu  
www.valasztottbirosag.hu

This steady arbitral tribunal may primarily be – or in certain circumstances, if arbitration is desired by the parties, has to be – elected in connection with money and capital market issues and related agreements. The arbitrator has to be selected from among the persons included on the list of arbitrators issued by the Court.

### Arbitration Tribunal for Communications

Ostrom utca 23-25  
1015 Budapest  
Tel: +36 1 457 7909  
Fax: +36 1 457 7452  
www.nhh.hu

The telecommunications tribunal may be – or in certain cases has to be – elected if arbitration proceedings is elected by the parties. The arbitrator has to be selected from among the persons included on the list of arbitrators issued by the Court.

### Energy Arbitration Court

Köztársaság tér 7  
1081 Budapest  
Hungary  
Tel: +36 1 459 7769  
titkarsag@aevb.hu  
www.aevb.hu

Legal disputes that may be delegated to this arbitral tribunal are where at least one of the parties is a natural or legal person professionally engaged in business activities and possesses a licence issued by the Hungarian Energy Office or a similar foreign authority, and the dispute is related to such of its activities. Arbitrators may be selected from outside of the persons recommended on the list of arbitrators, provided that the person has the legal, economic and energy related skills required to arbitrate the given dispute.

## Arbitration agreement

### 8 Arbitrability

Are there any types of disputes that are not arbitrable?

Pursuant to section 3 of the Arbitration Act, arbitration proceedings may take place, if the following conditions are met:

- at least one of the parties is a person dealing professionally with economic activity, and the legal dispute is in connection with this activity;
- the parties may dispose freely of the subject matter of the proceedings; and
- the arbitration was stipulated in an arbitration agreement.

However, there are some disputes that are not arbitrable; these mostly include questions involving family law and civil status matters, such as matrimonial proceedings, other actions for the establishment of paternity and origin termination of parental custody, or placement under guardianship or conservatorship. Furthermore, administrative actions, challenging administrative decisions, actions for media remedy, liquidation proceedings, actions relating to employment and payment order procedures are not arbitrable.

In competition law matters, decisions of the antitrust authority on prohibition of unfair competition, and prohibition of abuse of dominant position are not arbitrable. Private enforcement and related damage claims deriving from such acts are arbitrable. Theoretically, disputes between the parties relating to IP rights and infringement thereof may be conferred to arbitration if the parties have free disposal over the subject matter of the proceeding. Intra-company disputes are arbitrable.

As of 1 January 2012, disputes deriving from transactions affecting Hungarian national property are not arbitrable and can be handled exclusively by Hungarian regular courts.

### 9 Requirements

What formal and other requirements exist for an arbitration agreement?

Requirements for an enforceable arbitration agreement are as follows:

- the arbitration agreement has to be in a written form. Exchange of letters, telegrams, through telex or any other means of exchanging messages between the parties that is capable of producing a permanent record of the messages are considered as a written form;
- an arbitration agreement can be concluded either as part of another contract or as a separate agreement;

- moreover, if one of the parties states in his or her statement of claim, and the other party does not deny it in his or her defence that an arbitration agreement was in fact concluded between them, it should be regarded as if an arbitration agreement has been concluded between them validly;
- reference to a document containing an arbitration clause in a contract concluded in writing qualifies as an arbitration agreement, provided that a specific acceptance of the arbitration clause is made; and
- failure to raise an objection against the jurisdiction of the arbitral tribunal cures any problem deriving from lack of formalities.

#### 10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Typically the avoidance of a contract should not affect the enforceability of the arbitration clause. Avoidance of the agreement itself does not deprive the arbitral tribunal from deciding on its jurisdiction. Within this the tribunal can decide about the validity of the arbitration agreement as well (see further discussion under question 21). Rescission or other unilateral termination rights would not make the arbitration clause unenforceable. In the event of mutual termination of the parties, their termination agreement would be decisive to evaluate whether the termination also affects the arbitration clause of the terminated agreement.

