



Dispute Resolution

in 49 jurisdictions worldwide

2014

Contributing editor: Simon Bushell



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Latham & Watkins

Getting the Deal Through is delighted to publish the twelfth edition of *Dispute Resolution*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 49 jurisdictions featured. New jurisdictions this year include Ecuador, Hong Kong, Indonesia, Kazakhstan, the Philippines, Portugal and the United Arab Emirates.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editor Simon Bushell of Latham & Watkins for his continued assistance with this volume.

Getting the Deal Through

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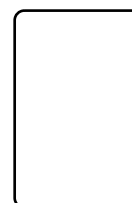
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Hungary

Zoltán Csehi

Nagy és Trócsányi Ügyvédi Iroda

Litigation

1 What is the structure of the civil court system?

The Hungarian court system has four levels. There are:

- 111 local courts (105 in towns and six in the various districts of Budapest, the capital city);
- 20 county courts, including the Metropolitan Court of Budapest;
- five courts of appeal operating in five major towns; and
- the Curia.

Specific administrative and labour courts operating in the same towns as the county courts deal with the judicial revision of administrative decisions as well as labour matters as defined by the Civil Procedure Act (CPA) at first instance. In addition, specific subdivisions of the county courts deal with these matters at the second instance.

The Constitutional Court, which reviews and annuls statutes that are unconstitutional, is not part of the ordinary court system, although under certain circumstances and with reference to the breach of a constitutional right, the Constitutional Court may review individual decisions of ordinary courts.

At first instance, the trial is held by a single professional judge. In employment matters there are also two lay judges in the court. In every second-instance procedure, there is a court consisting of three professional judges.

2 What is the role of the judge and the jury in civil proceedings?

The role of the judge encompasses prehearing responsibilities, which include examination of the statement of claim, the decision whether to refuse the claim or suspend the procedure, decisions on interim remedies and determination of the time of the hearing.

At the hearing, the judge leads the trial and determines the sequence of procedural acts; he or she listens to the arguments raised, then renders his or her judgment based on interpretation of the law and the evidence adduced.

The responsibility for producing evidence for the purposes of litigation lies with the parties.

The jury system is unknown in Hungary.

3 What are the time limits for bringing civil claims?

The statute of limitations is considered to be a matter of substantive law. Limitation of actions is regulated in the Civil Code, and a general regime applies to most civil claims. As a general rule, the limitation period for breach of contract, property damage, economic loss and personal injury is five years. If the damage or personal injury is caused by a crime, the limitation period is the same as the period during which the crime is punishable, but is at least five years.

Some special rules provide for shorter limitation periods such as three years or one year (eg, implied warranty) and for special torts. Generally, the parties to a contract are also free to shorten the prescribed period, provided this agreement is made in writing.

Where the claimant is not in a position to bring an action for good cause, his or her claim is not time-barred for one year from the date on which the reason ceased to hinder the claimant, even if the limitation period has expired.

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

- the start of judicial proceedings, or in the event that the court has adopted a final and binding decision in conclusion of the proceedings;
- amendment by the parties of the underlying contract and also its composition;
- notification of the claim in bankruptcy proceedings; or
- acknowledgment of the debt by the debtor.

The limitation period recommences after interruption.

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

While the general statutory limitation period (five years) can be departed from, it cannot be suspended by the parties.

4 Are there any pre-action considerations the parties should take into account?

In order to reduce the courts' workload, legal entities are obliged to try to settle their business disputes before bringing an action. This requirement includes the exchange of letters setting out their position in detail. The parties must attach this correspondence to the statement of claim.

If any voluntary mediation procedure was in progress between the parties, this fact must be referred to in the statement of claim.

5 How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement?

An action is started with the submission of a statement of claim to the appropriate court and must include the name and address of the parties, a concise statement of the nature of the case and a statement of value; specify the remedies the claimant seeks; and indicate particulars such as facts and supporting evidence.

