

# ACT LX OF 2017 ON ARBITRATION\*

## CHAPTER I. GENERAL PROVISIONS

### 1. Scope of the Act

#### *Section 1*

(1) This Act shall apply to the arbitration if the place of arbitration is in Hungary.

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

(3) No arbitral proceedings shall take place in legal 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, 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*

(1) For the purposes of this Act:

1. arbitration means deciding on legal 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. [Repealed]
3. [Repealed]
4. [Repealed]
5. arbitral tribunal means a sole arbitrator or a panel of arbitrators;
6. court means a body or organ of a State exercising the administration of justice;
7. the term commercial means all commercial or economic, contractual or extra-contractual legal relationships.

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\* Act LX of 2017 on arbitration (as in force on 8 August 2018). This translation has been produced by the Ministry of Justice for informational purposes only.

(2) Where

- a) a provision of this Act, except section 41, leaves the parties free to determine a certain issue, such freedom shall include the right of the parties to authorise a third person or an organisation to make that determination;
- b) this Act refers to the fact that the parties have agreed or that they may agree or in any other way refers to the agreement of the parties, such agreement shall also include any arbitration rules referred to by that agreement;
- c) a provision of this Act, other than in sections 38 a) and 45 (2) a), refers to a claim, it shall also apply to the counter-claim, and where it refers to a defence, it shall also apply 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 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”).

#### **4. Service of documents**

##### *Section 4*

(1) Unless otherwise agreed by the parties, any written communication shall be deemed to have been received

- a) if it delivered to the addressee personally; or
- b) if it is delivered at the addressee’s place of business, domicile, habitual residence or mailing address.

(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.

(3) The provisions of this section shall not apply to service in court proceedings.

#### **5. Waiver of right to object**

##### *Section 5*

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

## **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 jurisdiction under Hungarian enforcement rules 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 Budapest-Capital Regional Court 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 action for the annulment of the arbitral award may be submitted.

(5) In an action for the annulment of the arbitral award, at the request of a party, the enforceability of the arbitral award may be suspended by the regional court until the end of the procedure, and by the Curia 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 shall not affect the discretion of the court in making any subsequent determination.

(6) The regional court shall send – except cases under Section 9 (1) and (2) – the documents, submitted to it and initiating proceedings before it in an arbitration case, to the permanent arbitration court that proceeds and have proceeded, respectively, or in an *ad hoc* arbitration to the arbitrator or arbitrators, proceeding and having proceeded, respectively, within thirty days from receipt. The regional court and the Curia shall send its decision adopted in the arbitration case to the proceeding permanent arbitration court or, in the event of *ad hoc* arbitration, to the proceeding arbitrator or arbitrators, 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 action for the annulment of the arbitral award.

## **7. Definition and form of the arbitration agreement**

### *Section 8*

(1) Arbitration agreement is an agreement between 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 extra-contractual. An arbitration agreement may be a part of a contract (hereinafter “arbitration clause”) or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing.

(3) An agreement concluded by electronic communication without electronic signature shall be deemed a written arbitration agreement if the data in the electronic communication are accessible by the other party and are suitable for later reference. Any communication that the parties make by means of data messages shall be deemed electronic communication. Data message means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail (e-mail), telegram, telex or telecopy.

(4) The arbitration agreement shall also be deemed to be concluded in writing if a party alleges the existence of the arbitration agreement in its statement made with respect to choosing arbitration, or in the presentation of its claim, and this statement is not disputed by the other party.

(5) The reference in a contract concluded in writing to a document containing an arbitration clause shall constitute an arbitration agreement in writing, provided that the clause therein is a part of the contract.

## **8. Court enforcement of a claim subject to an arbitration agreement**

### *Section 9*

(1) A court to which an action is brought in a matter that is subject to an arbitration agreement, with the exception of an action for the annulment of the arbitral 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 was launched for the enforcement of a claim that is the subject of an arbitration agreement, 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 establishes that the arbitration agreement did not come into existence, or is invalid, ineffective or impossible to be fulfilled.

(3) The commencement of the proceedings referred to in paragraphs (1) and (2) shall not impede the commencement or continuance of the arbitral proceedings and the making of the arbitral tribunal’s award even while the proceedings are pending before the notary or the court.

