



Arbitration Guide
IBA Arbitration Committee

HUNGARY
(Updated January 2018)

Zoltán Faludi

Faludi Wolf Theiss
1085 Budapest Kálvin tér 12-13
Kálvin Center, 4th floor
Hungary

zoltan.faludi@wolftheiss.com

TABLE OF CONTENTS

	PAGE
I. Background	3
II. Arbitration Laws.....	4
III. Arbitration Agreements	5
IV. Arbitrability and Jurisdiction	7
V. Selection of Arbitrators.....	8
VI. Interim Measures	9
VII. Disclosure/Discovery.....	10
VIII. Confidentiality.....	11
IX. Evidence and Hearings	11
X. Awards	14
XI. Costs	15
XII. Challenges to Awards	16
XIII. Recognition and Enforcement of Awards.....	17
XIV. Sovereign Immunity	18
XV. Investment Treaty Arbitration.....	19
XVI. Resources	19
XVII. Trends and Developments.....	20

I. Background

- (i) **How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

Arbitration has had a growing significance over the past two decades. An increasing number of contracting parties, in particular those active in the construction and energy industries, have submitted their disputes to arbitration in recognition of the advantages of these procedures. Timely process, efficiency, confidentiality and the freedom to appoint arbitrators with particular professional knowledge and expertise are the most commonly listed advantages of arbitration. The relatively high costs of arbitration are often referred to as a key disadvantage. The final and binding nature of arbitral awards (ie that no appeal is available) is seen as a disadvantage in the public sector.

- (ii) **Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?**

Arbitration is predominantly institutional. Commercial disputes are most commonly referred to the Permanent Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry (the ‘Commercial Arbitration Court’) which offers institutional arbitration both for domestic and international disputes.

- (iii) **What types of disputes are typically arbitrated?**

Commercial disputes arising in the energy, construction and finance industries are typically referred to arbitration.

- (iv) **How long do arbitral proceedings usually last in your country?**

Generally, arbitration proceedings should be finished within six months; however general experience shows that arbitration proceedings are usually closed within 8 to 12 months with exceptional cases that may extend beyond 1.5 years.

- (v) **Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

No.

II. Arbitration Laws

- (i) **What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

Hungary has had an arbitration act in place since 1994 which was based, to a large extent, on the UNCITRAL Model Law. A new act has been enacted with effect from 1 January 2018 (Act LX of 2017, the ‘Arbitration Act’) which governs both domestic and international arbitrations with their seat in Hungary. Provisions governing the procedure of state courts related to international arbitration matters are applicable even if the seat of arbitration is outside of Hungary. The Arbitration Act is largely based on the UNCITRAL Model Law as amended in 2006.

- (ii) **Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

In general, the Arbitration Act does not make distinctions between domestic and international arbitration. The only manifest exception is that in international arbitration the presiding arbitrator's or the sole arbitrator's citizenship must differ from the citizenship or domicile of the parties.

- (iii) **What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Hungary is party to, inter alia, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), the European Convention on International Commercial Arbitration (European Convention), the Energy Charter Treaty and nearly sixty bilateral investment protection treaties.

- (iv) **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?**

The substantive law applicable to the merits of the dispute will be decided by the parties' choice of law in their agreement. If the parties failed to agree on the choice of law, the substantive law applicable to the merits of the dispute will be decided by the tribunal. The tribunal may decide the dispute *ex aequo et bono* only if the parties have expressly authorized the tribunal to do so. In any event, the tribunal must take into account the provisions of the parties' commercial

contract and the customary practice applicable to the type of commercial transaction that is the subject matter of the dispute.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

Arbitration agreements must be in writing and must contain the parties' submission of their disputes, arising from their contractual or non-contractual relationship, to arbitration, either to a permanent institution or ad hoc arbitration. The arbitration agreement may be entered into on a stand-alone basis or as part of another agreement. An arbitration agreement will only be valid if duly signed by all parties (physically or by electronic means). Arbitration agreements concluded via electronic communication must be deemed to be in written form even if they are not signed electronically, but the electronic communication is available to the other party and is suitable for later reference.

The parties may also enter into valid arbitration agreements by referring to a separate document containing an arbitration agreement, provided that the parties' contract expressly refers to that separate document and sets out that the arbitration agreement in the separate document must be deemed as part of the parties' contract.

