

Gearing up for international competitiveness - Reforms to the Rules of Proceedings of the Permanent Court of Arbitration attached to the HCCI

Summary of key changes introduced by the amended Rules of Proceedings

18 September 2024

The amended Rules of Proceedings (hereinafter referred to as the "Rules of Proceedings") of the Permanent Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry (hereinafter referred to as the "Arbitration Court") came into force on 15 September 2024. The amended rules are to be applied in arbitration proceedings initiated on or after the date of its entry into force.

Some of the amended provisions reflect issues that have emerged in arbitration practice, while others specifically aim to promote the use of modern technologies, create more client-friendly provisions and enhance the efficiency of proceedings. Additionally, certain new provisions clarify and refine previously applicable rules. Below is a summary of the predominant changes to the Rules of Proceedings.

This article addresses:

- the amended provisions of the Rules of Proceedings;
- the relevance of the amended provisions and the reasons for the amendments; and
- what to keep in mind when conducting proceedings under the amended Rules of Proceedings.

1 Amendments to the Rules of Proceedings and their significance

1.1 Amendments to the standard clause stemming from the reference to the Sub-Rules on Expedited Proceedings

The amended Rules of Proceedings offer a separate standard clause for parties that wish to apply the provisions of the Sub-Rules on Expedited Proceedings. The previously applicable Rules of Proceedings contained a unified standard clause, in practice, however, parties often interpreted the reference to the Sub-Rules on Expedited Proceedings in the unified standard clause as meaning that the procedure would automatically be conducted under the rules of expedited arbitration. Only once arbitration proceedings had begun did they realise that the provisions of the Sub-Rules on Expedited Proceedings could only be applied through an explicit stipulation in the arbitration agreement. Therefore, this

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amendment was introduced to increase clarity, allowing parties to clearly express in the arbitration agreement, through the appropriate standard clause, whether they wish the arbitration procedure to be conducted under the regular procedural rules or the rules set out in the Sub-Rules on Expedited Proceedings, in the event of a dispute.

1.2 Aligning the definition of the arbitration agreement with statutory provisions

The amended Rules of Proceedings also modify the "Definitions" section, specifically the definition of the "arbitration agreement." The new definition essentially reiterates the provisions of Article 8 from Act LX of 2017 on Arbitration (hereinafter referred to as the "**Arbitration Act**"). Although the Arbitration Act's definition of the arbitration agreement has been criticised for "*defining the term by using the term itself*"¹ and "*conflating the definition with formal requirements*"², the Rules of Proceedings cannot deviate from this statutory definition as long as the Arbitration Act defines it in this manner. While the previously applicable Rules of Proceedings also provided a valid, albeit more abstract definition of the arbitration agreement, aligning the definition with the Arbitration Act creates greater clarity and helps avoid potential discrepancies or misunderstandings in practice.

1.3 Reform of the rules on submissions and notifications

Submission by the parties

The amendment to Section 3(3) of the Rules of Proceedings reflects the need to incorporate the flexible forms of communication already frequently used in arbitration practice at the regulatory level. Furthermore, it formalises the broad procedural responsibilities of the arbitral tribunal, which include the determination of how parties must submit their submissions. While the arbitral tribunal must consider the parties' agreements in this regard, parties may not choose a form of communication that would limit or hinder any arbitrator's access to the submissions or jeopardise the efficiency of the proceedings. Therefore, the final decision on the method of submission is left to the arbitral tribunal under the Rules of Proceedings.

Order on jurisdiction

Under Section 3(4) of the Rules of Proceedings, the arbitral tribunal is, as a general rule, authorised to decide whether the tribunal itself or the Arbitration Court (Secretariat) will serve its decisions and other communications to the parties. However, this provision contains some exceptions, such as judgments and orders terminating proceedings for which the tribunal has no discretion. The Presidency of the Arbitration Court has extended these exceptions to include decisions on jurisdiction. Since decisions on jurisdiction are subject to legal remedy, potentially leading to court proceedings, it is crucial to clarify the deadline by which a such a legal remedy must be initiated. Given that the Rules of Proceedings already treat decisions on jurisdiction as highly significant, equal to awards that can be challenged in setting aside proceedings in Section 3(5) of the Rules of Proceedings, it was justified to include this in Section 3(4) of the Rules of Proceedings.

¹ István Varga: A választottbírói eljárás jog megújulása - Új törvény, új szabályzat (in: ESz, 2018/1., 1-24. pp.)