## **9. Compatibility of the arbitration agreement with the measures of the court and the notary**

### *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**

### **10. Number of arbitrators**

#### *Section 11*

(1) The parties shall be 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.

### **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 shall be free to agree on the rules of the procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) to (8).

(3) Failing such agreement,

a) if the arbitral tribunal consists of three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the presiding arbitrator. If a party fails to appoint his 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, at the request of any party, by the court specified in section 7 (2) or, in cases falling within the jurisdiction of the Court of Commercial Arbitration, by the Presidium of the arbitration court from the list of recommended arbitrators published on the website of the arbitration court,

b) if the arbitral tribunal consists of a sole arbitrator and the parties are unable to agree on the arbitrator, he shall be appointed, at the request of any party, by the court specified in section 7 (2) or, in cases falling within the jurisdiction of the Court of Commercial Arbitration, by the Presidium of the arbitration court from the list of recommended arbitrators published on the website of the arbitration court,

c) if the arbitral tribunal consists of 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) If in the course of an appointment procedure agreed upon by the parties:

- a) a party fails to appoint its own arbitrator, or otherwise acts contrary to the agreement,
- b) the parties or the arbitrators are unable to reach an agreement expected of them under such procedure, or
- c) a third party fails to perform, within thirty days, any function entrusted to it under such procedure for the purpose of appointment,

any party may turn to the court specified in section 7 (2), unless the agreement on the appointment procedure or the rules of the permanent arbitration court specified in the arbitration agreement provide other means for securing the appointment in such circumstances.

(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 of the parties, 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 legal 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.

## **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 with

respect 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.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts with respect 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.

### **13. Challenge procedure**

#### *Section 14*

(1) The parties shall be free to agree on a procedure for challenging the arbitrator, subject to the provisions of paragraph (4).

(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 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 the motion for challenge under the procedure laid down in paragraphs (1) to (3) is not successful, the challenging party may request, within thirty days after having received the decision rejecting the challenge, the court specified in section 7 (2) or, in cases falling within the jurisdiction of the Court of Commercial Arbitration, 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 Court of Commercial Arbitration, 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). Until the service of such order, the arbitral tribunal, including the arbitrator affected by the motion for challenge, may continue the arbitral proceedings and may adopt a decision.

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

##### *Section 15*

(1) If an arbitrator, for any reason, becomes unable to perform his functions or for other reasons he causes undue delay in the proceedings, and does not withdraw from his office, the parties may agree on the termination of his mandate. Failing that, any party may request, by referring to the cause of the termination, the court specified in section 7 (2) or, in cases falling within the jurisdiction of the Court of Commercial Arbitration, the Presidium of the arbitration court to decide on the termination of the arbitrator's mandate. If the request is rejected by the Presidium of the Court of Commercial Arbitration, 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.

(2) There shall be no legal remedy against the order of the court adopted in the proceedings under paragraph (1).

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

#### **15. Appointment of a new arbitrator**

##### *Section 16*

If the mandate of an arbitrator terminates for any reason, another arbitrator shall be appointed in accordance with the provisions that were applicable to the appointment of the arbitrator whose mandate terminated.

#### **CHAPTER IV. DECISION OF THE ARBITRAL TRIBUNAL WITH RESPECT TO ITS OWN 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 of the arbitral tribunal declaring that a contract has not come into existence or is invalid shall not entail the invalidity of the arbitration clause.

(2) An objection concerning the arbitral tribunal's jurisdiction shall be presented not later than the submission of the defence. A party shall not be precluded from presenting such an objection by the fact that he has appointed, or participated in the appointment of, an arbitrator. An objection asserting that the arbitral tribunal is exceeding the scope of its authority shall be presented as soon as the presumed excess of authority occurs. The arbitral tribunal may admit a later objection if it considers the delay justified.

(3) The arbitral tribunal may rule on an objection referred to in paragraph (2) either as a preliminary question or in its award. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received the decision, the court specified in section 7 (2) to decide in an order on the objection, with the proviso that, until the service of the order, the arbitral tribunal may continue the arbitral proceedings and make an award.



## **16. 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) By the interim measure the arbitral tribunal can, prior to the issuance of the award by which the dispute is finally decided, order a party

- a) to maintain or restore the status quo pending determination of the dispute;
- b) to take action that would prevent, or to refrain from taking action that is likely to cause, damage or imminent threat of damage, or prejudice to the arbitral proceedings;
- c) to take measures in order to keep available the assets serving as a basis for the satisfaction of the arbitral award, or to provide cover corresponding to their value;
- or
- d) to preserve evidence that may be relevant to the resolution of the dispute.