If a party uses arbitration clauses as part of standard forms of contract or general terms and conditions, it will be that party's burden of proof to demonstrate that the other party was given full and proper opportunity to read and understand the terms, and that the other party accepted such terms, expressly or by conduct. As a special rule, the other party must be expressly and specifically informed if the standard forms of contract or general terms and conditions contain unusual terms. Such terms will bind the other party only if such party expressly and specifically accepted such unusual terms. Court practise in Hungary tends to view arbitration agreements as such unusual terms in general terms and conditions, and therefore a highly conservative approach is recommended when including an arbitration agreement in standard forms of contract or general terms and conditions.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

Courts of the state recognize valid arbitration agreements. They will only accept jurisdiction in disputes arising from a contract with an arbitration clause if they find that the clause is non-existent, null and void, ineffective or incapable of being performed.

- (iii) **Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

No specific provisions of law address multi-tiered dispute resolution. If a contract contains a multi-tier clause and a party skips one or more tiers, the consequences are left to the discretion of the arbitral tribunal. Arbitral tribunals will most likely respect the agreement on multi-tiered dispute resolution, and will dismiss the claim as premature or suspend the case until the steps are completed.

- (iv) **What are the requirements for a valid multi-party arbitration agreement?**

There are no specific provisions of law related to the validity of multi-tiered arbitration agreements. The general requirements of validity apply.

- (v) **Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

There are no specific legal regulations in this particular respect. No notable cases have been reported where Hungarian courts examined the validity of unilateral option clauses *per se*. While such clauses are not expressly prohibited by Hungarian law, there is a risk that a unilateral option clause may not be considered sufficiently precise and specific and may therefore be found invalid. The unequal bargaining position of the parties to a unilateral option clause is also likely to raise concerns from a Hungarian law perspective.

- (vi) **May arbitration agreements bind non-signatories? If so, under what circumstances?**

Arbitration agreements must be in writing and will be valid only if duly signed by all parties. Non-signatories will not be bound.

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

There are a number of disputes that cannot be submitted to arbitration: those arising from consumer contracts, marriage, personal or family status and capacity, orders for payment procedures, public administration and labour relations, false or defamatory press statements, constitutional complaints and enforcement procedures. Both arbitration tribunals and courts must scrutinise claims and applications brought before them to ensure that matters that cannot be arbitrated are not decided in arbitration. The lack of such arbitrability is a matter of jurisdiction.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

State courts will dismiss claims submitted in disputes that are governed by arbitration agreements. The courts will only accept jurisdiction if they find that the arbitration clause is non-existent, null and void, non-effective or incapable of being performed. The defendant must present its objection to the jurisdiction of the court in its very first defence submission.

There are no specific legal rules on whether a party is deemed to waive its right to arbitrate by participating in court proceedings. Even if the parties participate in court proceedings, a state court will dismiss the claim and terminate the procedure at any stage if the court finds that it lacks jurisdiction on the basis of a valid and enforceable arbitration agreement.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

In the first place it is the tribunal that decides on its own jurisdiction. If it establishes its own jurisdiction either party may, within 30 days, challenge this decision before the competent state court (the Metropolitan Court or county courts). The court may set aside the decision of the tribunal and find that the tribunal has no jurisdiction, or may approve the decision of the tribunal.

V. Selection of Arbitrators

(i) **How are arbitrators selected? Do courts play a role?**

The number of arbitrators is agreed by the parties, but it must be an odd number. In general practice, each party appoints one arbitrator, and the party-appointed arbitrators elect the chairman of the tribunal. If the number of the arbitrators is three, and if a party fails to appoint its arbitrator within 30 days of the receipt of the other party's request, or if the party-appointed arbitrators fail to elect the chairman within 30 days of their appointment, the competent state court (the Metropolitan Court or county courts) will appoint the arbitrator. If the dispute falls within the jurisdiction of the Commercial Arbitration Court, such appointing responsibilities will be exercised by its president.

(ii) **What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?**

Arbitrators must be independent from the parties, impartial and unbiased; they must not be instructed to rule one way or another, and they are under full confidentiality obligations. They must issue a declaration of impartiality upon their appointment, or a statement of disclosure on any matters that they believe in good faith to have a material impact on their independent, impartial and unbiased conduct.