A filing fee (procedural duty) must also be paid, the amount of which is based on the value of the claim. In monetary claims or claims for handover of tangible assets, an action can (or must, in the case of claims under 1 million forints) be started by a request for the issuance of an order to pay.

Under Hungarian law, the other party shall not be informed of the start of the judicial proceeding, nor shall the statement of claim be delivered directly to him or her. The summons and the claim are served by the court on the defendant. For further details, see question 6.

6 What is the typical procedure and timetable for a civil claim?

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

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

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

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

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

7 Can the parties control the procedure and the timetable?

Under the CPA, the procedure and the timetable are controlled by the court. On the other hand, parties may influence the procedure and the timetable by dilatory behaviour (which is, however, sanctioned by the CPA) in order to have case hearings postponed.

8 Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

In Hungary, the court can only order production of those documents that the defendant must, by substantive provisions of civil law, give the claimant access to.

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

The prospective claimant must also file the documents:

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

9 Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

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

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

Classified information, for example state secrets, must not be disclosed. If a third party's business secret or professional confidence is affected, and the third party does not consent to disclosure, the document cannot be used as evidence. If the court deems that the content of a submitted document concerns business or professional secrets, it must approach the person or entity entitled to approve the use of the secret (secret-holder) to obtain approval. If the secret-holder does not respond within eight days or gives its consent, the secret can be used.

10 Do parties exchange written evidence from witnesses and experts prior to trial?

See question 4. In addition, the claimant may present any type of evidence he or she may have in the statement of claim, and he or she basically has an obligation to do so under the CPA. The defendant in his or her response may also present any type of evidence.

In practice, the timing and scope of evidence presented by the parties is often a matter of tactics.

11 How is evidence presented at trial? Do witnesses and experts give oral evidence?

Court witnesses of fact usually only give oral evidence in person, in court before the judge (written evidence is generally treated as a document and not as witness testimony).

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

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

There is a right to reply to expert evidence, and if the written expert opinion is unclear, there is also a right to hear and cross-examine the expert. The court can also order the expert to supplement his or her opinion.

The appointment of new or further experts can also be suggested, but the court has a discretionary right to grant the request or appoint a new expert *ex officio*.

12 What interim remedies are available?

Interim injunctions granted before full trial are available, but only if the claim (or counterclaim) is filed before, or simultaneously with, the application. The court grants an interim injunction if both instant damage is threatening, the status quo should be maintained, or it is justified by the special circumstances of the applicant; and the advantage to be attained exceeds the disadvantage caused.

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

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

13 What substantive remedies are available?

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

- specific performance;
- compensatory damages;
- injunctions;
- declarations; and
- in special cases, conclusion or amendment of contracts (eg, general terms and conditions shall be regarded as unfair).

Nevertheless, the court cannot apply a remedy that the claimant did not specify in the statement of claim as a relief sought. Punitive damages are not awarded. Interest on money judgments must be paid even if not specifically requested in the statement of claim.

14 What means of enforcement are available?

Enforcement is a separate, standalone court procedure. It is governed by Act LIII of 1994 on Judicial Enforcement (Enforcement Act).

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

Enforcement for the recovery of sums of money takes one of the following forms: attachment of goods and financial assets, including bank assets, shareholdings, and outstanding claims; assignment of earnings; or execution against real property.

15 Are court hearings held in public? Are court documents available to the public?

Generally, court hearings are public; however, under certain circumstances a closed hearing can be ordered.

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

16 Does the court have power to order costs?

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

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

17 Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Client and counsel are free to agree on any fee arrangement. In practice, task-based billing is the most common in litigation matters,

often combined with a success fee. A contingency fee can also be agreed, but in practice it is not frequently used. If legal counsel does not disclose his or her agreement with the client, which is mostly the case, the court determines legal fees and costs on the basis of statutory provisions.

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

18 Is insurance available to cover all or part of a party's legal costs?

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

19 May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

The CPA does not provide a special proceeding for complex class action litigation similar to that of certain common law jurisdictions. The Civil Code and, more generally, consumer protection and competition laws entitle the following to bring an action against any party causing substantial harm to a wide range of consumers by illegal activities, aimed at enforcing the interests of consumers, even if the identity of the injured consumers cannot be determined: Hungarian consumer protection and competition authorities; Hungarian and EU non-governmental organisations for the protection of consumers' interests; and the public prosecutor.

