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## Hungary

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### A. Legislation and rules

#### A.1 Legislation

Arbitration in Hungary continues to be governed by the Act LX of 2017 on Arbitration (“Hungarian Arbitration Act”) entered into force on 1 January 2018 and applicable to procedures initiated after this date. The Act is based on the amended the UNCITRAL Model Law, hence it follows international standards, creating an attractive arbitration environment for foreign investors with enhanced reliability and flexibility of procedures.

To improve the efficiency of the arbitration proceedings, the Act has introduced a number of new institutions. As such, the Hungarian Arbitration Act now allows the intervention of third parties that have a legal interest in the outcome of the arbitration procedure and permits non-contractual parties to enter the proceedings if the claim submitted by or against them can only be decided together with the claim subject to the ongoing arbitration proceedings. The party entering the procedure must submit to the jurisdiction of the arbitration court. The parties have the option to exclude the application of these rules in the arbitration agreement.

In line with the provisions of UNCITRAL Model Law, the new Act contains detailed provisions with respect to the adoption of interim measures and preliminary orders. It should be noted that the Act poses a higher threshold than the UNCITRAL Model Law for granting interim measures. The UNCITRAL Model Law requires only that the harm, which is not adequately reparable by an award of damages,

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would “likely” result if the measure is not ordered, whereas the Act requires the party to “substantiate” the same.

The act has introduced the possibility of a re-trial within one year from the delivery of the arbitral award. If, during the course of the main proceedings, a party failed to present a fact or evidence for any reason not attributable to the party, and if the consideration of that fact or evidence would have resulted in a preferable award for that party. These provisions are automatically applicable, but parties can opt-out from it. Since the possibility of a re-trial affects the finality of the arbitral award and thus the length of the procedure, the parties should carefully consider whether they wish to leave open the door to this possibility.

## A.2 Institutions, rules and infrastructure

### A.2.1 Commercial Arbitration Court

Pursuant to the Hungarian Arbitration Act, as of 31 December 2017 the Permanent Court of Arbitration for Money and Capital Markets and the Permanent Court of Arbitration for Energy ceased to function and was replaced by the single Permanent Court of Arbitration for Commerce of the Hungarian Chamber of Commerce and Industry (“Commercial Arbitration Court”). Accordingly, where the contracting parties stipulated the competence of the two affected courts, the clause will automatically be interpreted to mean the competence of the Commercial Arbitration Court. The Permanent Court of Arbitration for Sports and the Arbitration Court of the Hungarian Chamber of Agriculture will continue to function.

The Commercial Arbitration Court is the centralized permanent arbitration court of Hungary that has general competence. As such, its jurisdiction covers all disputes that do not belong to the competence of the Permanent Court of Arbitration for Sports, which adjudicates sports law disputes between sports federations and athletes, and the Arbitration Court of the Hungarian Chamber of Agriculture, which is



designed to adjudicate arbitration cases of companies in the agricultural sector.

### A.2.2 Rules of Procedure of the Commercial Arbitration Court

The Commercial Arbitration Court has adopted new procedural rules effective as of 1 February 2018 (“Rules of Procedure”). The Rules of Procedure aims to regulate the arbitration procedure as a flexible notice procedure that is in compliance with international standards. The application of the Rules of Procedure is advised, as it supplements the Hungarian Arbitration Act and excludes the application of certain provisions that might pose a risk to the finality of the arbitral procedure, such as the possibility of re-trial. The parties can also opt-in to apply the rules of expedited procedure, if they agree to do so.

The Rules of Procedure contains provisions regarding the application of interim measures in conformity with the Hungarian Arbitration Act. The Rules of Procedure regulate the compulsory scheduling of a preliminary hearing within 30 days of the appointment of arbitrators, allowing the parties to establish the frames of the procedure, including the schedule, the applicable procedural rules and admissible evidence and arguments. After the preliminary hearing, the tribunal draws up the terms of reference in the form of an order.

The Rules of Procedure put forward modernized provisions regarding the appointment of arbitrators and the composition of the arbitral tribunal, including the obligation of the arbitrator to disclose in writing any facts or circumstances which might call into question the arbitrator’s independence, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator’s impartiality. The regulation of costs is also modernized, so that the proceedings are not delayed by the defendant’s reluctance to pay the arbitration fee, as the applicant can pay the provisional advance of the costs.

### A.2.3 List of Arbitrators

The Commercial Arbitration Court has a new list for arbitrators as of 1 February 2018, which contains two special sections for the energy

sector and for the financial and capital sector. The main list contains at least sixty arbitrators, while both sectoral lists contain at least thirty arbitrators. For both sectoral lists, acknowledgment of the competent body is required: the Hungarian Energy and Utilities Regulatory Office for the energy list and the Budapest Stock Exchange and the Hungarian Banking Association for the financial and capital list.