² István Varga: A választottbírói eljárás jog megújulása - Új törvény, új szabályzat (in: ESz, 2018/1., 1-24. pp.)

VB Portal

The amendment to Section 3(5) of the Rules of Proceedings, which allows the arbitral tribunal to decide whether or not submissions must be made via the VB PORTAL electronic system, is a welcome development. Communication between the parties and the arbitral tribunal largely takes place via email during arbitration proceedings and a recurring issue has been the inability to send large attachments via email. As a result, attachments were often submitted through platforms used by the parties' legal representatives, which frequently caused access difficulties, download issues and in some cases led to the entire case file being uploaded to Google Drive. However, there were concerns regarding whether such systems constituted closed systems, which in turn raised questions related to the confidentiality of the arbitration proceedings. To address this issue, the Arbitration Court is introducing the VB PORTAL system, which will provide a unified, closed and user-friendly IT system for submitting statements and other large documents. The system also enhances the confidentiality and consistency of arbitration proceedings, which could be an advantage for the Arbitration Court in terms of strengthening its competitiveness in the international arena. The amendments to Sections 3(5) and 3(6) of the Rules of Proceedings follow the introduction of this new system.

Miscellaneous rules on service

Pursuant to the amendment to Section 3(5) of the Rules of Proceedings, the determination of the rules of service by the arbitral tribunal no longer requires the consent of the parties. This determination is at the discretion of the arbitral tribunal, which will hear the parties before making its decision. This is an amendment aimed at improving the efficiency of the procedure and also reflects the broad procedural functions of the arbitral tribunal specified in Section 3(3) of the Rules of Proceedings.

Furthermore, the amendment of Section 3(6) of the Rules of Proceedings broadens the application of the specific rule of the "fiction of service" in arbitral proceedings in cases of service at the registered seat of a company, given that the registered seat is conceptually a place where the receipt of official documents must be ensured under the rules governing company law and other legal persons. Thus, for example, if a company fails to register a change of its registered seat in the official register in breach of its legal obligations, it is also obligated to bear the risk of not being notified or not being notified within an adequate timeframe of any arbitration proceedings against it by means of being served at its registered seat. If a respondent does not submit a statement in the proceedings, this does not constitute an obstacle to the arbitration proceedings under Article 38(b) of the Arbitration Act.

1.4 Expansion of the content requirements of the statement of claim regarding legal entities

As part of the amendments to the Rules of Proceedings, Section 15(1) was supplemented with a new provision that facilitates the identification and establishment of the legal capacity of legal entity parties. According to this new provision, extracts from the company register or documents proving registration that are no older than 30 days, confirming the legal entity has been registered, must form part of the statement of claim for legal entity parties.

1.5 Updating certain rules regarding the value of the subject of the procedure

Section 16(3)(g) of the Rules of Proceedings was also amended with regard to claims aimed at challenging corporate decisions, therefore changing the fiction of the subject's value. In cases where the financial value affected by the contested decision cannot be determined, the value of the subject of the procedure is now linked to the share of the claimant in the company's equity as per the last annual financial statement, instead of the previously applied proportion of the registered capital, provided that the claimant is a member of the company. As an auxiliary rule, the Rules of Proceedings stipulate that when determining the value of the subject of the procedure, a minimum of HUF 3,000,000 per contested corporate decision must be considered.

The previous regulation was based on the registered capital in determining the value of claims aimed at challenging corporate decisions. However, this often led to undesirable results from both equity and legal policy perspectives, as the registered capital of many companies is disproportionately low compared to the actual value of the corporate shares. This is because many companies, even with significant revenue, assets and profits, operate with only the legally required minimum registered capital. The amendment aims to correct this imbalance.

1.6 Reconsideration of rules concerning arbitrators

Section 19 of the Rules of Proceedings, which defines the number of arbitrators, underwent two significant amendments:

- Firstly, if the value of the subject of the procedure does not exceed HUF 5 million and the parties have not agreed on the number of arbitrators, the auxiliary rule provides that a sole arbitrator may preside. This rule is aimed at reducing costs and expediting proceedings in cases where the value of the subject is lower.
- Secondly, a new subsection (3) has been added to Section 19, formally codifying the previously available practical solution whereby the parties can agree to appoint a sole arbitrator instead of a three-member tribunal, even if the latter was specified in their original arbitration agreement. If they agree, the claimant is not required to submit a separate statement proposing the sole arbitrator, as the arbitrator nominated in the statement of claim will automatically be interpreted as the proposed sole arbitrator. The respondent may either accept this proposal or suggest an alternative arbitrator in their agreement statement. If the parties cannot agree on the sole arbitrator, but there is consensus that a sole arbitrator should preside, then according to the new Section 19(3), the rules of Section 21(3) apply. This means that the Arbitration Court will appoint the sole arbitrator upon request. This solution offers support in cases where, relative to the value of the subject, the parties do not consider a three-member tribunal necessary but cannot resolve their dispute peacefully.