20 On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

An appeal can be brought on certain grounds, including:

- lack of clarification of the facts, or of examination of all relevant evidence;
- procedural error;
- misinterpretation of the applicable substantive provisions of law;
- improper application of law;
- improper assessment of facts or the evidence presented; and
- granting of unsought relief.

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

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

There is no right of further appeal. Nevertheless, a request for the judicial review of the final judgment or a final ruling adopted on the merits of the case can be submitted to the Curia, on the grounds of violation of law.

21 What procedures exist for recognition and enforcement of foreign judgments?**EU member states**

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

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

A judgment will not be recognised if:

- recognition is manifestly contrary to Hungarian public policy;
- the defendant was not served with the document that started the proceedings in sufficient time and in such a way as to enable the defendant to arrange for his or her defence;

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

Recognition is normally a question of formalities as provided under the Brussels Regulation. A judgment is enforced when, on the application of the interested party, it has been declared enforceable in Hungary. The application for enforcement should be submitted to the competent court in Hungary with jurisdiction. With the revised Brussels Regulation (Regulation 1215/2012 of the European Parliament and of the Council) being applicable from 10 January 2015, the recognition and enforcement of judgments in the EU will be automatic. Under Council Regulation 1346/2000/EC on insolvency proceedings, insolvency of a company ordered by a court in a member state is automatically acknowledged by Hungarian courts.

Other countries

Similar rules as under the Brussels Regulation apply between Hungary and the EFTA countries, other than Liechtenstein, under the New Lugano Convention dated 30 October 2007.

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

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

Recognition of the judgment can be refused if:

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

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

-
- 22** Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

EU member states

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

All means of transmission provided in the EU Service Regulation can be applied, except direct service. In practice, direct postal service and transmission with the assistance of receiving authorities are used. Application for and certificate of service is facilitated by standard forms. The designated receiving agency in Hungary is the

Ministry of Justice. If the addressee does not understand the language of the document, he or she can refuse to accept it.

Other countries

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

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

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

In addition, Hungary has signed numerous bilateral agreements on judicial assistance that also provide for the service of documents (eg, with Albania, Algeria, Austria, Bulgaria, China, Croatia, Cuba, Cyprus, Czech Republic, Egypt, Finland, France, Greece, Iraq, Macedonia, Mongolia, North Korea, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Syria, Tunisia, Turkey, Ukraine and the United Kingdom).

Arbitration

-
- 23** Is the arbitration law based on the UNCITRAL Model Law?

Act LXXI of 1994 on Arbitration (Arbitration Act) closely follows the UNCITRAL Model Law but does not reflect the 2006 amendments. The Arbitration Act applies if the place (seat) of the ad hoc or permanent arbitration court is in Hungary. It also includes a specific chapter relating to international arbitration.

The following also apply:

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

-
- 24** What are the formal requirements for an enforceable arbitration agreement?

Except for the requirement that the agreement be in writing, there are no statutory requirements relating to the arbitration agreement. (An arbitration agreement can be concluded as part of another contract or in a separate agreement.) The interpretation of the term 'in writing' is not always straightforward, but it is usually accepted as being in writing if the arbitration clause is signed by each party and mailed or faxed to the other. The signature must originate from a person duly authorised to represent the party (valid proxy). In many cases, the validity of an arbitration clause is challenged on the grounds that the signing party was not an authorised representative.

An arbitration clause is often included in one of the party's standard terms and conditions. However, this type of arbitration clause forms part of the parties' agreement only if both the party using the general terms and conditions specifically draws the attention of the other party to the arbitration clause; and the other party expressly accepts the arbitration clause.