Either party may, by written notice to the tribunal, challenge an arbitrator within 15 days of receiving notice of the arbitrator's appointment or within 15 days of becoming aware of circumstances giving rise to doubts as to the arbitrator's independence or impartiality, whichever occurs later. If the arbitrator fails to resign or the other party disputes the challenge, the tribunal will decide on the matter. If the tribunal dismisses the challenge, the challenging party may, within 30 days of the receipt of the decision, request the state court to decide on the challenge. The tribunal, including the challenged arbitrator, may continue the arbitration and issue an award until the receipt of the decision of the court of the state.

(iii) **Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?**

Arbitrators must have the knowledge and expertise relevant to the matter in the arbitration. No person may be appointed as an arbitrator if he or she (i) is under the age of 24, (ii) is prohibited from public matters by the court, (iii) is condemned by court to imprisonment, (iv) is under guardianship ordered by a

court, (v) is prohibited by court from the exercise of jobs that require a law degree or (vi) is under probation ordered by a court.

There are no specific legal regulations on ethical duties. The general principle applies: arbitrators must be independent from the parties, impartial and unbiased; they must not be instructed to rule one way or another, and they are under full confidentiality obligations. Arbitration institutions are free to adopt a code of ethics; however, the most significant Hungarian arbitration institution, the Commercial Arbitration Court, does not have codes of ethics.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

Other than the general principle set out above there are no specific legal regulations or codes of conduct concerning conflicts of interest for arbitrators. The most significant Hungarian arbitration institution, the Commercial Arbitration Court, does not have code of conduct concerning conflicts of interest; however the IBA Guidelines on Conflicts of Interest in International Arbitration are usually followed.

VI. Interim Measures

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

Arbitrators may issue a wide range of interim measures, including measures to preserve a specific status, to prevent the occurrence of damage or inappropriate influence of the outcome of the arbitration proceedings, to seize assets or freeze bank accounts that provide satisfaction of the award or to preserve evidence. Interim measures of arbitral tribunals are adopted in the form of orders (ie not awards). Such orders will be granted only after the constitution of the tribunal (the emergency arbitrator procedure has not been introduced into the rules of the major arbitration institutions in Hungary). The order of interim measure is enforceable through the judicial system of the state courts.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

Following the UNCITRAL Model Law as amended in 2006, the Arbitration Act provides that it is not incompatible with an arbitration agreement for a party to

request from a Hungarian or foreign state court, before or during arbitral proceedings (i) preliminary evidencing, (ii) interim measures, (iii) freezing orders, (iv) granting enforcement endorsements on documents and (v) ordering securities against potential damages, and for a court to grant such measures. Accordingly, Hungarian courts will accept applications for the aforesaid measures related to arbitration – irrespective of the place of arbitration. The applicant will bear the burden of proof to demonstrate that the request is well grounded in facts and law. If the request is properly supported with probative evidences, the court will grant the measure even if the arbitral tribunal has been constituted. If ordered prior to the constitution of the tribunal, it will remain in effect as the tribunal does not have power to overrule the order of the court.

- (iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

Courts will grant evidentiary assistance in support of the arbitration upon the request of the tribunal or the request of a party as approved by the tribunal, if the tribunal believes that the evidentiary procedure would be conducted in a more time and cost efficient manner by the court of the state.

VII. Disclosure/Discovery

- (i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

There are no specific legal rules governing the types of disclosure or discovery in arbitration. It is a fundamental rule that it is the party's obligation to present the evidence that supports its case. If a party requests the production of documents that is in the other party's possession, it will be at the discretion at the tribunal to decide on such a request. Although no notable cases have been reported in respect of such decisions, arbitral tribunals are likely to consult the IBA Rules on the Taking of Evidence in International Arbitration to determine materiality and relevance of evidence, and scope and extent of document production.

- (ii) What, if any, limits are there on the permissible scope of disclosure or discovery?**

There are no limits; all issues related to the scope of disclosure or discovery will be decided by the tribunal in its absolute discretion. Such discretion will be limited only by the requirement of impartiality and independence of arbitrators.

(iii) Are there special rules for handling electronically stored information?

