

New Year New Rules – Arbitral proceedings before the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry after 31 December 2022

The amended Rules of Proceedings of the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry entered into force on 31 December 2022

03 January 2023

The amended Rules of Proceedings of the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (hereinafter referred to as "Rules of Proceedings") entered into force on 31 December 2022, which apply to proceedings commenced on the date of the entry into effect or thereafter.

Some of the amended provisions seek to address problems and issues that have arisen in practice, including amendments that introduce significant changes. Other new provisions make minor changes or clarify the previously effective rules. Below is a summary of the main changes introduced in the Rules of Proceedings.

In this article, we cover:

- the most important amendments to the Rules of Proceedings
- the relevance of the amendment and
- what should be considered in proceedings under the amended Rules of Proceedings

1 Most important amendments to the Rules of Proceedings and their relevance

Stay of the arbitration

One of the most significant amendments is the inclusion in the Rules of Proceedings of the provisions on the stay of proceedings. The relevance of this lies in that the parties agree to arbitrate in order to obtain a prompt, binding resolution of their dispute in a single contractually-selected forum. A stay of arbitral proceedings is therefore prima facie contrary to the parties' agreement to arbitrate their disputes. There are, however, several cases and circumstances which can (and have in practice) justified a stay of proceedings. However, in the absence of provisions on the stay of proceedings, the agreement to stay proceedings by the parties could only be reached on the basis of Article 31 of the Rules of Proceedings, which was practically the only way to achieve the stay of proceedings. However, even in the event of such an agreement, the issue arose that the parties did not generally agree on the details of the stay of proceedings and their conduct often led to a protraction of the proceedings. To remedy these issues, Article 5 of the Rules of Proceedings has been amended to lay down provisions on the stay of proceedings.

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According to the new provisions, the proceedings are stayed if

- legal succession occurs on any party's side, or
- the arbitration is hindered for reasons beyond control, or
- the arbitral tribunal suspends the proceedings until a preliminary issue affecting the outcome of the proceedings on the merits is decided by authority or court, or
- the parties submit a mutual request on the stay of the proceedings.

Article 5 of the Rules of Proceedings also stipulates that upon the first jointly submitted request of the parties the arbitral tribunal shall order, upon each further joint request it may order the staying of the proceedings. During the course of an arbitration the duration of the stay shall not exceed six months.

The Rules of Proceedings do not lay down detailed rules in this context, that is not their function, rather it is to lay down the foundations of the provisions on the stay of proceedings, which is fundamentally alien to the institution of arbitration. However, the declaring of a preliminary question as a ground for suspension in the case of a stay of proceedings or the establishment of a time limit in the case of a mutual request for a stay, pay regard to the original purpose of the arbitration agreement and at the same time to the potential need for a stay of proceedings.

Delivery of the decisions of the arbitral tribunal

The arbitral tribunal may, in consultation and agreement with the parties, determine the specific form of delivery, for example, it may provide that communications between the arbitral tribunal and the parties shall be by electronic means only. Thus, in practice, it is often the case that the parties receive the arbitral tribunal's decision by e-mail beforehand, only after which the Secretariat of the Arbitration Court serves the hard copies. As a result, determining the date of delivery to a party has therefore raised problems in practice.

Therefore, in relation to the rules on delivery of documents, a new provision has been introduced to ensure that decisions of the arbitral tribunal, which may be subject to ordinary court proceedings at the place of arbitration shall be delivered to the parties by registered mail, by registered letter with notice of receipt. This is specifically applicable to awards against which an action for setting aside may be submitted, as well as the order on jurisdiction against which an objection may be raised before the court can be considered as such a decision. For such decisions the time limit to initiate court proceedings shall be calculated from the date of delivery of the registered letter with notice of receipt to the party.

Another amendment shall also be highlighted, namely, written communications sent by registered letter with notice of receipt shall be deemed to have been delivered on the eighth day of dispatch in case of a domestic addressee and on the fifteenth day of dispatch in case of a foreign addressee if they return with "not claimed" or "refused" postal remark.

