



**Budapest, 18 May 2020**

**Editor's Note  
for the Comparison document detailing the Hungarian implementation of the UNCITRAL Model Law on  
International Commercial Arbitration by Act LX of 2017 on Arbitration**

Section 3 Par. (3) of the Act LX of 2017 on Arbitration ("New Arbitration Act") provides that "*The provisions of this Act shall be interpreted in accordance with the requirement of exercising rights in good faith, and with regard to such Explanatory Note published by the United Nations Commission on International Trade Law (hereinafter "UNCITRAL") of the Model Law on International Commercial Arbitration, with amendments as adopted in 2006 by UNCITRAL, the Hungarian translation of which has been published on the website of the Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (hereinafter "Court of Commercial Arbitration").*" That was the reason why we thought that a comparative translation could help interpretations.

The intention of our work was to help those legal professionals and business people who seek arbitration in Hungary and are acquainted with the legal instruments of the UNCITRAL Model Law on International Commercial Arbitration ("UML") but have little information on its Hungarian implementation.

The UML served as a basis for the Hungarian rules on arbitration – this is explicitly confirmed by the official reasoning attached to the bill of the New Arbitration Act. Accordingly, the main structure and the applied principles are materially the same in the Arbitration Act as in the UML. However, there are some important differences.

We used two texts for our work: (i) the UML's 1985 version with amendments as adopted in 2006, and (ii) an English translation of the New Arbitration Act. We took the text of the UML as a basis and compared it with the text of the English translation of the New Arbitration Act (as in force on 18 May 2020).

During the process, we took the liberty to track the changes in a way that concentrates on better legibility and the ease of use. In the English translation we decided to keep the exact wording of the UML as much as possible and modified it only where keeping the original UML wording could have caused misunderstanding and/or alter the meaning of the provisions of the New Arbitration Act.

The result, the text below, is the New Arbitration Act marked-up from the UML.

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*Part One*

**UNCITRAL Model Law on International  
Commercial Arbitration**

~~(United Nations documents A/40/17,  
annex I and A/61/17, annex I)~~

~~(As adopted by the United Nations Commission on  
International Trade Law on 21 June 1985,  
and as amended by the United Nations Commission  
on International Trade Law on 7 July 2006)~~

**ACT LX OF 2017 ON ARBITRATION**

CHAPTER ~~I~~ 1

GENERAL PROVISIONS

*Article 1.* Scope of ~~application~~<sup>1</sup>the Act

~~(1) — This Law applies to international commercial<sup>2</sup> arbitration, subject to any agreement in force between this State and any other State or States.~~

**Section 1 (1)** The provisions of this Law, ~~except articles 8, 9, 17 H, 17 I, 17 J, 35 and 36,~~Act shall apply ~~only~~ if the place of arbitration is in ~~the territory of this State~~Hungary.

~~(2) Unless otherwise provided by an international treaty, section 9, section 10, sections 26 to 28, section 40, section 53 and section 54 shall apply to the proceedings of any permanent arbitration court having its seat in Hungary even if the place of arbitration is outside Hungary.~~

~~(3) No arbitral proceedings shall take place in case of disputes arising from consumer contracts and in cases which are to be settled in special procedures governed by Part Seven of Act CXXX of 2016 on the Code of Civil Procedure (hereinafter the “Pp.”) or in procedures governed by Act I of 2017 on the Code of General Administrative Procedure.~~

2. The nature of the regulation

**Section 2** The rules of the Hungarian permanent arbitration court<sup>3</sup>, the arbitral tribunal and the parties to the arbitral proceedings may derogate from the provisions of this Act only if it is permitted by this Act.

3. Interpretative provisions

**Section 3**

~~(Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006)~~

~~(2) — An arbitration is international if:~~

~~(a) — the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or~~

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<sup>1</sup> Article headings are for reference purposes only and are not to be used for purposes of interpretation.

<sup>2</sup> The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

<sup>3</sup> Please visit: <https://mkik.hu/en/court-of-arbitration>.

~~(b) one of the following places is situated outside the State in which the parties have their places of business:~~

- ~~(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;~~
- ~~(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or~~

~~(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.~~

~~For the purposes of paragraph (3) of this article:~~

~~(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;~~

~~(b) if a party does not have a place of business, reference is to be made to his habitual residence.~~

~~(3) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.~~

### *Article 2. Definitions and rules of interpretation*

~~(1) For the purposes of this Law:~~Act:

~~“arbitration”~~

1. arbitration means any arbitration deciding on disputes that arise in commercial relationships in proceedings, whether or not administered by a permanent arbitral institution, chosen by the parties instead of litigation before a state court;

~~“2.~~

~~3.~~

~~4.~~

5. arbitral tribunal” means a sole arbitrator or a panel of arbitrators;

“6. court” means a body or organ of the judicial system of a State exercising the administration of justice; where~~7. the term commercial means all commercial or economic, contractual or non-contractual legal relationships.~~

(2) Where

a) a provision of this Law~~Act~~, except ~~article 28~~section 41, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

~~where a provision of b) this Law~~Act~~ refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;~~

~~where c) a provision of this Law~~Act~~, other than in ~~articles 25~~~~(sections 38 a)~~ and ~~32~~~~45~~ (2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.~~

(3) The provisions of this Act shall be interpreted in accordance with the requirement of exercising rights in good faith, and with regard to the such Explanatory Note published by the United Nations Commission on International Trade Law (hereinafter “UNCITRAL”) of the Model Law on International Commercial Arbitration, with amendments as adopted in 2006 by UNCITRAL, the Hungarian translation<sup>4</sup> of which has been published on the website of the Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (hereinafter “Commercial Arbitration Court”).

### *Article 2 A. International origin and general principles*

*(As adopted by the Commission at its thirty-ninth session, in 2006)*

~~(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.~~

~~(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.~~

### *Article 3. Receipt of written communications*4. Service of documents

#### Section 4

~~(1) (1) Unless otherwise agreed by the parties:~~

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<sup>4</sup> Yet to be published.

any written communication is deemed to have been received

a) if it ~~is~~ delivered to the addressee personally; or

b) if it is delivered at ~~his~~the addressee's place of business, domicile, habitual residence or mailing address; ~~if none of these can be found after making a~~

(2) If, despite reasonable inquiry, it cannot be ascertained whether the written communication is received in accordance with paragraph (1), unless otherwise agreed by the parties, the written communication shall be deemed to have been received if it is sent to the addressee's ~~the~~ last- known place of business, domicile, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it; The written communication shall be deemed to have been received on the eighth day of its dispatch with respect to Hungarian recipients, and on the fifteenth day with respect to foreign recipients.

~~(a) — the communication is deemed to have been received on the day it is so delivered.~~

(3) The provisions of this ~~article-section~~ do not apply to communications in court proceedings.