There are no arbitration-specific legal regulations for handling electronically stored information. Evidence in electronic format can be presented, and the tribunal will decide how to handle and weigh such evidence in its absolute discretion.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Arbitrations are conducted behind closed doors. Third parties may attend hearings only if the parties and the tribunal agree. Documents (evidence, hearing minutes, awards, dissenting opinions etc) are treated strictly confidentially.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

In addition to the rules discussed above (Section VIII(i)) the arbitrators are under strict confidentiality obligations in respect of the subject matter of the arbitration, even following the termination of the arbitration.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

There are no specific provisions in the Arbitration Act as to rules of privilege.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

Parties are free to agree on the rules of the arbitration proceedings. It is therefore possible to adopt the IBA Evidence Rules, wholly or in part. General experience shows that parties seldom depart from the rules of proceedings of the arbitral institution to which they submit their disputes, and therefore the Rules are not often adopted.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

Hearings are conducted in compliance with the Arbitration Act, the procedural rules of the arbitral institution, the parties' agreement and the orders of the tribunal. The tribunal has wide discretion to govern the hearings within the framework of these rules. The only limits stem from the requirement of

impartiality and independence of arbitrators, and the parties must be granted equal and unrestricted opportunities to present their case.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

It is a general rule that oral hearings are the normal practice in arbitration. Witness statements are most commonly presented orally at hearings. Witnesses appear in person and give testimony in response to questions from the arbitrators and the parties' counsels. Submitting written witness statements prior to the hearing, and cross examination on the basis of those statements, is not customary. Arbitrators have extensive rights to question witnesses.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

There are no arbitration-specific rules on who can or cannot appear as a witness. In this respect the general rules of the Civil Procedural Act (although not directly applicable in arbitration) will apply *mutatis mutandis*. A person cannot be questioned as a witness if (i) his or her physical or mental disability prevents him or her from giving a proper statement, (ii) he or she is under a confidentiality undertaking and no waiver was granted in that respect, (iii) he or she is a close relative of either party, (iv) he or she would incriminate himself or herself or a close relative or (v) he or she had previously acted in the arbitration as an expert or mediator.

The legal instruments of oath or affirmation are not recognized in Hungary.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?

If the above prohibitions (Section IX(iv)) do not apply and the witness can be questioned, his or her connection with one of the parties will be assessed at the discretion of the tribunal for the purposes of judging the weight of such testimony. In any event, witnesses must tell the truth, and giving false witness testimony is a criminal offence.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

Experts are usually asked to present their opinion in writing. If the opinion is challenged by the parties or if they intend to pose questions to the expert, the

expert is usually asked to give a supplemental opinion or to appear at the hearing to answer the questions of the parties and the tribunal. Experts should be impartial and independent of the parties and should have no interest in how the case is finally decided.

- (vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

The arbitral tribunal is free to appoint experts beside party-appointed experts. Before appointing such an expert, the arbitral tribunal will hear the parties' proposals or agreement on the identity of the expert. Arbitral tribunals usually appoint judicial experts (selected from the statutory list of judicial experts) to give opinions on all decisive matters pertaining to the case. Arbitral tribunals must use experts if they do not have the necessary technical and professional knowledge. The selection of the expert largely depends on the parties' submissions and the professional field in which the disputed issue has arisen. Based on due consideration of all circumstances it will be in the discretion of the arbitral tribunal to appoint the expert.

- (viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

'Hot-tubbing' is definitely not regulated in law or the procedural rules of the Commercial Arbitration Court. It is not customary in Hungarian arbitration practise. Nevertheless, if the parties so agree in their arbitration agreement or during the arbitration process, there are no provisions that prohibit such a method of obtaining witness evidence or limit arbitral tribunals in assessing witness statements presented in 'hot-tubbing'.

- (ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

There are no statutory legal rules or requirements as to the use of arbitral secretaries. Nevertheless, the Commercial Arbitration Court uses arbitral secretaries.

X. Awards

- (i) **Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

The Arbitration Act requires that an award must be in writing and signed by all arbitrators. The award must contain provisions on the amount and allocation of procedural costs and expenses, including the arbitrators' fees, only if either party so requests. The award must describe the reasons and grounds of the decision, and must provide a proper justification of the decision. The date of the award and the seat of arbitration must be clearly shown. A copy of the award must be delivered to each party. There are no statutory limitations on the types of permissible relief.

- (ii) **Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

Arbitrators have wide discretion to decide claims. Arbitrators are free to apply punitive or exemplary damages, interest or compound interest if the underlying contract, the applicable substantive law and the statement of claim so specifies and the tribunal finds such claims well grounded.