Acceptance of the nomination or appointment

In order to ensure the efficient and expeditious conduct of the proceedings, the Rules of Proceedings introduce a new provision for arbitrators. It declares that the arbitrator shall submit his / her acceptance to the Arbitration Court within thirty days reckoned from receipt of the notification on the nomination or appointment at the latest. The Rules of Proceedings also explicitly highlight that the arbitrator undertakes to perform their duties as arbitrator in accordance with the provisions of the Rules of Proceedings by accepting the nomination or appointment.

Timeliness of the Case Management Conference

In order to enable the Case Management Conference to achieve its purpose and to clarify the framework of the dispute in an efficient manner, the Rules of Proceedings set an alternative deadline for the date of the Case Management Conference, namely the case management conference shall be held within thirty days following the constitution of the arbitral tribunal or the submission of the statement of defence or the expiry of the time limit granted to submit the statement of defence at the latest.

Taking of evidence

The arbitral tribunal may (for the purposes of investigating the circumstances relevant to the decision) order the taking of evidence, which include documents, witnesses, experts and the in-person inspection of an object or place. A practical novelty introduced by the Rules of Proceedings extended these evidentiary instruments that could be invoked by the arbitral tribunal and now provides for a possibility for the arbitral tribunal to call upon any legal entity (or any non-legal organization or entity). Thereby, the arbitral tribunal may request documents or information from the approached legal entity (or any non-legal organization or entity) facilitating the gathering of evidence. This provision may facilitate the discovery of the substantive justice that the arbitral tribunal is required to seek by the Arbitration Act.

Decisions by the arbitral tribunal

According to the new Rules of Proceedings, arbitral tribunals shall make their decisions by majority. Failing a majority standpoint, the Rules of Proceedings reinforce the outstanding practice and the Arbitration Act by granting decision making authority to the presiding arbitrator.

Two important amendments are introduced by the Rules of Proceedings regarding awards made by arbitral tribunals:

- (i) Higher level of confidentiality is emphasized with regards to the dissenting opinion of arbitrators. Dissenting opinions to the award shall be placed in a closed envelope among the files of the case and should only be disclosed by a specific permit granted by the presiding arbitrator. Moreover, such dissenting opinion cannot contain information concerning the internal discussions and deliberations of the arbitrators.
- (ii) In order to facilitate the effectiveness of arbitral proceedings, arbitral awards not indicating a deadline for execution shall be executed immediately.

Correction and interpretation of the arbitral award

In line with the previous rules, a party may request the arbitral tribunal to correct the award (in respect of clerical, typographical or computation errors) or to give an interpretation of a specific part of the award. According to the newly introduced provision, the arbitral tribunal may send the party's request to the opposing party with invitation to submit its observations.

Expedited proceedings

Expedited proceedings are further rationalized by two specific amendments introduced by the Rules of Proceedings as:

- (i) the arbitration fee must be borne by the claimant in full (irrespective of the disputed amount); and
- (ii) further submissions of the parties may be allowed by the arbitrator in justified cases (previously the number of submissions were strictly limited to the statement of claim, the statement of defense and one further submission each in expedited proceedings).

Although we summarized the most important and practically relevant amendments to the Rules of Proceedings, further amendments exceeding the scope of this notice are also introduced as regards fees (e.g. the Arbitration Court is now entitled to decrease the arbitrators' fees, should they not present their award within the framework of the applicable deadline), other technical amendments and mediation rules.

2 Nota bene

Also with regard to the newly introduced rules, it is worth taking into account the possibility provided for in Article 31 of the Rules of Proceedings which declares that by mutual agreement the parties may derogate from any provisions of the Rules as to how to proceed before the arbitral tribunal as long as such derogation does not result

in the violation of a mandatory provision of the law applicable in the place of arbitration. The possibility to formulate procedural rules is rarely used by the parties in practice, although experienced arbitrators usually provide the parties with a detailed draft procedural order on which the parties may comment and make observations before the case management conference. Well-designed procedural rules facilitate the efficient conduct of the arbitration between the parties and are also of great importance from a litigation strategy point of view. With this in mind, we are glad to assist if the need arises to commence arbitration proceedings or to participate in arbitration proceedings as a respondent or otherwise.

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