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A. Legislation and rules

A.1 Legislation

A.1.1 New Act on Arbitration

In 2017, the parliament adopted Act LX of 2017 on Arbitration ("Hungarian Arbitration Act"), which replaces the previous Arbitration Act LXXI of 1994. Similarly to the previous Act, the new rules are based on the UNCITRAL Model Law, but mirror its amended version adopted in 2006. The new Act entered into force on 1 January 2018 and is applicable to procedures initiated after this date.

The objective of the new legislation is to create a more attractive arbitration environment for foreign investors with enhanced reliability and flexibility of procedures. Hungarian companies may also benefit from the new Act as they may better be able to convince their foreign partners to resolve disputes in Hungary, relying on faster and more effective arbitration proceedings, which are envisaged to be more cost-efficient than procedures abroad. In line with the above, the Hungarian Arbitration Act introduces some new features to improve the efficiency of the arbitration proceedings.

The most significant changes introduced by the new Act are changes to the structure of the Hungarian permanent arbitration courts, which we examine in detail under Section A.2. This is probably the most important change, which requires the particular attention of anyone who applies standard clauses and GTCs, and these should be revised and modified as soon as possible, if necessary, with a view to the new Act's coming into force on 1 January 2018. (Of course, the option will

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also remain available under the new law to conduct ad hoc arbitrations proceedings).

The new Hungarian Arbitration Act allows intervention: third parties who have legal interest in the outcome of the arbitration procedure may intervene to promote the party with the same interest. The intervener may submit motions for evidence and can be present at the hearings and on-site inspections. Intervention is subject to the approval of the panel of arbitrators.

The new rules also permit non-contractual parties to enter the proceedings if the claim submitted by or against them can only be decided together with the claim subject to the ongoing arbitration procedure. The party entering the procedure must submit to the jurisdiction of the arbitration court. However, the parties have the option to exclude these rules in the arbitration agreement.

The new Act also introduces detailed regulation of interim measures and preliminary orders in arbitration proceedings, which has long been awaited by practitioners and business players.

The new Hungarian Arbitration Act allows the parties to request the retrial of the procedure within one year of the delivery of the arbitration award if during the course of the main proceedings the party failed to present a fact or evidence for any reason not attributable to the party, if the consideration of that fact or evidence would have resulted in a preferable award for that party.

The new Act also contains detailed rules for the procedure after an arbitration award has been canceled, which was missing from the previous regulation. Under the new procedure, the parties are now able to decide whether they trust the panel of arbitrators from the preceding procedure or opt for a new panel with different arbitrators.

The previous Act remained silent regarding the legal succession of a contractual party. The new Hungarian Arbitration Act sets out a new

general rule that the arbitration clause must be applied to the legal successor as well, unless the parties agree otherwise.

A.1.2 New Act on Private International Law

The new Act on Private International Law (Act XXVIII of 2017) entered into force on 11 April 2017. The new Act on Private International Law is applicable to issues that do not fall within the scope of any directly applicable act of the EU (eg, Rome I) or any international treaty. As a general rule, the applicable law to the contract will be the one chosen by the parties. In the absence of a choice of law, the applicable law will be that which is the most closely connected to the contract.

The parties should be entitled to choose the applicable law to their agreement falling under arbitration, which may either be in a separate agreement or in an arbitration clause set out in the main contract. The aim of this legislation is to apply the principle of "separability" to such agreements, on the basis of which parties should have the option to apply a different law to the arbitration agreement than the law that applies to the main contract.

A.1.3 Statistics

The new legislation and the structural changes might result in more significant and a higher number of arbitration cases with the hope that the decreasing trend will end. According to 2016 statistics of the Arbitration Court of the Hungarian Chamber of Commerce and Industry in Budapest ("HCCI Arbitration Court"), in the vast majority of the cases heard before the HCCI Arbitration Court, the disputed amount was relatively low; in 47% of cases, the disputed amount did not exceed HUF 10 million (approximately USD 37,400) and in 83% of cases this did not exceed HUF 100 million (approximately USD 374,000). More significant cases where the disputed amount exceeded HUF 100 million were quite rare and only 3% of cases exceeded HUF 1 billion (approximately USD 3.74 million). Cases usually ended up with an arbitral award; 69% of the cases in the last

year did so. Only 18% of closed cases ended by orders and another 13% by termination orders.