1.7 Expansion of hearings held via telecommunication tools

The amendment to Section 37(1) of the Rules of Proceedings aims to increase the efficiency of the procedure and meet modern expectations of arbitration by allowing greater use of telecommunication

tools for hearings. It is now possible to hold a hearing via telecommunication tools not only in justified cases but in any case, depending on the decision of the arbitral tribunal. In cases presided over by a sole arbitrator, hearings via telecommunication tools is the default rule, although the parties may agree otherwise. If no agreement is reached, the sole arbitrator may only opt for a physical hearing in justified cases.

1.8 Modification of the rules on the delivery of arbitral awards

Section 43(3) of the Rules of Proceedings allows the president of the Arbitration Court, at the written request of the tribunal's presiding arbitrator, to extend the 45-day deadline for the submission of the award by a maximum of 45 days in exceptionally justified cases. In practice, there may be instances where, due to the complexity of the case, the volume of documents or the detailed deliberations of the tribunal, the 45-day deadline proves insufficient. This extension is only allowed once, ensuring that the tribunal has sufficient time to prepare a high-quality award while also preventing undue delays.

1.9 Reform of the dissenting opinion

One of the most significant amendments to the Rules of Proceedings concerns the rules on dissenting opinions by arbitrators who disagree with the majority decision. Under the previously effective rules, dissenting opinions had to be placed in a sealed envelope among the case documents, accessible mainly to the state court during a possible setting aside procedure or, in exceptional cases, with the permission of the president of the Arbitration Court. According to the new rules, dissenting opinions must be submitted to the Arbitration Court together with the award or within 30 days after the award is signed. The Arbitration Court will then forward the dissenting opinion to the parties and the other arbitrators and place it among the case documents. Specifically, the rule on the content of the dissenting opinion is that it may no longer contain information related to not only the internal deliberations of the arbitrators but also on facts or evidence that did not previously appear in the record of the proceedings.

These stricter limitations are intended to prevent a dissenting arbitrator from providing arguments or reasons that could be used by a party seeking a setting aside procedure. The detailed new provisions aim to ensure that dissenting opinions reflect legitimate professional differences without undermining the integrity of the arbitration process.

1.10 Supplementing the Sub-Rules on Expedited Proceedings

The amendments to the Sub-Rules on Expedited Proceedings are of course aimed at further improving the efficiency of proceedings, so that these provisions can achieve their real objectives. The newly inserted provision in Section 52(3) of the Rules of Proceedings states that counterclaims or objections based on set-off must be submitted no later than the deadline for filing a defence. The new provision also stipulates that hearings can only be held via telecommunication tools.

1.11 Changes to the fee schedule due to increased administrative fees

Nearly all fee items in the fee schedule set out in the Rules of Proceedings have been amended, mainly due to the increase in administrative fees. The rise in administrative fees was necessitated by the economic situation in Hungary. Additionally, it must be acknowledged that arbitral tribunals, with strong support from the Arbitration Court, conduct their work in accordance with international standards. While

international expectations are placed on the Arbitration Court and tribunals regarding the quality of proceedings, the fees set in the previous version of the Rules of Proceedings were significantly lower than international averages. Although the new fees still do not reach international levels, the increase was justified for this reason.

2 Nota Bene

Some of the newly introduced rules are mandatory, meaning that the parties cannot deviate from them by agreement. However, many of the provisions of the amended Rules of Proceedings allow parties to agree on procedural rules that differ from those stipulated in the amendments, as long as the deviation does not violate mandatory provisions of the applicable law. While parties rarely use this opportunity, experienced arbitrators often provide detailed drafts of procedural orders for the parties to review and comment on before case management conferences. Well-designed procedural rules can greatly facilitate the efficient conduct of arbitration and have significant strategic importance. We are happy to assist should the need arise to initiate arbitration proceedings or participate as a respondent or otherwise in arbitration.

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For more information, please contact:



Zoltán Faludi
Partner

E zoltan.faludi@wolftheiss.com

T +36 1 4848 805



Tímea Csajági
Associate

E timea.csajagi@wolftheiss.com

T +36 1 4848 800



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