Legal incapacity makes the arbitration agreement unenforceable if such capacity problem existed at the time of entering into the arbitration agreement. Losing legal capacity later would not affect the validity of the arbitral agreement.

The death of a party typically would not make the arbitration clause unenforceable, the legal successor of the contractual position of the deceased party would be bound by the arbitration commitment as well.

Following the commencement of a liquidation proceedings any claim against the company under liquidation can be initiated exclusively at the liquidation court. On the other hand, the liquidation proceedings does not affect the jurisdiction of the arbitral or other courts where a proceedings is already in progress.

#### 11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

Third parties may be bound by the arbitration agreement of others in the event of assignment of the entire contract and legal succession between companies or succession of a contractual position due to the death of a person.

In case of insolvency, the bankruptcy trustee is bound by the contracts previously concluded by the company in the event the arbitration proceedings has already been pending, or in the event the bankruptcy trustee initiates a claim as a plaintiff under a contract that has an arbitration clause.

#### 12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The jurisdiction of the arbitration court cannot be extended to third parties, unless the third party accepts the jurisdiction of the arbitration court and each party agrees to the joinder. Generally, third parties who have an interest in the outcome of the arbitration may join the proceedings in order to support the position of one of the parties, provided that all original parties to the arbitration agreement, as

well as the arbitration court approve such joinder. The rules of the Money and Capital Markets Arbitration Court exclude the possibility of joinders.

#### 13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The group of companies doctrine is not recognised in Hungary, consequently the jurisdiction of the arbitration cannot be extended to non-signatory parent and subsidiary companies.

#### 14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

Multiparty arbitration agreements are not excluded by the Arbitration Act or the relevant rules of the different standing arbitral tribunals. It is advisable that the parties settle in their arbitration clause the rules of election of the arbitrators in the event there are more than two parties. According to the HCCI Rules, in the event there are several claimants or defendants, the group of claimants and the group of defendants, respectively, may jointly designate one arbitrator each.

#### Constitution of arbitral tribunal

##### 15 Appointment of arbitrators

Are there any restrictions as to who may act as an arbitrator?

The following persons may not act as arbitrators:

- persons under 24 years of age;
- persons barred from public affairs by a final court judgment;
- persons placed under guardianship or conservatorship by final court decision;
- persons sentenced to imprisonment by final court verdict, until exonerated from the detrimental consequences of having a criminal record; and
- active judges.

Generally the parties may freely select arbitrators, they do not need to chose from the list of arbitrators, the latter serves only as information and recommendation. At the arbitration tribunal of communications and the Money and Capital Markets Arbitration Court the parties may select exclusively from the list of the respective arbitration courts.

##### 16 Appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The general rule is contained in the Arbitration Act. According to this, in connection with arbitration tribunals containing three members, each party has the right to appoint one arbitrator, and the two arbitrators thus appointed shall designate the third arbitrator. When either party fails to appoint its own arbitrator within 30 days from the date of receipt of the other party's request to do so, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the arbitrator shall be appointed, upon the request of any of the parties – unless the parties authorised a third independent person or authority for this function, or if such independent authority fails to act in due time – by the court of law with jurisdiction under the Arbitration Act.

In the case of HCCI arbitration, the missing arbitrator is appointed by the chairman of the Arbitration Court. Similar rules apply in case of other standing arbitration tribunals.

#### 17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

The appointment of an arbitrator may terminate only upon his or her resignation, by a successful challenge procedure or by the mutual agreement of the parties in those cases where the Arbitration Act makes it possible.