#### A.2.4 Infrastructure

Under the Hungarian Arbitration Act, a new organizational structure was implemented for the Commercial Arbitration Court, which is headed by a seven-member body. The chairman and two members are delegated by the Hungarian Chamber of Commerce and Industry, and one member is delegated by each of the Hungarian Energy and Utilities Regulatory Office, the Budapest Stock Exchange, the Hungarian Banking Association and the Hungarian Bar Association.

## B. Cases

### B.1 Validity of the arbitration agreement

Among the cases decided last year, an arbitral award of the Commercial Arbitration Court regarding the validity of the arbitration agreement in cases where a legislative act requires an additional condition to establish the competence of the arbitral tribunal is of particular interest.<sup>3</sup>

In this case, the arbitral tribunal ruled that, based on section 1 (4) of the Rules of Procedure, an arbitration agreement is deemed to be concluded if either party claims the conclusion of an arbitration agreement and the other party does not contest it. An exception to this rule applies when a legislative act orders the solution of disputes falling in the scope of the act by state courts and allows arbitration only with the explicit inclusion of an additional condition in the arbitration agreement, in the absence of which the arbitral court will not have competence to decide the case.

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<sup>3</sup> VBT.2/3/2018.



An example of such legislation is the Legislative Decree No 3 of 1971 on the Convention on the Contract for the International Carriage of Goods by Road (CMR), section 31 of which provides that all disputes arising from the carriage of goods are to be settled by the ordinary courts or tribunals of a country. Based on section 33 of CMR however, the contract of carriage may contain a clause conferring competence to an arbitral tribunal if the clause provides that the tribunal shall apply the provisions of CMR.

In the case at hand, the claimant submitted a claim concerning a contract on the carriage of goods that fall under the scope of CMR. The arbitration panel concluded that the arbitration agreement does not contain the provisions put forward in section 33 of CMR, thus the panel did not have competence to hear the case. The claimant requested the continuation of the proceedings, as the contract was drafted by the defendant and it was the apparent will of both parties to confer the disputes arising out of the contract to the competence of the Commercial Arbitration Court. The defendant argued that the arbitration agreement cannot be retrospectively amended, hence the court should terminate the proceedings.

The arbitral tribunal terminated the proceedings due to its lack of competence. According to the arbitral tribunal, a declaration or silence of the defendant could not have resulted in a valid arbitration agreement, as the mutual and explicit amendment of the contract would have been necessary to establish the competence of the arbitral tribunal.

## B.2 Infringement of Public Order

In another case, the Supreme Court of Hungary (“Curia”) interpreted the notion of public order based on Hungarian law in a judicial review procedure.<sup>4</sup> The relevance of public order (or the public policy clause) in arbitration is that its infringement can bar the recognition and enforcement of foreign arbitral awards in Hungary, and can result in

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<sup>4</sup> BH2018.174.

the annulment of the arbitral awards that fall under the scope of the Hungarian Arbitration Act. Accordingly, the interpretation of the public policy clause is crucial for the successful enforcement of arbitral awards.

The facts of the case concerned T.M., a Hungarian-Belgian dual citizen who married the father of the claimants and later adopted the claimants based on French law. The court of first instance of Marseille approved the adoption with its decision. One year after the adoption T.M. died, leaving the claimants as heirs.

The claimants requested the enforceability of the decision of the first instance court of Marseille, as the notary public could only establish their right to inherit if the decision could be enforced based on Hungarian law. In that case, they would qualify as the heirs of T.M. Both the first and the second instance court established the enforceability of the first instance decision of the court of Marseille in Hungary.

In the judicial review procedure, the Curia also found the decision to be enforceable and refused the argument that this was contrary to public order due to the application of French law on adoption. Regarding the content of *ordre public*, the Curia has stated that although the rules of adoption are an important part of family law and require the unconditional application of those norms, in the present case the Curia did not consider the application of French law to be contrary to Hungarian public order.

The Curia has emphasized that the substance of public order changes based on the social-economic, political and moral environment. The aim of public order is to protect institutions and enforce principles that can be drawn under the concept, even against the application of foreign law that would result in the imminent infringement of public order.



The Curia has further elaborated that conflict with public order can be established only, if the enforcement of the foreign decision would infringe fundamental rights and social norms that have an effect beyond the relation of the parties. As such, public order is infringed if the decision is likely to affect the social-economic order.

With this decision, the Curia has reinforced that the public policy clause has to be interpreted in a restrictive way and applied exceptionally, as it poses a barrier to the principle of free enforcement of judgments promoted by the EU.