-
- 25** If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The Arbitration Act provides default rules on the appointment and removal of arbitrators, as well as the start of arbitral proceedings. However, these provisions, except for certain mandatory rules, such

as disqualification, apply only if the parties have not agreed otherwise or chosen a permanent arbitration court whose procedural rules regulate these issues in detail.

In order to secure the appointment of an independent and impartial arbitrator, it is necessary to observe both the requirements set out in the parties' agreement concerning the arbitrator's qualifications, and any other considerations, such as statutory rules and any applicable rules of the arbitration institution.

26 Does the domestic law contain substantive requirements for the procedure to be followed?

The Arbitration Act provides default rules governing the commencement of arbitral proceedings, although it does not cover all procedural rules, and additional legislation may apply; for example, the CPA.

Except for certain mandatory provisions of the Arbitration Act and general principles of civil procedure, the parties can freely:

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

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

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

27 On what grounds can the court intervene during an arbitration?

State courts can assist with the following:

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

28 Do arbitrators have powers to grant interim relief?

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

A decision in relation to interim measures is valid until either the new tribunal's decision is adopted to replace it or an award is made.

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

29 When and in what form must the award be delivered?

The award is committed in a written form and signed by the arbitrators. The award will state the reasons upon which it is based, unless

it is an award on agreed terms. In addition, the award includes its date and the place of arbitration. One copy bearing the signature of the arbitrators will be delivered to each party. It usually takes six months to two years for an arbitration award to be made.

30 On what grounds can an award be appealed to the court?

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

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

The following may invalidate the award during the annulment proceedings: breach of the arbitral institution's rules; breach of the parties' agreement (including the procedural rules), unless the agreement conflicts with any mandatory provision of the Arbitration Act; or the tribunal proceeded in a case where there was no arbitration clause.

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

31 What procedures exist for enforcement of foreign and domestic awards?

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

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

Hungary acceded to the 1958 New York Convention in 1962 and to the European Convention on International Commercial Arbitration 1961 (Geneva Convention) in 1964. Under the New York Convention, arbitral awards made in Hungary are enforceable

Update and trends

The renewal of the CPA is now in progress, although an expert committee in this regard has not yet been established. As a novelty, the regulation of class actions (which is not currently contained within the CPA) is under preparation.

in other member states of the New York Convention, save for the grounds listed in article V of the New York Convention. In certain jurisdictions, local rules may further limit the enforceability of awards made in Hungary.

The party applying for recognition and enforcement must:

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

Upon receipt of the application, the local court must issue a recognition certificate, provided the award complies with the Hungarian procedural rules, that is, the award is construed as final and non-appealable by the law of the state in which it was made; the award contains an obligation (ruling against the judgment debtor); and the award is enforceable or is subject to preliminary enforcement and the deadline of performance has expired.

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

32 Can a successful party recover its costs?

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

In a widely cited case (BH 2003.127), the arbitration tribunal set the lawyers' fees at less than 1 per cent of the litigated amount, which amounted to the equivalent of nearly US\$1 million. The Supreme Court considered that this fee was unreasonably high and that it violated public policy. Therefore, it annulled this part of the

award. Many have criticised this Supreme Court judgment, as there is no right to annul awards on the grounds of legal fees and the arbitration tribunal had respected the 5 per cent limit applied by civil courts.

The losing party typically bears the following:

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

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

Alternative dispute resolution**33 What types of ADR process are commonly used? Is a particular ADR process popular?**

The main ADR method used in Hungary is arbitration. Arbitration is used in almost all industries, and particularly in banking, insurance, aviation and shipping.

Ad hoc arbitration is not a frequent choice of parties and counsel. If not resolved at court, commercial disputes are resolved through institutional arbitration before one of the several permanent arbitration courts.

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

34 Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

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

Miscellaneous**35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?**

Since 1 January 2012, commercial contracts that concern assets that qualify as national property within the meaning of Act CXVI of 2011 on national property cannot contain an arbitration clause, and so cannot be disputed through arbitration. This prohibition on making any such assets subject to arbitration cannot be circumvented by the choice of foreign governing law.

NAGY & TRÓCSÁNYI

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