A challenge may be exercised for the disqualification of an arbitrator only under those circumstances that are likely to give rise to justifiable doubts as to his or her lack of prejudice, independence or impartiality, or if he or she does not have the qualification agreed upon by the parties. The parties may agree in the procedure of challenging an arbitrator. In the absence of such agreement, the party who intends to challenge an arbitrator has to send a statement in writing to the arbitration tribunal containing the reason for the challenge within 15 days after being informed about the composition of the arbitration tribunal, or learning information about the circumstances that have given reason for the challenge. If the challenged arbitrator refuses to resign or the other party does not agree to the challenge, then the arbitration tribunal will decide about the challenge. In the event the arbitration tribunal rejects the challenge, the challenging party may, within 30 days, request the court of law to adjudge the challenge. The challenge proceedings at the court of law does not deprive the arbitration tribunal to continue its proceedings and pass a decision, and does not deprive the challenged arbitrator to participate in the proceedings and in the decision-making process.

If an arbitrator fails to comply with the statutory conditions to be an arbitrator due to a reason arising after the acceptance of the appointment, or in the event the arbitrator de facto becomes unable to perform his or her functions, furthermore in the event the arbitrator fails to act in due time for any reason, he or she may resign his or her office or the parties may agree on the termination of his or her appointment.

In HCCI arbitration the tribunal seeks guidance from the relevant IBA Guidelines.

#### 18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

Hungarian law does not identify specifically the type of legal relationship between an arbitrator and the party who nominated the arbitrator. Nevertheless, it derives from the Arbitration Act and the rules of other arbitration courts that arbitrators are independent and impartial and are not considered and cannot act as representatives of the parties. An arbitrator cannot accept any instructions from the party nominating him or her (or from any third person) in his or her official capacity.

The amount of the fees is determined by the rules of each arbitration court.

#### 19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

There are no special statutory regulations on this issue. The HCCI Rules render that the arbitrators, the HCCI Arbitration Court and its employees shall not be liable to any person, for any act or omission in connection with the arbitration.

#### Jurisdiction

#### 20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

The court, where an action is filed in connection with a matter that is subject to an arbitration agreement, has to reject the statement of claim without issuing any summons or has to dismiss the action upon the request of either party, unless it declares that the arbitration agreement is null and void, inoperative or inadmissible. The respondent has to submit its dismissal request, at the latest, upon filing its counterclaim on the merits of the case. The submission of the request for dismissal and the counterclaim on the merits does not impede the opening or the continuation of the arbitration proceedings and shall not impede the arbitration tribunal from adoption of its award or decision while the issue is pending at the court.

In the event the court rejects the jurisdictional challenge and issues a decision on its jurisdiction or incorporates such decision into its judgment on the merits, the respondent may challenge such decision in the same manner and at each level of appeal and extraordinary judicial review process available for challenging court decisions under Hungarian law.

#### 21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

Primarily, the arbitration tribunal makes its own decision concerning its jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement. Any objection with respect to the jurisdiction of the arbitral tribunal has to be made at the time of submission of the statement of defence. A plea claiming that the arbitral tribunal exceeded its jurisdiction has to be lodged without delay when the alleged excess of the jurisdiction was made. The arbitral tribunal may admit a later plea as well, in the event it finds the delay justified.

The arbitral tribunal may rule on the jurisdictional objection either when the objection was made, or in its decision on the merits of the case. In the event the arbitral tribunal rules that it has jurisdiction, either party may request, within 30 days from the date of receiving such ruling, the court of law to adjudge the jurisdiction of the arbitration tribunal. The arbitral tribunal may continue the proceedings and may adopt its award or other decision while the court proceeding regarding the jurisdiction issue is pending. The final and binding decision of the regular courts will ultimately settle the jurisdictional dispute.

As a last resort, either party, or any person who is affected by the award may file for action at regular court of law to have the arbitral award set aside if the arbitration agreement was not valid under the law to which the parties subjected the arbitration agreement, or in lack of such indication, under Hungarian law; or the subject matter of the dispute is not capable of settlement by arbitration, or the arbitration tribunal exceeded the scope of the arbitration agreement.