#### ~~Article 4-5~~ Waiver of right to object

**Section 5** A party who knows that any provision of this LawAct from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet ~~proceeds with~~continues to participate in the arbitration proceedings without stating his objection to such non-compliance without ~~undue~~ delay or, if a time- limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

#### ~~Article 5. Extent of court intervention~~

~~In matters governed by this Law, no court shall intervene except where so provided in this Law.~~

#### ~~Article 6. Court or other authority for certain functions of arbitration assistance and supervision~~

~~The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]~~

#### 6. Tasks of the courts in assisting and reviewing arbitration

**Section 6.** A court may proceed in cases to which the provisions of this Act apply only if it is permitted by this Act.

**Section 7** (1) In cases under sections 53 to 54, the courts having material and territorial competence under Hungarian enforcement rules<sup>5</sup> shall proceed.

(2) In court cases under section 12 (3) and (4), section 14 (4), section 15 (1), section 17 (3), and section 47 (2) the Metropolitan Tribunal shall proceed.

(3) The court shall proceed in accordance with the litigation procedure in cases under section 9 (1) and (2), and section 47 (2), while it shall proceed in accordance with the non-contentious procedure in any other case, with the proviso that in cases under section 17 (3), it shall decide following the oral hearing of the parties.

(4) The provisions of the Pp. shall apply to the proceedings of the court in any other respect, with the proviso that there shall be no legal remedy against the decision of the court, with the exception that an appeal against the termination of the proceedings under section 9 (1) and (2), and a petition for review against an order in the proceedings under section 17 (3) and against a decision on an application for setting aside of the award may be submitted.

(5) In an application for setting aside of the award, at the request of a party, the enforceability of the award may be suspended by the tribunal until the end of the procedure, and by the Curia of Hungary until the end of the review proceedings if

a) it can be substantiated that non-suspension results in a disadvantage that cannot be eliminated, and this disadvantage exceeds the one that the affected party will presumably suffer in the event of suspension; and

b) there is a reasonable possibility that the claim of the party requesting the suspension will succeed on the merits of the case. The determination on this possibility is not binding on the court in making any subsequent determination.

(6) With the exception of the cases under section 9 (1) and (2), the tribunal shall send, within thirty days

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<sup>5</sup> See Act LIII of 1994 on the Judicial Enforcement.

of receipt, the document initiating the proceedings received in an arbitration case to the arbitration court that proceeds or has proceeded, or, in ad hoc arbitration, to the arbitrator who proceeds or has proceeded or to the arbitrators who proceed or have proceeded. The tribunal and the Curia of Hungary shall send its decision adopted in the arbitration case to the permanent arbitration court that proceeds or has proceeded or, in ad hoc arbitration, to the arbitrator who proceeds or has proceeded or to the arbitrators who proceed or have proceeded, simultaneously with it being served on the parties.

(7) In proceedings referred to in this section the court shall proceed as a matter of priority, except in the event of an application for setting aside of the award.

## CHAPTER II-

### ARBITRATION AGREEMENT

#### ~~Option I~~

#### ~~Article~~

#### ~~7. Definition and form of arbitration agreement~~

~~(As adopted by the Commission at its thirty-ninth session, in 2006)~~

Section 8 (1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain specified disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing.

~~(1)–(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the concluded by electronic communication without electronic signature shall be deemed a written arbitration agreement or contract has been concluded orally, by conduct, or if the data in the electronic communication are accessible by the other means.~~

~~The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable party and are suitable~~ for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or teletype.

~~(4) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which one party alleges the existence of an agreement is alleged by one party and the arbitration agreement in its statement made with respect to choosing arbitration, or in the presentation of its claim, and this statement is not denied/disputed by the other.~~

~~(5) The reference in a contract concluded in writing to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.~~

#### ~~Option II~~

#### ~~Article 7. Definition of arbitration agreement~~

~~(As adopted by the Commission at its thirty-ninth session, in 2006)~~

~~“Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.~~

#### ~~Article 8. Arbitration agreement and substantive claim before court~~Court enforcement of a claim subject to an arbitration agreement

Section 9 (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement with the exception of an action for the annulment of the award, shall terminate the proceedings with respect to this claim if, in his written statement of defence submitted in response to the statement of claim at the latest, the defendant requests so, unless it establishes that the arbitration agreement is null and void, invalid, ineffective or impossible to be fulfilled.



(2) If an order for payment procedure<sup>6</sup> was launched for the enforcement of a claim that is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration the procedure that transformed into an action due to opposition shall be terminated upon the written statement of defence submitted by the defendant in response to the statement of claim at the latest, unless it finds that the agreement ~~is null and void, inoperative or incapable of being performed~~ did not come into existence, or is invalid, ineffective or impossible to be fulfilled.

(3) Where an action referred to in paragraphs (1) and (2) of this ~~article~~ section has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, even while the ~~issue is~~ proceedings are pending before the notary or the court.

~~Article 9. Arbitration agreement and interim measures by court~~ Compatibility of the arbitration agreement with the measures of the court and the notary

~~It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.~~

Section 10 The party's request made prior to the commencement of the arbitral proceedings for the issuance of an order of payment, or submitted to a Hungarian court prior to or during the arbitral proceedings for a preliminary taking of evidence (Chapter XXIV of Pp.), for a provisional measure (Chapter VIII of Pp.), for a security measure [Chapter X of Act LIII of 1994 on judicial enforcement (hereinafter "Vht. ")], for the insertion of an enforcement clause into a document [sections 23/B (1) a) and 23/C of Vht.], or for the provision of a security [section 6:523 of Act V of 2013 on the Civil Code (hereinafter "Ptk. ")], as well as his request submitted to any foreign court for a similar measure and the measure of the court granting such request shall not be deemed incompatible with the arbitration agreement.

### CHAPTER III.

#### COMPOSITION OF ARBITRAL TRIBUNAL

##### ~~Article~~

##### 10. Number of arbitrators

Section 11 (1) The parties are free to determine the number of arbitrators; however, the number of arbitrators must be an odd number.

(2) Failing such determination, the number of arbitrators shall be three.

##### ~~Article~~

##### 11.- Appointment of arbitrators

Section 12 (1) No person shall be precluded by reason of his nationality or the lack of it from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) ~~and (5) of this article to~~ (8) of this section.

(3) Failing such agreement,

a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the ~~third~~ presiding arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court ~~or other authority~~ specified in ~~article 6;~~ section 7 (2) or, in cases falling within the jurisdiction of the Commercial Arbitration Court, by the Presidium of the arbitration court from the list of recommended arbitrators published on the website of the arbitration court<sup>7</sup>,

b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court ~~or other authority~~ specified in ~~article 6;~~ section 7 (2) or, in cases falling within the jurisdiction of the Commercial Arbitration Court, by the Presidium of the arbitration court from the list of recommended arbitrators published on the website of the arbitration court,

<sup>6</sup> See Act L of 2009 on the Order for Payment Procedures.