The statistics of previous years show a decrease in the number of both domestic and international cases filed with the HCCI Arbitration Court. Fortunately, in 2016, the rate of international cases increased from an average of 10% to 22%.

The international cases involved foreign parties from Austria, British Virgin Islands, Cyprus, Czech Republic, France, the Netherlands, Croatia, Poland, Latvia, Luxembourg, Isle of Man, Germany, Russia, Portugal, Romania, Switzerland, Slovakia, Slovenia, Turkey and the USA.

A.2 Institutions, rules and infrastructure

As of 2018, the new Arbitration Act introduced significant organizational changes in the Hungarian arbitration institutions.

The HCCI Arbitration Court continues to be the most well-known and frequently used permanent arbitration court in Hungary,[3] now alternatively known as the Commercial Arbitration Court. The Commercial Arbitration Court proceeds as a permanent arbitration court and it has general competence; its jurisdiction covers all disputes that do not belong to the competence of other permanent arbitration courts.

Under the new Arbitration Act, a new organizational structure was implemented for the Commercial Arbitration Court, which is headed by a seven-member body. The chairman and two members are delegated by the Hungarian Chamber of Commerce and Industry, and one member is delegated by each of the Hungarian Energy and Utilities Regulatory Office, the Budapest Stock Exchange, the Hungarian Banking Association and the Hungarian Bar Association.

[3] For more information about the Commercial Arbitration Court please visit: http://mkik.hu/en.

At the same time, two previously operating permanent arbitration courts were terminated on 31 December 2017. These are the Arbitration Court of Financial and Capital Markets, which had exclusive jurisdiction to handle domestic and international arbitration cases arising in these industries, and the Energy Arbitration Court, which was authorized to proceed in legal disputes on rights and obligations arising from legislation on gas and electricity supply, as well as from contracts concluded between license holders under the scope of that legislation. The ongoing cases of these arbitration courts will be resolved by the Commercial Arbitration Court from 1 January 2018.

The Commercial Arbitration Court has a new list for arbitrators as of 1 February 2018, which contains two special sections for the energy sector and for the financial and capital sector. The main list contains at least sixty arbitrators, while both sectoral lists contain at least thirty arbitrators. For both sectoral lists, acknowledgment of the competent body is required; the Hungarian Energy and Utilities Regulatory Office for the energy list and the Budapest Stock Exchange and the Hungarian Banking Association for the financial and capital list. The Commercial Arbitration Court has adopted new procedural rules as well, effective as of 1 February 2018.

Besides the Commercial Arbitration Court, the following permanent arbitration courts continue to operate in Hungary: the Sport Arbitration Court and the Arbitration Court of the Hungarian Chamber of Agriculture. The Sport Arbitration Court is designed to adjudicate sport law disputes between sport federations and athletes. The Arbitration Court of the Hungarian Chamber of Agriculture is designed to adjudicate arbitration cases of companies in the agricultural sector.

B. Cases

There have been no significant arbitration cases decided by Hungarian arbitration courts in 2017.

C. Funding in international arbitration

Generally, in Hungary, arbitration is funded by the clients themselves. Third-party funding is not yet available on a commercial level. Theoretically, it is possible, as there are no prohibitions regarding either the funding of an arbitration procedure, by loan or by insurance, or using third-party funds in an arbitration procedure, but as the concept has not yet gained popularity in Hungary, there are no specific rules to consider.

It is possible for lawyers to enter into conditional or contingency fee arrangements to ease clients' financial exposure, as the parties can enter into any fee agreement, but this has obvious limitations. Also, the new Act on Attorneys (Act LXXVIII of 2017) stipulates that if the contingency fee exceeds two-thirds of the total fee, the excess amount cannot be claimed before the courts. Task-based hourly fees are the most common arrangements.

Considering "funding" in a wider sense, the position of a party that is unable to fund its procedure is still a fairly unfavorable position. The Arbitration Act does not contain any provisions regarding insufficient funding (eg, reduced rates or installments). Thus if a party lacks sufficient funds, it will be unable to proceed with the arbitration. It is especially problematic if the party is unable even to pay the registration fee, as it is usually due before the submission of the statement of claim, and is a precondition to commencing proceedings.