Generally parties are precluded from raising jurisdictional objections at a later stage of the proceedings unless they did so within the time frames specified above.

### Arbitral proceedings

#### 22 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

Failing agreement of the parties, the place of arbitration should be determined by the arbitration tribunal in due consideration of the circumstances of the case. In case of a standing arbitration tribunal, the place of arbitration should be the place registered in the charter documents as its seat. In addition, the arbitration tribunal may – unless otherwise agreed by the parties – convene at any place for consultation among its members, for hearing the parties, witnesses or experts, as well as for the inspection of physical evidence and documents. According to the HCCI Rules the place of the hearings is in Budapest, at the courtrooms of the HCCI Arbitration Court.

Failing agreement of the parties the Hungarian language should be used in the domestic proceedings, while in international proceedings the arbitral tribunal will define the applicable language and may order the translation of any evidence to the language of the proceedings.

#### 23 Commencement of arbitration

How are arbitral proceedings initiated?

Unless otherwise agreed by the parties, in case of an ad hoc arbitration the claimant can initiate arbitral proceedings by sending a notice of arbitration to the respondent. The proceedings of the tribunal shall open on the day on which the other party receives the notice of arbitration. In case of a standing arbitration tribunal, proceedings can be initiated by sending a statement of claim to the arbitration tribunal.

In accordance with the HCCI Rules all documents shall be submitted in a number of copies sufficient to provide one copy for each arbitrator, for each party and the Secretariat. As far as possible, the documents shall also be submitted in electronic format. In case of HCCI arbitration the statement of claim has to indicate:

- the exact names and addresses of the parties;
- the data establishing the jurisdiction of the HCCI Arbitration Court;
- the claim of the claimant;
- the legal grounds of the claim, the facts and reference to evidence supporting it;
- the amount in dispute;
- the name of the arbitrator appointed or a request for the appointment of an arbitrator by the HCCI Arbitration Court;
- a list of the documents attached to the statement of claim; and
- the proper signature of the claimant or the signature of his or her counsel with certified authorisation.

The parties have to send all documents submitted to the HCCI Arbitration Court simultaneously to the other parties as well, proving the delivery (eg, with notice of receipt). The claimant has to transfer the registration fee and submit the bank certificate thereof to the Secretariat of the HCCI Arbitration Court. After submitting the statement of claim, the claimant shall also transfer the advance payment as communicated by the Secretariat to the bank account of the HCCI Arbitration Court. The effectuation of the aforementioned payments is a precondition to the initiation of the proceedings.

#### 24 Hearing

Is a hearing required and what rules apply?

Subject to the rules of the Arbitration Act the parties may freely agree upon the rules of procedure, or they may stipulate the use of the rules of procedure of a standing arbitration tribunal. In lack of such agreement the arbitration tribunal may determine the rules of procedure at its own discretion within the framework of the Arbitration Act.

Unless otherwise agreed by the parties, the arbitration tribunal holds a hearing and gives the parties the opportunity to submit their petitions. The arbitration tribunal hears the witnesses and experts present. The parties shall be given sufficient advance notice of any hearing and of any action of the arbitration tribunal undertaken for the purpose of inspection of physical evidence or documents.

All statements submitted to the arbitration tribunal by one party shall be communicated to the other party. Furthermore, any expert report or evidentiary document on which the arbitration tribunal may rely in making its decision shall be communicated to the parties.

Minutes shall be prepared of the arbitration proceedings, and one copy thereof shall be served upon each of the parties.

Unless otherwise agreed by the parties, arbitration proceedings are not public.

#### 25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

The Arbitration Act stipulates that the parties may submit, together with their statements and pleadings, all other documents which they consider relevant for the case, or may refer to any document or other evidence that they plan to submit. The arbitration tribunal may order that any written evidence should be translated in the language of the procedure.