- (iii) **Are interim or partial awards enforceable?**

Interim or partial awards are enforceable if they satisfy the validity criteria for final awards set out in the Arbitration Act.

- (iv) **Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

Unless the parties agree otherwise, the arbitral tribunal adopts its award with a majority of votes. Dissenting opinions are allowed; however they will not be added to the award, but kept on record in a closed envelope. Dissenting opinions may be disclosed only upon the permission of the Chairman of the arbitration institution.

- (v) **Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

During the arbitration the parties may at any time agree to terminate the disputed matter. In that case, the arbitral tribunal will terminate the proceedings by adopting a ruling (not an award). If the parties request, their settlement will be set out in an arbitral award, provided that the arbitral tribunal is convinced that the settlement is in full compliance with the applicable substantive law.

If the arbitral tribunal does not terminate the proceedings by a substantive decision, but on procedural grounds, it will do so by way of a ruling, which is not enforceable.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Either party may request that the arbitral tribunal correct any misspelt or erroneous names, figures, calculations or other typographical errors in the award. Any such errors can be corrected by the arbitral tribunal *ex officio* as well.

Either party may request that the arbitral tribunal interpret certain parts of the award. Such interpretation will become part of the reasoning of the award.

Either party may request that the arbitral tribunal supplement the award if requests, claims or applications presented in the process remained unresolved. The arbitral tribunal may, if it finds it necessary, hold another hearing, and will issue a supplementary award.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

As a general rule, the costs of arbitration will be borne by the losing party. In case of a partial win, costs will be allocated in proportion to the win-loss ratio. Nevertheless, the arbitral tribunal is free to deviate from this principle in a justified case. The parties are also free to agree otherwise. Notwithstanding the general rules, the arbitral tribunal may order a party to bear the excess costs incurred as a result of such party's unreasonable procedural acts or bad-faith conduct.

(ii) What are the elements of costs that are typically awarded?

The typical elements of costs are the registration fee of the procedure (in case of the Commercial Arbitration Court), the fees of the arbitrators, experts' fees, party counsels' fees and other administrative costs (translations, travel, accommodation etc).

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

The arbitral tribunal has jurisdiction to decide on its own costs and expenses. The Commercial Arbitration Court has a fee schedule that determines arbitrators' fees in accordance with the value of the case.

- (iv) **Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

In justified cases the arbitral tribunal may deviate from the general allocation principles explained in Section XI(i) above. Partial win/loss or cost sanctions on a party may be factors of considerations at the discretion of the tribunal.

- (v) **Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

No. Courts of the state may only set aside an award, but cannot review the tribunal's decision on costs. One exceptional case has been reported where a part of the award dealing with legal expenses was set aside by the court of the state on the basis that excessively high legal expenses awarded to the winning party are in breach of public order.

XII. Challenges to Awards

- (i) **How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

Arbitration awards may be challenged before state courts on grounds specifically listed in the Arbitration Act: (i) a party's lack of legal capacity, (ii) invalid arbitration agreement, (iii) failure to receive proper notice on the appointment of arbitrator or tribunal's procedure, (iv) a party's inability to present its case, (v) an award in excess of matters submitted to arbitration, (vi) the composition or procedure of the tribunal being in conflict with the parties' agreement or the Arbitration Act, (vii) the subject matter of the dispute not arbitrable under the Arbitration Act or (viii) the award in conflict with public order. The challenge is submitted to the court of the state as a statement of claim against the opponent party in the arbitration, and set aside of the award must be requested.

Challenge proceedings before the state courts are usually completed at one single court hearing. It is exceptional that a second hearing is scheduled to further discuss complicated legal issues. Therefore challenge proceedings usually terminate within three to six months.

The court may stay enforcement upon the challenging party's request if (i) leave to enforce would likely result in an unavoidable disadvantage, and such disadvantage would likely be in excess of the disadvantage presumably suffered by the party affected by the stay and (ii) there is a reasonable likelihood of success of the merits of the claimant's case submitted for the set aside of the

award. The court will assess all relevant circumstances in determining whether to stay enforcement or grant leave to enforce.

- (ii) **May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

The Arbitration Act is silent on whether a party may waive the right to challenge an arbitration award.

- (iii) **Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

Arbitration awards may not be appealed; the only remedy is setting aside the award.