<sup>7</sup> Please visit: <https://mkik.hu/en/roll-of-arbitrators-2018-2021>.

c) in an arbitration with more than three arbitrators, the provisions of point a) shall apply accordingly, with the proviso that the parties shall appoint arbitrators in an equal proportion, and a majority vote of the elected arbitrators shall decide on the appointment of the last arbitrator.

(4) Where, under an appointment procedure agreed upon by the parties:

a) a party fails to act as required under such procedure, or

b) the parties, or ~~two~~the arbitrators, are unable to reach an agreement expected of them under such procedure, or

c) a third party, ~~including an institution,~~ fails to perform, within thirty days, any function entrusted to it under such procedure for the purpose of appointment,

any party may request the court ~~or other authority~~ specified in ~~article 6 to take the necessary measure,~~section 7 (2), unless the agreement on the appointment ~~procedure provides~~procedure or the rules of the permanent arbitration court specified in the arbitration agreement provide other means for securing the appointment in such circumstances.

~~A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.~~(5) In the process of appointing the missing arbitrator, the requirements set out in the parties' agreement concerning the arbitrator's professional qualifications or other characteristics shall be taken into account, along with all other aspects that are likely to secure the appointment of an independent and impartial arbitrator. If, in a case falling within the jurisdiction of the Court of Commercial Arbitration, the list of recommended arbitrators does not contain any person with the professional qualification or other characteristics specified in the agreement, a person other than those contained in the list of recommended arbitrators may be appointed as sole arbitrator or presiding arbitrator.

(6) There shall be no legal remedy against the decision adopted under paragraphs (3) and (4) by a court, other person or organisation acting in accordance with this section.

(7) The following persons shall not serve as arbitrators:

a) persons under the age of twenty-four,

b) persons excluded from participating in public affairs by a final and binding court judgment,

c) persons sentenced to imprisonment by a final and binding court judgment, until exonerated from the aggravating consequences of having a criminal record,

d) persons placed under custodianship or supported decision-making affecting his capacity to act,

e) persons disqualified from a profession that is subject to a university degree in law, or

f) persons on probation by a final and binding court judgment, during the probation period.

(8) Persons formerly participating as a mediator, a representative of one of the parties or an expert in the dispute of the parties referred or related to arbitration shall not proceed as an arbitrator in the arbitral proceedings.

(9) The arbitrator shall communicate his acceptance of the appointment by a written statement addressed to the parties. The arbitrator's signing of the document containing his appointment shall qualify as acceptance.

## **Article 12.** - Grounds for challenge

**Section 13 (1)** When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties ~~unless they have already been informed of them by him.~~

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess the professional qualifications or other characteristics agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

## **Article**

### 13.- Challenge procedure

**Section 14 (1)** The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), justifying the motion, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under ~~any procedure agreed upon by the parties or under~~ the procedure of paragraph (2-3) of this ~~article-section~~ is not successful, the challenging party may request, within thirty days after having received ~~notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal~~ the court specified in section 7 (2) or, in cases falling within the jurisdiction of the Commercial Arbitration Court, the Presidium of the arbitration court to decide on the motion for challenge. If the motion for challenge is rejected by ~~the Presidium of the Commercial Arbitration Court, the challenging party may request, within thirty days after having received the decision rejecting the challenge, the court specified in section 7 (2) to decide on the motion for challenge.~~

(5) There shall be no legal remedy against the order of the court adopted in the proceedings under paragraph (4) of this section. ~~while such a request is pending~~ Until the service of such order, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

~~Article 14. Failure or impossibility to act~~

### 14. Other cases of the termination of the arbitrator's assignment

**Section 15 (1)** If an arbitrator, for any reason, becomes ~~de jure or de facto~~ unable to perform his functions or for other reasons ~~fails to act without~~ the causes undue delay, ~~his mandate terminates if he withdraws in the proceedings, and does not withdraw from his office or if~~, the parties may agree on the termination of his mandate. ~~Otherwise, if a controversy remains concerning any of these grounds~~ Failing that, any party may request ~~the court or other authority specified in article 6, by referring to the cause of the termination, the court specified in section 7 (2) or, in cases falling within the jurisdiction of the Commercial Arbitration Court, the Presidium of the arbitration court to decide on the termination of the arbitrator's mandate, which decision.~~ If the request is rejected by the Presidium of the Commercial Arbitration Court, the requesting party may request, within thirty days after having received the decision on rejection, the court specified in section 7 (2) to decide on the termination of the arbitrator's mandate.

~~(1) shall be subject to no appeal.~~

~~If,~~ (2) There shall be no legal remedy against the order of the court adopted in the proceedings under ~~this article or article~~ paragraph (1) of this section.

(3) The termination of the arbitrator's mandate in accordance with paragraph (1) of this section or section 14 (2) and (3) shall not mean the acknowledgement of the existence of any of the reasons referred to in paragraph (1) of this section or section (13). ~~13(2), an~~

~~(2) arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).~~

### ~~Article 15. Appointment of substitute arbitrator~~

**Section 16** Where the mandate of an arbitrator terminates ~~under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate,~~ for any reason a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

## CHAPTER IV. ~~JURISDICTION OF ARBITRAL TRIBUNAL~~

~~Article 16. Competence of arbitral tribunal to rule on its jurisdiction~~ COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION



**Section 17 (1)** The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal declaring that the contract has not come into existence or is ~~null and void~~ invalid shall not entail ~~ipso jure~~ the invalidity of the arbitration clause.

**(2)** A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the ~~matter~~ matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, ~~in either case,~~ admit a later plea if it considers the delay justified.