The arbitration tribunal shall hear the witnesses and experts present voluntarily, however, it may not impose a fine or apply any means of coercion. Upon request of the arbitration tribunal the local court shall provide legal assistance in the form of conducting the procedure for the presentation of evidence, or by application of coercive measures (see question 26 below).

Unless otherwise agreed by the parties, the arbitration tribunal may appoint experts if any special expertise is required for the establishment or judgment of any relevant fact or other circumstance that the arbitration tribunal is lacking. In the frame of this the arbitration tribunal may appoint one or more experts to provide an opinion on issues specified by the tribunal, and may order either party to provide information to the expert or access to any relevant documents or objects to the expert for inspection.

According to the HCCI Rules each party must prove the circumstances on which he or she bases a claim or a defence. The arbitral tribunal may also instruct a party to submit further evidence, order the presentation of expert opinion, obtain evidence from third persons and order the hearing of witnesses. The parties shall submit the original written evidence or a copy thereof, in such number of copies that enables each party to be provided with one copy and the HCCI Arbitration Court with four copies. If the party fails to submit the required evidence, the arbitral tribunal may make its decision on the basis of the available information and evidence.

The manner of taking evidence is to be determined by the arbitral tribunal and the arbitrators evaluate the evidence according to their inner conviction.

**26 Court involvement**

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

The general rule is that in arbitration proceedings the court may intervene or proceed only if it is specifically allowed by the Arbitration Act. The Arbitration Act stipulates that it is not incompatible with the arbitration proceedings, if either party requests a court for provisional measures and the court grants such measures even before or during the proceedings. Moreover, the court may order protective measures in a case pending before an arbitration tribunal. As already mentioned in question 25 above, if the presentation of evidence before the tribunal is likely to entail considerable difficulties or unreasonable extra costs, upon the request of the arbitration tribunal the local court shall provide legal assistance in the form of conducting the procedure for the presentation of evidence, or will apply the coercive measures if necessary in the procedure for the presentation of evidence if conducted by the arbitration court.

The arbitration tribunal shall approach the local court on whose territory the presentation of evidence may be conducted the most efficiently. In Budapest, the Pest Central District Court has jurisdiction in such cases.

Following the issuance of the arbitral award the court may suspend the enforcement of the award or may overturn (set aside) the award upon the request of a party under certain circumstances (see question 40).

**27 Confidentiality**

Is confidentiality ensured?

According to the Arbitration Act the hearings are not public and the arbitrators are fully committed to confidentiality with regard to all information they have received when discharging their responsibilities, including after the termination of the proceedings.

According to the HCCI Rules the confidential nature of the proceedings shall be respected by every person who is involved in it in whatever capacity. Information on the proceedings to third persons can only be given upon agreement of the parties and the conciliator-mediator. The HCCI hearings are not public: besides the presiding arbitrator, the members of the arbitral tribunal, the parties, the recorder, the interpreter, the experts, the witnesses and the president of the HCCI Arbitration Court, only such persons may be present at the hearings whose presence has been consented to by the arbitral tribunal and all parties. Furthermore, the HCCI Arbitration Court may not give any information on pending proceedings and on its decisions, or the contents thereof. The decision of the tribunal may be published in legal journals or special publications only upon the permission of the president of the Arbitration Court and only in such a way that the interests of the parties will not suffer any harm. Even then, the names of the parties, their countries of residence, the nature and counter-value of the subject matter can only be included in a publication with the express consent of the parties. By stipulation of the HCCI Arbitration Court, the parties undertake that they shall also comply with these rules on their parts and shall cause others to do so.

**Interim measures****28 Interim measures by the courts**

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Either party may submit a request before or during the arbitration proceedings to an ordinary court requesting the imposition of interim or provisional measures, and the court may grant such measures. The court may order protective measures in a case pending before an arbitri-

tration tribunal, if the party requesting such measure can produce an authentic instrument or a private document with full probative force in proof of the inception, quantity, and expiry of his or her claim. The party filing for such intervention has to inform the arbitral tribunal on his or her request as well as on the decision of the court.