- (iv) **May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

The court of the state may, upon a party's request in a procedure for the set aside of an award, stay the process for 90 days to grant the opportunity to the arbitral tribunal to reopen the arbitration procedure or to make procedural measures that are considered by the tribunal appropriate to eliminate the grounds of setting the award aside. Thus, the arbitration procedure continues for the time period and purpose as determined by the court of the state, and a new arbitration award is adopted.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

Awards of arbitral tribunals will be directly enforceable through the judicial enforcement system. The applicant party must file an application to the competent state court (county courts or the Metropolitan Court) and pay the statutory duties and fees. The award will be enforced by the judicial enforcement officer in the same manner as state court judgments.

Enforcement may be opposed on the grounds that (i) the subject matter of the dispute was not capable of settlement by arbitration under the laws of Hungary or (ii) the enforcement of the award would be contrary to the public order of Hungary.

The party opposing enforcement may request the court to stay enforcement. The court will assess all relevant circumstances in determining whether to stay enforcement or grant leave to enforce. There are no statutory aspects or factors to consider; it is in the absolute discretion of the court to make the decision.

(ii) If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

If an *exequatur* is obtained and enforcement is granted, the award will be enforced by the judicial enforcement officer in the same manner as state court judgements. Recourse to the court is not possible at this stage.

(iii) Are conservatory measures available pending enforcement of the award?

Conservatory measures may be requested from the state court from the filing of the request for arbitration until enforcement of the award.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Unchallenged arbitration awards are enforced in the same manner as state court judgements. Foreign awards set aside by the courts at the place of arbitration cannot be enforced in Hungary.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

There is a wide range of duration of enforcement procedures in practise. Enforcement is typically completed within a time period of three to eight months. There are no statutory time limits set out specifically for seeking the enforcement of arbitration awards, but generally a time limitation of five years applies.

XIV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

In general, there is no state party immunity. As a general rule of civil law, state parties may enter into commercial contracts. State parties will be liable to good-faith parties for damages and contractual undertakings even in the absence of sufficient budgetary funds. State administrative organs or bodies are liable for damages caused in the scope of their administrative activities. The State will be liable for damages caused by expropriation, nationalisation or other measures

tantamount to expropriation through the ICSID convention and the bilateral investment protection treaties.

As a general rule, the State cannot be held liable for damages caused by legislative actions. This is a field where the State enjoys immunity. Recent legislative changes have opened the possibility to seek the establishment of the liability of the State in cases where the legislative action is in breach of the Constitution or international treaties. Nevertheless, court practise has yet to test this new trend.

- (ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?**

No.

XV. Investment Treaty Arbitration

- (i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Hungary is party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), the Energy Charter Treaty and the European Convention on International Commercial Arbitration.

- (ii) Has your country entered into bilateral investment treaties with other countries?**

Hungary is party to about sixty bilateral investment treaties.

XVI. Resources

- (i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

There is a wide range of articles and legal literature on arbitration in Hungary. In particular, the works of Mr Kecskés, Mr Várady, Ms Horváth, Mr Mádl and Mr Németh should be consulted.

- (ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

There are no regular educational events, but the Hungarian Chamber of Commerce and Industry organises events on arbitration from time to time.

XVII. Trends and Developments

- (i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

An increasing number of contracts in commercial matters contain arbitration clauses. The undisputable advantages of arbitrators' professional industry expertise and knowledge, relatively shorter duration, confidentiality and the parties' control over the appointment of the arbitrators and procedure have resulted in a trend of shifting disputes to arbitration from litigation in state courts.

- (ii) **What are the trends in relation to other ADR procedures, such as mediation?**

Hungary has had an act on mediation in place since 2002. Mediation has since become increasingly popular; however it is still not a prevalent method in commercial dispute resolution. Other forms of non-binding dispute resolution for commercial disputes are not typical.

- (iii) **Are there any noteworthy recent developments in arbitration or ADR?**

With effect from 1 January 2018 a completely new act on arbitration has been enacted. Moving from the outdated platform of the previous act (in effect since 1994) the new act follows the UNCITRAL Model Law as amended in 2006. The Arbitration Act brought changes, long awaited in the legal community, such as a more active support provided by state courts in arbitration matters, the enforceability of interim measures adopted by arbitral tribunals and the harmonisation of statutory rules applicable in domestic and international arbitration.