**(3)** The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received ~~notice of that ruling~~ the decision, the court specified in ~~article 6~~ section 7 (2) to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

## CHAPTER ~~IV A-V~~

### INTERIM MEASURES

#### AND PRELIMINARY ORDERS

*(As adopted by the Commission at its thirty-ninth session, in 2006)*

#### ~~Section 1-~~

##### 16. Interim measures

~~Article 17. Power of arbitral tribunal to order interim measures~~

**Section 18 (1)** Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

**(2)** An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

**(a)** Maintain or restore the status quo pending determination of the dispute;

**(b)** Take action that would prevent, or to refrain from taking action that is likely to cause, ~~current~~ damage or imminent ~~harm~~ threat of damage, or prejudice to the arbitral process itself;

**(c)** Provide a means of preserving assets out of which a subsequent award may be satisfied or to provide cover corresponding to their value; or

**(d)** Preserve evidence that may be relevant ~~and material~~ to the resolution of the dispute.

#### ~~Article 17 A. Conditions for granting interim measures~~

~~The~~ **Section 19** ~~In cases under section 18 (2) a), b) and c), the~~ party requesting an interim measure ~~under article 17(2)(a), (b) and (c)~~ shall satisfy the arbitral tribunal that:

**(a)** Harm not ~~adequately~~ substantially reparable by an award of damages is likely to result if the measure is not ordered, and such harm ~~substantially~~ outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; ~~and~~

~~There is a reasonable possibility that~~ **(b)** ~~The~~ the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

~~(1) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.~~

#### ~~Section 2-~~ 17. Preliminary orders

~~Article 17 B. Applications for preliminary orders and conditions for granting preliminary orders~~

**Section 20 (1)** Unless otherwise agreed by the parties, a party may, ~~without notice to any other party,~~ make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

**(2)** The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for ~~the~~ interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

~~(1) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)(a), is the harm likely to result from the order being granted or not.~~

#### ***Article 17 C. Specific regime for preliminary orders***

**Section 21 (1)** ~~Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the~~ The arbitral tribunal shall give notice to all parties of the ~~request for the interim measure, the~~ determination made in respect of an application for the preliminary order, ~~the preliminary order, if any, and all other communications, including by indicating, at the same time, it shall provide information about~~ the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

**(2)** At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

**(3)** The arbitral tribunal shall decide promptly on any objection to the preliminary order.

**(4)** A preliminary order shall expire after twenty days from the date on which it was issued ~~by the arbitral tribunal. However, the~~

**(5)** ~~The~~ The arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

**(6)** A preliminary order shall be binding on the parties but shall not be subject to judicial enforcement ~~by a court. Such a preliminary order does not constitute an award.~~

### 18. Common rules on interim measures and preliminary orders

#### ~~Section 3. Provisions applicable to interim measures and preliminary orders~~

##### ~~Article 17 D. Modification, suspension, termination~~

**Section 22** ~~The~~ At the request of any party or, in exceptional circumstances, in the absence of a request and without prior notice to the parties, the arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, ~~upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.~~

#### ***Article 17 E. Provision of security***

**Section 23 (1)** The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

**(2)** The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

#### ***Article 17 F. Disclosure***

**Section 24 (1)** The arbitral tribunal may require any party ~~promptly~~ to immediately disclose any ~~material~~ substantial change in the circumstances on the basis of which the measure was requested or granted.

**(2)** The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.

#### ***Article 17 G. Costs and damages***

**Section 25** The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order ~~to any party~~ if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

## 19. Enforcement of interim measures

### **Section 4. ~~Recognition and enforcement~~ of interim measures**

#### *Article 17 H. ~~Recognition and enforcement~~*

**Section 26 (1)** An interim measure issued by an arbitral tribunal shall be ~~recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued~~in accordance with the rules on judicial enforcement<sup>8</sup>, subject to the provisions of ~~article 17 I~~Section 27 on refusal.

**(2)** The party who is seeking or has obtained ~~recognition or~~ enforcement of an interim measure shall ~~promptly inform~~immediately notify the court of any termination, suspension or modification of that interim measure.

~~(1) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.~~

#### *Article 17 I.*

**20.** Grounds for refusing ~~recognition or~~ enforcement<sup>9</sup>

### **Recognition or enforcement**

**Section 27 Enforcement** of an interim measure may be refused only:

**(a)** At the request of the party against whom it is invoked if the court is satisfied that:

**aa)** Such refusal is warranted on the grounds set forth in ~~article 36(1)(a)(i), (ii), (iii) or (iv)~~Section 47 (2) a); or

**ab)** The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

**ac)** The interim measure has been terminated or suspended by ~~the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or~~

**(b)** If the court finds that:

**ba)** The interim measure is incompatible with the powers conferred upon the court, ~~unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or~~

**(i) — bb)** Any of the grounds set forth in Section 47 (2) b)~~article 36(1)(b)(i) or (ii)~~, ~~—~~ apply to the recognition and enforcement of the interim measure.

~~Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.~~

## CHAPTER VI

### PROCEEDINGS OF THE COURT

#### **Section 5. ~~Court-ordered interim measures~~**

#### *Article 17 J. ~~Court-ordered interim measures~~*

~~A court shall have the same power of issuing an interim measure in~~Section 28 In relation to arbitration proceedings, irrespective of ~~whether their place is in the territory of this State,~~the Hungarian court shall have the same material competence to order a preliminary taking of evidence (Chapter XXIV of Pp.), a provisional measure (Chapter VIII of Pp.), and a security measure (Chapter X of Vht.), as well as to insert an enforcement clause into a deed [sections 23/B (1) a) and 23/C of Vht.], and to require the provision of a security in a separate claim in accordance with the rules on litigation proceedings (section 6:523 of Ptk.) as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.In

<sup>8</sup> See Act LIII of 1994 on the Judicial Enforcement.

<sup>9</sup> The conditions set forth in article 17 I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

the course of this, the court having material and territorial competence shall proceed with due consideration of the characteristics of arbitration.

## CHAPTER VII-

### CONDUCT OF ARBITRAL PROCEEDINGS

#### ~~Article 18-~~

21. Equal treatment of parties and determination of rules of procedure

~~The~~

Section 29 In the course of the arbitral proceedings the parties shall be treated with equality and each party shall be given a full an opportunity of presenting his case.

#### ~~Article 19. Determination of rules of procedure~~

Section 30 (1) Subject to the provisions of this LawAct, the parties are free to agree on the rules of the procedure to be followed by the arbitral tribunal in conducting the proceedings.

~~Failing~~(2) In the absence of such an agreement, the arbitral tribunal may, subject to the provisions of this Law, ~~conduct~~Act, determine the arbitration rules of procedure in such manner as it considers appropriate. The ~~power conferred upon~~ powers of the arbitral tribunal includes the power to determine the admissibility, relevance, ~~materiality~~ and weight of any evidence.

#### ~~Article 20-22.~~ Place of arbitration and the commencement of proceedings

Section 31 (1) The parties are free to agree on the place of arbitration. ~~Failing~~In the absence of such an agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including in particular the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place ~~it considers appropriate~~ for consultation among its ~~members~~arbitrators, for hearing the parties, witnesses, or experts ~~or the parties~~, or for inspection of goods, ~~other property or~~ objects and documents.

#### ~~Article 21. Commencement of arbitral proceedings~~

Section 32 Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

#### ~~Article 22-~~

23. Language of the proceedings

Section 33 (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. ~~Failing~~In the absence of such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. ~~This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.~~

(2) Unless otherwise agreed by the parties, the agreement on the language of the proceedings or the determination of the language of the proceedings shall apply to any written statement by a party, any hearing, and any decision and or other communication by the arbitral tribunal.