Coercive force cannot be applied by the arbitral tribunal, only by the ordinary court.

**29 Interim measures by the arbitral tribunal**

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

The general rule is that the arbitral tribunal may, upon request, order either party to implement provisional measures to the extent the tribunal deems it necessary, and may require either party to provide appropriate security in connection with such measure. In the event the party does not obey voluntarily with such measure, only regular courts can order enforcement of the measure. This would take considerable time and would open the possibility of different appeals available for the obligor within the regular court system.

**Awards****30 Decisions by the arbitral tribunal**

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Unless otherwise agreed by the parties, decisions on the merit of the case shall be passed by a majority of votes of the arbitrators. In the absence of majority decision the presiding arbitrator shall have the decisive vote. Procedural questions shall be decided by the presiding arbitrator if so authorised by the parties or by all other arbitrators.

**31 Dissenting opinions**

How does your domestic arbitration law deal with dissenting opinions?

If the dissenting arbitrator does not sign the award, this fact has to be indicated on the award. The dissenting arbitrator may incorporate into writing his or her opinion taking into account the secrecy rules as well.

**32 Form and content requirements**

What form and content requirements exist for an award?

The arbitral award and the ruling for the termination of the proceedings has to be made in writing and has to contain (unless it is an award incorporating the settlement agreement of the parties) the reasons of the decision. It also has to include the date of the award, the place of the arbitration and the costs of the proceedings, including the fee of the arbitrators and the manner of satisfaction. The award has to be signed by the arbitrators and the standing arbitration. In case of a multi-member tribunal, the signatures of the majority of the arbitrators is sufficient, provided that the reason for any omitted signature is stated.

**33 Time limit for award**

Does the award have to be rendered within a certain time limit under your domestic arbitration law?

The Arbitration Act does not contain any general rule on the time frame of the proceedings. Under the HCCI Rules the award has to be passed within six months from the setting up of the tribunal 'when-

ever it is possible', except under the expedited proceedings in which case the proceedings has to be completed within 100 days from the filing of the claim 'whenever it is possible'.

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#### 34 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

Time limits for the filing a request with the arbitration tribunal for a correction, the issuance of a supplementary award or provision of interpretation, as well as the time limit for filing a court claim for the setting aside of the award commence on the date of delivery of the award.

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#### 35 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The arbitral tribunal may pass a final, a partial or an interim award on the merits of the case, or may terminate the proceedings. The tribunal, at the request of the parties, incorporates the settlement agreement of the parties in the form of an award, provided that it finds the settlement in compliance with the law.

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#### 36 Termination of proceedings

By what other means than an award can proceedings be terminated?

The arbitration tribunal terminates the proceedings, if:

- the claimant fails to present its statement of claim;
- the claimant withdraws its claim, unless the respondent objects thereto and the tribunal finds that the respondent has a legitimate interest in the final settlement of the dispute;
- the parties agree to the termination of the proceedings;
- the parties reach a settlement;
- the tribunal finds that the continuation of the proceedings has, for any other reason, become unnecessary or impossible.

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#### 37 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Typically arbitration decisions follow the local rules of costs allocation, according to which the losing party has to cover or reimburse all costs and expenses of the winning party.

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#### 38 Interest

May interest be awarded for principal claims and for costs and at what rate?

Interest may be awarded in accordance with the relevant rules of law applicable to the merit of the case.

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#### Proceedings subsequent to issuance of award

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#### 39 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The arbitral tribunal may correct any errors of names, including if misspelled, any errors in numbers or calculations, or any other typing errors of the kind on its own initiative or on the request of either party if found justified. If so agreed by the parties, either party may request the arbitration tribunal to provide an interpretation of a specific part or point of the award. The arbitration tribunal may issue

such interpretation if it finds the request justified. The interpretation shall comprise a part of the disposition of the award. Either party may file a request for correction or interpretation within 30 days from receipt of the award and the tribunal has 30 days from receipt of such request to respond.

