

## NEW ARBITRATION REGIME IN HUNGARY

### RENEWAL OF THE PROCEDURAL REGIME

The Hungarian civil procedural rules underwent a sweeping reform in 2017, affecting the entire dispute resolution area, including both litigation and arbitration. The brand new regime better reflects the requirements of the 21st century and thus may give rise to a modern, professional and effective handling of procedures.

### NEW ARBITRATION ACT

Hungary has had an arbitration act in place since 1994. The completely new and retailored Act No. LX of 2017 on arbitration ("Arbitration Act") has been enacted with effect from 1 January 2018, which is largely based on the UNCITRAL Model Law as amended in 2006.

On the basis of the fundamental principle of party autonomy, the parties are free to choose to have their dispute arising out of commercial relationship settled by arbitral tribunals instead of by the state courts.

The Arbitration Act governs both domestic and international arbitrations based in Hungary. Under the regime of the Arbitration Act, ad hoc or permanent arbitral institutions conduct arbitration proceedings.

### ARBITRAL INSTITUTIONS

The Arbitration Act introduces the institutional framework for Hungarian commercial arbitration on the basis of which the following permanent arbitration courts have been established:

- Commercial Arbitration Court with general jurisdiction in Hungary as the main institution dealing with arbitration;
- Sports Arbitration Court under the provisions of Act on Sports which is competent in matters defined in such Act;
- Arbitration Court for agricultural disputes which is attached to the Hungarian Chamber of Agriculture.

Considering the revision of arbitral institutions in the Arbitration Act, the Money and Capital Markets Arbitration Court and the Energy Arbitration Court have been ceased to exist on 31 December 2017.

## NEW RULES OF PROCEDURE

The Presidium of the Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (Commercial Arbitration Court) has adopted the Rules of Procedure which is applicable as of 1 February 2018 ("Rules of Procedure").

The Rules of Procedure shall be applied if the parties have agreed to settle their dispute by the Commercial Arbitration Court or to apply the Rules of Procedure.

## HIGHLIGHTS

The Arbitration Act and the Rules of Procedure brought changes, in some respects, gap-filling rules, therefore the following procedural novelties are worth highlighting:

- **Interim and preliminary measures**

Pursuant to the Arbitration Act, unless the parties have agreed otherwise, the arbitral tribunal may at the request of a party grant interim measures. Interim measures of arbitral tribunals are adopted in the form of orders (i.e. not awards). Such order will only be granted following the constitution of the tribunal (the emergency arbitrator instrument has not been introduced into the rules of the major arbitration institutions in Hungary). When requesting interim measures the party may also request preliminary measures. Preliminary measures may be capable of preventing the other party from frustrating the purpose of the interim measure. The provisions of the Arbitration Act explicitly stipulate that the above orders should be enforced in accordance with the rules of judicial enforcement.

- **Preparatory consultation**

As a positive development, the Rules of Procedure contains provisions regarding the preparatory consultation. The arbitral tribunal holds consultation with the parties in person or via telecommunication devices within 30 days following the constitution of the tribunal in order to plan the conduct of the procedure. The arbitral tribunal and the parties discuss the rules of procedure, the evidences to be used foreseeably, and as a result of this fix the timing and deadline of procedural actions.

- **Intervention**

Under the Arbitration Act, at the request of either party, the arbitral tribunal informs the person, who has legal interest as to the outcome of the arbitration procedure that they may join the procedure to promote the party who has the same interest, in order to succeed in the arbitration procedure.

- **Renewal of procedure**

As one of the unique provisions, the Arbitration Act provides for the possibility of renewal of the procedure within 1 year following the receipt of the award, based on

facts or evidences which were not taken into account during the original arbitration procedure for any reason not attributable to the party relying on them, provided that it could have resulted in a more favourable decision to this party. The renewal of procedure is only applicable unless otherwise agreed by the parties. Therefore, the application of renewal of procedure can be excluded by the parties in their arbitration clause / arbitration agreement.

- **Extract of arbitral awards**

Pursuant to the Arbitration Act, the Presidium of the Commercial Arbitration Court may make recommendations on procedural issues, as well as the President ensures that the anonymised extract of arbitral awards will be available on the website of the Commercial Arbitration Court.

## STANDARD ARBITRATION CLAUSE

The Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (Commercial Arbitration Court) suggest to the parties to apply the following standard arbitration clause in their contracts:

"In the event of any dispute arising from or in connection with the present contract, so especially with its breach, termination, validity or interpretation, the parties exclude the state court procedure and agree to submit the matter to the exclusive and final decision of the Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (Commercial Arbitration Court Budapest). The Arbitration Court proceeds in accordance with its own Rules of Proceedings (supplemented with the provisions of the Sub-Rules of Expedited Proceedings). The number of arbitrators shall be [one/three] and the language to be used in the arbitral proceedings shall be [...] (e.g. Hungarian, German, English). The parties exclude the possibility of the renewal of the proceedings as regulated in Section IX of Act no. LX of 2017 on Arbitration. In order to settle the legal dispute the [...] substantive law shall apply, excluding its private international law rules."

## CONCLUSION IN A NUTSHELL

With the re-tailored Arbitration Act and by transforming the arbitration institutions, the Hungarian arbitration environment is about to change and the arbitration practice may face new challenges and create new trends in line with the international best practice. On the one hand it may affect the Hungarian arbitration community, on the other hand it may make arbitration more attractive to the business sector.

In general, litigation and arbitration compete in the legal market. As a result of the complete renewal of the Civil Procedural Act (including in particular to the new and untested procedural rules and electronic communication system with the state courts) applicable to litigation as of 2018, it can be expected that contracting parties may be more willing to submit their disputes to arbitration, which may also result in a trend of shifting disputes to arbitration from litigation in state courts.

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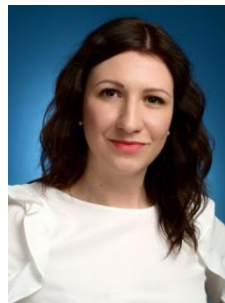


**Zoltán Faludi**

Partner

[zoltan.faludi@wolftheiss.com](mailto:zoltan.faludi@wolftheiss.com)

T: +36 1 4848 800



**Enikő Lukács**

Associate

[eniko.lukacs@wolftheiss.com](mailto:eniko.lukacs@wolftheiss.com)

T: +36 1 4848 800

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Faludi Wolf Theiss  
1085 Budapest  
Kálvin tér 12-13.  
Hungary

[www.wolftheiss.com](http://www.wolftheiss.com)