(3) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language ~~or languages~~ agreed upon by the parties or determined by the arbitral tribunal.

#### ~~Article 23. Statements~~24. Statement of claim and defence

Section 34 (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state his claim, the facts supporting his claim, ~~the points at issue~~it and the relief or remedy sought~~disputed issues~~, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed ~~the parties have other wise agreed~~ as to the required elements~~content~~ of such statements. ~~The parties may submit~~ Together with their statements all documents they consider to be relevant or may add a reference to the documents or other~~parties may also submit their~~ evidence ~~they will submit~~.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal ~~considers it inappropriate to~~

~~allow such amendment having regard to the delay in making it~~ does not allow its submission on the grounds of the delay it would cause.

#### 25. Participation in the proceedings by a person who is not a party to the arbitration agreement

**Section 35** Unless otherwise agreed by the parties, a person who is not a party to the arbitral agreement may participate in the proceedings as a party, if the claim submitted by or against him can only be assessed jointly with the dispute that is the subject of the arbitration agreement, and if this person subjects himself to the jurisdiction of the arbitral tribunal by a written statement.

#### ~~Article 24-26.~~ Hearings and written proceedings

**Section 36** (1) Subject to any contrary agreement by the parties, and subject to the exception provided for in paragraph (2) of this section, the arbitral tribunal shall decide whether to hold oral hearings a hearing for the presentation of the standpoints and the evidence or for oral argument, or whether to conduct the proceedings shall be conducted on without it.

(2) ~~At the request of a party the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held,~~ the arbitral tribunal shall hold ~~such hearings a hearing~~ at an appropriate stage of the proceedings, ~~if so requested by a party even if the parties have agreed that the dispute is to be settled without holding a hearing.~~

(3) The parties shall be given sufficient advance notice of any hearing and of any ~~meeting of procedural acts taken by~~ the arbitral tribunal for the purposes of inspection ~~of goods, other property or documents.~~ ~~All statements~~ (4) Statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any ~~expert report or evidentiary document on which~~ pieces of evidence that the arbitral tribunal may ~~rely~~ take into account in making its decision shall be communicated to the parties.

(5) The arbitral tribunal shall not impose a fine or apply any coercive measures against witnesses and experts.

(6) The arbitral tribunal shall draw up minutes of the arbitral proceedings, and a copy thereof shall be served on the party.

(7) Unless otherwise agreed by the parties, the proceedings of the arbitral tribunal shall not be public.

#### 27. Intervention in the proceedings

**Section 37** (1) At the request of a party, the arbitral tribunal shall inform those having a legal interest in the outcome of the arbitral proceedings that they may intervene in the proceedings in order to facilitate the success of the party with the same interest.

(2) There shall be no legal remedy against the decision of the arbitral tribunal on whether to authorise intervention.

(3) The intervener may submit evidence, and may participate in the hearing and in procedural acts taken for the purpose of inspection.

#### ~~Article 25~~

#### 28. Default of a party

**Section 38** Unless otherwise agreed by the parties, if, without showing sufficient cause,  
a) the claimant fails to ~~communicate~~ present his statement of claim in accordance with ~~article 23~~ section 34 (1), the arbitral tribunal shall terminate the proceedings;  
b) the respondent fails to ~~communicate~~ present his statement of defence in accordance with ~~article 23~~ section 34 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;  
c) any party fails to appear at a hearing ~~or of the arbitral tribunal, or fails~~ to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the basis of the evidence before it.

#### ~~Article 26. Expert appointed by arbitral tribunal~~

#### 29. Expert

**Section 39** (1) Unless otherwise agreed by the parties, the arbitral tribunal



a) may appoint one or more experts to ~~report to it~~ give expert opinion on ~~specific~~ issues ~~to be~~ determined by the arbitral tribunal for the assessment of which the arbitral tribunal lacks the necessary professional expertise;

b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant ~~documents, goods or other property~~ objects for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, ~~after delivery~~ following the presentation of his written or oral ~~report~~ opinion, participate in a hearing where the parties have the opportunity to put questions to him and to present ~~expert witnesses~~ experts in order to testify on the ~~points at issue~~ issues under dispute.

~~Article 27-~~ (3) A person formerly participating as a mediator or a representative of one of the parties, or an expert in the dispute of the parties referred or related to arbitration shall not act as an expert in the arbitral proceedings.

### 30. Court assistance in taking evidence

**Section 40** The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a ~~competent court of this State~~ assistance in taking evidence.

~~The court may execute the request within its competence and according to its-~~ In the course of this the court shall proceed in accordance with the rules on the preliminary taking of evidence-

(Chapter XXIV of Pp.), except that the rules of section 334 of the Pp. shall not be applied, and the court does not need to hear the parties with respect to ordering the taking of evidence.

## ~~CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS~~

~~Article 28. Rules applicable to substance of dispute~~

### 31. Applicable substantive law

**Section 41 (1)** The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the ~~substance of assessment on the dispute-~~ Any merits of the disputed matters. Unless otherwise agreed by the parties, any designation of the law or legal system of a ~~given~~ State shall be construed, ~~unless otherwise expressed,~~ as directly referring to the substantive law of ~~that~~ the State concerned and not to its ~~conflict of laws~~ private international law rules.

~~Failing any designation-~~ (2) In the absence of a choice of law by the parties, the arbitral tribunal shall ~~apply~~ determine the applicable substantive law determined by the conflict of laws in accordance with the private international law rules which it considers applicable.

(3) The arbitral tribunal shall decide ex aequo et bono ~~or as amiable compositeur~~ only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, and shall take into account the usages of the trade applicable to the transaction.

~~Article 29~~32. Decision-making by panel of arbitrators

~~In arbitral proceedings with more than one arbitrator,~~

**Section 42 (1)** ~~Any~~ any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members; in the absence of a majority position, the presiding arbitrator shall decide.

~~However, questions-~~ (2) Questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

~~Article 30~~33. Settlement

**Section 43 (1)** If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings ~~and, if,~~

(2) If so requested by the parties ~~and not objected to by,~~ the arbitral tribunal, shall record the settlement in the form of an arbitral award on agreed terms, provided that the settlement is in compliance with the law.

(3) An award on agreed terms shall ~~be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has~~ have the same ~~status and~~ effect as any other award on the merits of the case.

~~Article~~

~~34.~~ ~~34.~~ Form and contents of the award

**Section 44 (1)** The award and the order terminating the proceedings shall be made in writing and shall be signed by the ~~arbitrator or arbitrators, members of the arbitral tribunal.~~ In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members ~~of the arbitral tribunal~~ shall suffice, provided that the reason for any omitted signature is stated in the award.

(2) The award shall state the reasons upon which it is based, unless ~~the parties have agreed that no reasons are to be given or~~ the award is an award on agreed terms under ~~article 30~~section 43.