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#### 40 Challenge of awards

How and on what grounds can awards be challenged and set aside?

Arbitration awards cannot be appealed at courts.

The party or any person who is affected by the award, may file, within 60 days from delivery of the award, a request with the court of law for setting aside the award if:

- the party concluding the arbitration contract lacked legal capacity or competence;
- the arbitration agreement is not valid under the law to which the parties have subjected it, or in the lack of such indication, under Hungarian law;
- the party was not given proper notice about the proceedings or was unable to present his or her case due to other reasons;
- the award was made in a legal dispute that was not covered by the arbitration agreement;
- the composition of the tribunal or the procedure did not comply with the agreement of the parties (unless such agreement was in violation of the Arbitration Act), or in lack of such agreement, was in violation of the Arbitration Act;
- the subject matter of the dispute is not capable of settlement by arbitration under Hungarian law; or
- the award is contrary to Hungarian public policy.

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#### 41 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

The judgment of the court issued on the challenge issue cannot be appealed at court but an extraordinary review can be requested at the Supreme Court of Hungary. Decision on the challenge issue may take about one year on each level. Costs of the proceedings, including reasonable attorneys fees, under Hungarian law are typically to be borne by the losing party.

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#### 42 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

An arbitration award has the same effect as that of a binding court decision. The court refuses to enforce the arbitration award if:

- the subject matter of the dispute is not subject to arbitration under Hungarian law; or
- the award is contrary to Hungarian public policy.

With respect to foreign arbitration awards, Hungary is a party to the 1958 New York Convention and Council Regulation (EC) 44/2001 and Regulation 805/2004 of the European Parliament and the Council have also been implemented in Hungary.

Recognition of foreign awards does not require a separate procedure. The party who wishes to enforce an arbitral award has to supply the original or a certified copy thereof with the court of law. In the event the award is not in the Hungarian language, the party has to furnish a certified Hungarian translation as well.

**43 Enforcement of foreign awards**

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Regarding of recognition and enforcement of foreign awards the courts are bound by the rules discussed above. We are unaware of published decisions specific to this particular topic raised.

**44 Cost of enforcement**

What costs are incurred in enforcing awards?

A procedural fee of 1 per cent and 50 per cent of the service fee of the executor (in the amount of 3 to 0.5 per cent progressively defined) and 50 per cent of that latter fee for the expenses of the court executor has to be advanced by the claimant. There might be additional procedural expenses (eg, registration of the execution right in the land registry, etc). In the event the execution is successful, the court executor is entitled to a certain percentage of the collected amount (10 to 5 per cent, progressively defined). The attorney's fees in international cases are typically agreed upon in the retainer contract.

**Other****45 Judicial system influence**

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

No discovery, as it is known in the Anglo-Saxon systems, is part of the legal system in Hungary. This means that the party who has the burden of proof or seeks to provide evidence otherwise, has a more difficult task to access and provide evidence that is in the possession

**Update and trends**

As discussed in question 8, due to a new regulation, disputes deriving from transactions affecting Hungarian national property are not arbitrable and can be handled exclusively by Hungarian regular courts. Furthermore, these agreements have to be in the Hungarian language and governed by Hungarian law.

We are unaware of any plans that would significantly modify the current regime on arbitration.

There are five pending cases against Hungary at ICSID arbitration.

of the other party. The court, in the course of the proceedings, at the request of the party, may oblige the other party to provide certain documents. Written testimonies are not used, if testimony is necessary, typically the witness has to appear at the court to testify. Party officers may be heard on behalf of the party; their testimony will be treated as presentation of the party and not as a testimony of an independent witness.

**46 Regulation of activities**

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Active Hungarian judges, judges of the Constitutional Court and high-ranking state administration officials may not act as arbitrators.

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