(3) If so requested by a party, the award shall determine the amount of the costs of the proceedings and how these costs are to be borne.

(4) The award and the order terminating the proceedings shall state its date and the place of arbitration as determined in accordance with ~~article 20~~section 31 (1). The award and the order terminating the proceedings shall be deemed to have been made at the that place.

(5) After the ~~award~~award and the order terminating the proceedings is made, a copy signed by the arbitrators in accordance with paragraph (1) of this ~~article~~section shall be delivered to each party.

~~Article 32-35.~~ Termination of proceedings

**Section 45 (1)** The arbitral proceedings are terminated by the final award ~~or by an order~~ of the arbitral tribunal or by its order terminating the proceedings in accordance with paragraph (2) of this ~~article~~section.

(2) The arbitral tribunal shall ~~issue an order for~~terminate the ~~termination of the arbitral~~ proceedings ~~when:~~by an order if

a) the claimant does not present his claim in accordance with section 34 (1);

b) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

c) the parties agree on the termination of the proceedings; or

d) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the ~~arbitral~~ proceedings, ~~subject to the provisions of articles 33~~but the arbitral tribunal shall proceed in cases specified in sections 46, 47 (4), and 34(4)-50 to 52.

~~Article 33-36.~~ Correction ~~and~~ interpretation ~~of~~and supplementation of the award; ~~additional award~~

~~(1)~~ **Section 46 (1)** Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors ~~or any errors of similar nature;~~

~~if so~~(2) Within thirty days of receipt of the award, unless otherwise agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific ~~point~~or part of the award.

(3) If the arbitral tribunal considers the request referred to in paragraphs (1) and (2) of this section to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the reasoning of the award.

(4) The arbitral tribunal may, even in the absence of a request, correct any~~the~~ error ~~of the type~~ referred to in paragraph (1) ~~(a) of this article on its own initiative~~ within thirty days of the date~~making~~ of the award.

(5) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to ~~make an additional supplement the~~ award as to claims presented in the arbitral proceedings but ~~omitted from~~not assessed in the award. If the arbitral tribunal considers the request to be justified, it shall make ~~the additional,~~ based on a hearing if necessary, a supplementary award within sixty days.

(6) The arbitral tribunal may extend, if necessary, the period of time ~~within which it shall make a set in this section for~~ correction, interpretation ~~or and the making of the supplementary~~ award by a maximum of an additional ~~award under paragraph (1) or (3) of this article~~thirty days.

(7) The provisions of ~~article 31~~section 44 shall apply to a correction ~~or,~~ interpretation and supplementation of the ~~award or to an additional~~ award.

## CHAPTER VII. RECOURSE AGAINST VIII

### SETTING ASIDE OF THE AWARD

#### *Article 34. Application for setting aside as exclusive*

#### *recourse*

**Section 47 (1)** There shall be no appeal against an award. Recourse to a court against an arbitral award may be made only by an application for setting aside ~~in accordance with paragraphs (2) and (3) of this article.~~

(2) An arbitral award may be set aside by the court specified in ~~article 6~~ section 7 (2) on the basis of an action brought against the other party only if:

a) the party making the application for setting aside furnishes proof that:

aa) a party to the arbitration agreement ~~referred~~ had no legal capacity or capacity to in ~~article 7~~ was under some incapacity act; or the ~~said~~ arbitration agreement is not valid under the law to which the parties have subjected it or, ~~failing any indication thereon~~ in the absence of such law, under the ~~Hungarian~~ law of this State; or

ab) the party ~~making the application~~ was not given proper notice of the appointment of an arbitrator or of the ~~proceedings of the~~ arbitral ~~proceedings~~ tribunal, or was otherwise unable to present his case; or

ac) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the ~~decisions on~~ matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

ad) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a ~~mandatory~~ provision of this ~~Law~~ from which the parties cannot derogate Act, or, failing such agreement, was not in accordance with the ~~provisions of this Law~~ Act; or

b) the court finds that:

ba) the subject- matter of the dispute is not capable of settlement by arbitration under the ~~Hungarian~~ law of this State; or

bb) the award is in conflict with the public policy of ~~this State~~ Hungary.

~~(1) An application~~ (3) The action for setting aside may ~~not be made after three months have elapsed~~ brought within sixty days from the date on which the party ~~making that application~~ bringing the action had received the award or, if a request had been made under ~~article 33~~ section 46, from the date on which that request had been disposed of by the arbitral tribunal.

~~The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it~~ Failure to keep this time limit shall result in the forfeiture of the right.

(4) At the justified request of either party, the court may suspend the setting aside proceedings for a maximum of ninety days in order to give the arbitral tribunal an opportunity, subject to section 46, to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside. In this case the arbitral proceedings terminated by the award shall continue for the purpose and duration determined by the court. The setting aside of the award made in the resumed arbitral proceedings may be requested by an amendment of the claim or by a counter-claim within sixty days from the receipt of the award.-

(5) If the award is set aside, the arbitral proceedings may be continued with the appointment of arbitrators in accordance with section 12.

## CHAPTER IX

### RETRIAL

**Section 48** Unless otherwise provided by this chapter, the rules on the main proceedings shall apply accordingly to the retrial.

**Section 49** Unless otherwise agreed by the parties, retrial may be ordered within one year from receipt of the award if a party refers to a fact or evidence that he did not invoke in the main proceedings through no fault of his own, provided that, if assessed, it could have resulted in an award more favourable to the party.

**Section 50 (1)** The arbitral tribunal that made the contested award shall decide on the admissibility of the request for retrial by an order. There shall be no legal remedy against this order.

(2) In the event of one of the members of an arbitral tribunal being prevented from attending, an arbitrator appointed in accordance with the procedure under section 12 shall take his place.

(3) The arbitral tribunal may hear the parties prior to deciding on admissibility.

(4) The request for retrial shall be rejected if

a) it has been submitted following the expiry of one year after receipt of the award,

b) the issues raised by the party submitting the request are not suitable for producing an award more favourable to that party, even if their truthfulness is proven, or

c) the party did not invoke in the main proceedings the fact or evidence raised in his request through his own fault.

Section 51 If the arbitral tribunal granted a retrial, and the request is likely to be successful, the arbitral tribunal may suspend the enforcement of the award.

Section 52 If retrial is granted, the proceedings shall be carried out within the scope of the request, and, depending on the outcome of the proceedings, the arbitral tribunal shall uphold the contested award or, wholly or partially, repeal it and make a new award.

## CHAPTER X

### ~~VIII. RECOGNITION AND ENFORCEMENT OF THE AWARD~~

~~S~~

#### ~~Article 35. Recognition and enforcement~~

~~Section 53 (1) An arbitral award, irrespective of the country in which it was made, shall have the same effect be recognized as a final and binding court judgment and, upon application in writing to the competent court, shall be enforced subject to the laws on judicial enforcement. provisions of this article and of article 36.~~

(2) The party relying on an award or submitting a request applying for its enforcement shall attach supply the original award or a certified copy thereof to the request.

~~If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.~~

~~(Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006)~~

#### ~~Article 36. Grounds for refusing recognition or enforcement~~

~~(1) Recognition or enforcement Section 54 Enforcement of an arbitral award, irrespective of the country in which it was made, may shall be refused only:~~

~~(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:~~

~~(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or~~

~~(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or~~

~~the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or~~

~~if the court finds that:~~

a) the subject-matter of the dispute is not capable of settlement by arbitration under the Hungarian law of this State; or

b) the recognition or enforcement of the award would be is contrary to the public policy of this State. Hungary.

~~(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.~~

## CHAPTER XI

### OTHER RULES

#### 37. Enforcement of a claim subject to an arbitration agreement following the starting date of the liquidation

**Section 55** If a liquidation procedure under Hungarian law was initiated against a party to the arbitration agreement, following the starting date of the liquidation, a pecuniary claim related to the assets under liquidation may only be enforced within the liquidation procedure, in accordance with the Act on bankruptcy procedure and liquidation procedure. This provision shall not exclude the enforcement of non-pecuniary claims in accordance with this Act.

#### 38. Legal succession in arbitration agreement

**Section 56** Unless otherwise agreed by the parties, in the event of a legal succession or an assignment with regard to the arbitration agreement concluded by the legal predecessor, the scope of the arbitration agreement shall extend to the legal successor as well.

#### 39. Relations between the arbitral tribunal and the parties

**Section 57** (1) Withdrawal from the office of arbitrator or an agreement on the termination of an arbitrator's mandate by the parties shall become effective if all members of the arbitral tribunal and, with respect to the withdrawal, all parties are informed thereof.

(2) If an award is set aside, in the continued proceedings following the setting aside, the parties shall not be obliged to pay the fee for the arbitration tribunal or administrative costs.

(3) The rules of the permanent arbitration court or, in ad hoc arbitration, the agreement between the arbitral tribunal and the parties may exclude or limit the liability of the permanent arbitration court, the arbitral tribunal and the arbitrators, except for liability for damage caused intentionally or due to gross negligence.

#### 40. Mediation procedure

**Section 58** A permanent arbitration court may establish its own rules for the arbitral mediation procedure<sup>10</sup> in accordance with this Act and the UNCITRAL Model Law on International Commercial Conciliation of 2002.

## CHAPTER XII

### PERMANENT ARBITRATION COURT

#### 41. Permanent arbitration in Hungary

**Section 59** (1) In Hungary, the Commercial Arbitration Court and the arbitral panel established in accordance with its rules of procedure shall proceed as a permanent arbitration court.

(2) In accordance with the provisions of the Act on Sport, the Permanent Arbitration Court for Sport or the arbitral panel established according to its rules of proceedings shall proceed in cases determined therein; while in accordance with the provisions of the Act on the Hungarian Chamber of Agriculture, Food and Rural Development, and the Act on the Detection and Prevention of Legal Transactions Aimed at Circumventing the legal provisions limiting the Acquisition of the Ownership or Use of Arbitral land, the arbitration court attached to the Agricultural Chamber or the arbitral panel established according to its rules of proceedings shall proceed in cases determined therein.

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<sup>10</sup> Please visit: <https://mkik.hu/mkik-vb-eljarasi-szabalyzat2019-09-01>.



#### 42. Commercial Arbitration Court

**Section 60** (1) In the territory of Hungary, the Commercial Arbitration Court shall carry out the tasks of the permanent arbitration court as stipulated in this Act and in its order of business and its rules of procedure determined in accordance with this Act.

(2) The organs of the Commercial Arbitration Court shall be:

- a) the Presidium consisting of seven members, and
- b) the Secretariat carrying out the administrative matters of the Commercial Arbitration Court.

#### 43. Presidium

**Section 61** (1) The Presidium shall be the general decision-making organ of the Commercial Arbitration Court.

(2) The President and two members of the Presidium shall be delegated by the Hungarian Chamber of Commerce and Industry, while one member shall be delegated by each of the Hungarian Energy and Public Utility Regulatory Authority, the Budapest Stock Exchange Ltd., the Hungarian Banking Association and the Hungarian Bar Association. The delegated member shall not be instructed in connection with fulfilling the duties of the Presidium.

(3) The office of the Vice-President shall be held by a member delegated by the Hungarian Energy and Public Utility Regulatory Authority, the Budapest Stock Exchange Ltd., the Hungarian Banking Association and the Hungarian Bar Association. The office of the Vice-President shall be rotated annually between the members nominated by the Hungarian Energy and Public Utility Regulatory Authority, the Budapest Stock Exchange Ltd., the Hungarian Banking Association and the Hungarian Bar Association, in this order.

(4) Members of the Presidium shall be persons having at least 10 years of professional experience in a legal profession and has taken the bar examination or the corresponding professional examination according to their national law, and have considerable experience in connection with the application of the rules on arbitration.

(5) The mandate of the members of the Presidium shall be valid for three years, and they may be re-delegated once.

(6) The mandate of the President shall be valid for three years and he may be re-delegated once.

(7) The recalling of a member of the Presidium who has become unworthy of his office may be initiated by at least four members of the Presidium. The delegating organisation shall decide on the motion for recalling within thirty days. In case of the recalling of a member of the Presidium, the delegating organisation shall delegate, concurrently with the recalling, a new member to the Presidium.

(8) A member of the Presidium shall not proceed as an arbitrator or as an expert in proceedings falling within the jurisdiction of the Commercial Arbitration Court, except for cases in which he accepted his appointment as arbitrator before his mandate as a member of the Presidium started, or in which he provided an expert opinion before his was given a mandate to act as a member of the Presidium. A member of the Presidium shall not proceed as a legal representative in proceedings falling within the jurisdiction of the Commercial Arbitration Court.

(9) The Commercial Arbitration Court shall be represented by the President and the Vice-President acting as his general deputy.

(10) Members of the Presidium shall perform their tasks under this Act in person.

#### 44. Tasks of the Presidium and the President

**Section 62** (1) The Presidium

a) shall adopt the order of business and the rules of procedure of the Commercial Arbitration Court, and shall publish them on the website of the Commercial Arbitration Court,

b) shall compile a list of recommended arbitrators which it revises at least every three years,

c) shall exercise the right to appoint arbitrators in accordance with this Act,

d) may give recommendations on procedural issues, with the proviso that such recommendations shall not bind the proceeding arbitral panel,

e) shall determine in the rules of procedure the amount of the arbitration fee of the main proceedings, continued proceedings following the annulment of an award, and retrial, as well as in case an award is annulled, the detailed rules related to the fees of the arbitration panel or panels proceeding in the case concerned.

f) shall specify in the rules of procedure the cases falling within the jurisdiction of the Commercial Arbitration Court where the arbitrator is to be appointed from the members of the energy section and

those where the arbitrator is to be appointed from the members of the financial and capital market section.

g) shall prescribe, in the rules of procedure, the creation of a separate reserve fund to cover the fees and costs not reimbursed by the parties, and decide, in accordance with the order set out in the rules of procedure, on fulfilment of payments from the separate reserve fund.

(2) The President shall

a) manage the Secretariat,

b) ensure that six months after the decision concerned is made, an anonymised extract of the award and the decision as set out in Section 17 Subsection (3), and the ruling to dismiss the arbitration proceedings on the basis of Section 45 Subsection (2) paragraph d) adopted by the arbitration panel proceeding within the frameworks of the Commercial Arbitration Court excluding the possibility of recognising the parties is published and available on the website of the Commercial Arbitration Court in a searchable format.

(3) The members of the Presidium shall be entitled to a monthly honorarium; the legal persons delegating the members to the Presidium shall determine the amount of the honorarium and agree upon how the charges associated with their payment are to be borne.

(4) A person shall be considered to have the considerable experience referred to in section 61 (4) if his name has been indicated on the list of arbitrators of a Hungarian or foreign permanent arbitration court for at least five years or he has been providing legal representation in arbitration cases on a regular basis for at least five years. The President of the Hungarian Chamber of Commerce and Industry shall reject the nomination to the Presidium of any person who does not meet the delegation requirements laid down in this Act.

(5) If the separate reserve fund created for the purpose of covering the fees and costs not reimbursed by the parties does not cover the necessary payments, the Hungarian Chamber of Commerce and Industry operating the Court of Commercial Arbitration shall ensure the availability of coverage.

#### 45. List for recommending arbitrators<sup>11</sup>

**Section 63** (1) The Court of Commercial Arbitration shall compile a list for recommending arbitrators (hereinafter: "list").

(2) As part of the list, the Commercial Arbitration Court shall also prepare breakdowns

a) by the energy section according to the recommendations of the Hungarian Energy and Public Utility Regulatory Authority,

b) by the financial and capital market section according to the recommendations of the Budapest Stock Exchange Ltd. and the Hungarian Banking Association.

(3) The list shall consist of a general part and parts related to the sections.

(4) The general part of the list shall contain a minimum of 60 names, while the parts related to the sections shall contain a minimum of 30 further names each. The name of the same person may be included in both the general part of the list and in the parts related to the sections.

(5) The list may include the name of a lawyer with excellent professional knowledge, if such person

a) requests it,

b) has at least 10 years of professional experience in a legal profession.

c) has taken the bar examination or the corresponding professional examination according to his national law,

d) is capable of fulfilling the arbitrator's tasks according to the opinion of the majority of the Presidium, and

e) has not yet reached the age of 70.

(6) The names of those who

a) have reached the age of 70, or

b) request the deletion of their name

shall be deleted from the list.

(7) The Commercial Arbitration Court shall publish the list and its amendments on its website following the approval of the Hungarian Chamber of Commerce and Industry. The approval shall be conditional upon the agreement of the Hungarian Energy and Public Utility Regulatory Authority with respect to the members of the energy section, and the agreement of the Budapest Stock Exchange Ltd. and the Hungarian Banking Association with respect to the members of the financial and capital market section.

(8) The Commercial Arbitration Court shall revise the list every three years and, in the course of the revision, it shall request proposals from the Hungarian Energy and Public Utility Regulatory Authority

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<sup>11</sup> Please visit: <https://mkik.hu/en/roll-of-arbitrators-2018-2021>.

with respect to the energy section, and from the Budapest Stock Exchange Ltd. and the Hungarian Banking Association with respect to the financial and capital market section.

(9) The body consisting of persons included in the list may express its opinion on issues determined in the order of business, in the way it is determined in the order of business.

## CHAPTER XIII

### FINAL PROVISIONS

**Section 64** (1) With the exception specified in paragraph (2), this Act shall enter into force on the eighth day following its promulgation.

(2) Sections 1 to 63, 65, 66, 68, and 69 shall enter into force on 1 January 2018.

**Section 65** (1) The provisions of this Act shall apply to arbitral proceedings commencing on or after 1 January 2018.

(2) The cases that are pending on 1 January 2018 shall be settled in accordance with the procedural rules in force on the date of their commencement.

**Section 66** The provisions of section 1 (3) and sections 8, 41 and 56 shall apply to arbitration agreements concluded after 1 January 2018.

**Section 67** (1) The Permanent Arbitration Court for the Financial and Capital Market and the Permanent Energy Arbitration Court (hereinafter jointly “terminating arbitration courts”) shall cease to exist with effect from 31 December 2017.

(2) The assets of the terminating arbitration courts that remain following the full satisfaction of the creditors’ claims shall be transferred to their founders by virtue of this Act.

(3) The mandate of the officials of the Court of Commercial Arbitration and the terminating arbitration courts shall terminate on 31 December 2017 by virtue of this Act.

(4) The members and the President of the new Presidium of the Commercial Arbitration Court shall be nominated as of 1 January 2018.

(5) The presidiums of the terminating arbitration courts shall prepare a register of the pending arbitration cases, and shall transfer the documents thereof to the Commercial Arbitration Court on 31 December 2017.

(6) If an agreement specified any of the terminating arbitration courts as the arbitration court with jurisdiction before it ceased to exist, the Commercial Arbitration Court shall have jurisdiction to settle the dispute by arbitration after 1 January 2018. In such proceedings, the agreement on the jurisdiction of the terminating arbitration courts shall be considered to be an agreement on the jurisdiction of the Commercial Arbitration Court.

(7) In pending cases that were commenced before the terminating arbitration courts, the tasks of the arbitration court shall be performed by the Commercial Arbitration Court as of 1 January 2018.

(8) By 31 January 2018, the Hungarian Chamber of Commerce and Industry shall amend its statute and the deed of foundation of the Commercial Arbitration Court in accordance with this Act.

(9) By 31 January 2018, the Presidium of the Commercial Arbitration Court shall adopt its order of business and its rules of proceedings, and shall publish the list.

(10) In order to prepare the text of the order of business and the rules of proceedings of the Commercial Arbitration Court, as well as the list, a drafting commission shall be established on 1 October 2017, one member of which shall be nominated by the Hungarian Energy and Public Utility Regulatory Authority, the Budapest Stock Exchange Ltd., the Hungarian Banking Association and the Hungarian Bar Association each, while three further members shall be nominated by the Hungarian Chamber of Commerce and Industry.

**Sections 68 to 69** [repealed]