### *Section 19*

In cases under section 18 (2) a), b) and c), the party requesting the interim measure shall satisfy the arbitral tribunal that

- a) harm not reparable by an award of damages is likely to result if the measure is not ordered, and such harm outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted, and
- b) 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.

## **17. Preliminary orders**

### *Section 20*

(1) Unless otherwise agreed by the parties, the party may 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 interim measure to the party against whom it is directed would risk frustrating the purpose of the measure.

### *Section 21*

(1) The arbitral tribunal shall give notice to all parties of the determination made in respect of an application for a preliminary order, and, at the same time, it shall provide information about the content of any oral communication between the parties and the arbitral tribunal in relation thereto.

(2) After having made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give an opportunity to the party against whom a preliminary order is directed to present his 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.

(5) 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; however, it shall not be the subject of judicial enforcement.

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

### *Section 22*

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.

### *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 appropriate security in connection with the order unless the arbitral tribunal considers it unnecessary to do so.

### *Section 24*

(1) The arbitral tribunal may require any party to immediately disclose any 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 preliminary order has been requested has had an opportunity to present his case. Thereafter, the provisions of paragraph (1) shall apply.

### *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 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 26*

(1) An interim measure issued by an arbitral tribunal shall be enforced in accordance with the rules on judicial enforcement, subject to the provisions of section 27 on refusal.

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

## **20. Grounds for refusing 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) any of the grounds set forth in section 47 (2) a) exists; or
  - ab) the decision of the arbitral tribunal requiring the provision of security with respect to the interim measure has not been complied with; or
  - ac) the arbitral tribunal terminated or suspended the interim measure; or
- b) if the court finds that
  - ba) the interim measure is incompatible with the powers of the court; or
  - bb) with respect to the interim measure, any of the grounds set forth in section 47 (2) b) exists.

## CHAPTER VI. PROCEEDINGS OF THE COURT

### *Section 28*

In relation to arbitration proceedings, irrespective of their place, the Hungarian court shall have the same material jurisdiction 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. In the course of this, the court having material and territorial jurisdiction shall proceed with due consideration of the characteristics of arbitration.

## CHAPTER VII. CONDUCTING THE ARBITRAL PROCEEDINGS

## **21. Equal treatment of the parties and the determination of the procedural rules**

### *Section 29*

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

### *Section 30*

(1) Subject to the provisions of this Act, the parties shall be free to agree on the rules of the procedure to be followed by the arbitral tribunal.

(2) In the absence of such an agreement the arbitral tribunal may, subject to the provisions of this Act, determine the procedural rules in such manner as it considers appropriate. The powers of the arbitral tribunal shall include the power to determine the admissibility, relevance and weight of any evidence.

## **22. The place of arbitration and the initiation of the proceedings**

### *Section 31*

(1) The parties shall be free to agree on the place of arbitration. 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 provision of paragraph (1), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place for consultation among its arbitrators, for hearing the parties, witnesses or experts, or for inspection of objects and documents.

### *Section 32*

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

## **23. Language of the proceedings**

### *Section 33*

(1) The parties shall be free to agree on the language or languages to be used in the arbitral proceedings. In the absence of such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings.

(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 the submissions of the parties, the hearing, and the decision and any other communication of the arbitral tribunal.

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

## **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 present his claim, the facts supporting it and the disputed issues, and the respondent shall present his defence in respect of these particulars, unless otherwise agreed by the parties with respect to the content of the procedural statements. Together with their statements the parties may also submit their evidence.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence in the course of the arbitral proceedings, unless the arbitral tribunal 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 legal 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.

## **26. Hearings and written proceedings**

### *Section 36*

(1) Unless otherwise agreed by the parties, and subject to the exception provided for in paragraph (2), the arbitral tribunal shall decide whether to hold a hearing for the presentation of the standpoints and the evidence, or to carry out the proceedings without it.

(2) At the request of a party, the arbitral tribunal shall hold a hearing at an appropriate stage of the proceedings even if the parties have agreed that the legal dispute is to be settled without holding a hearing.

(3) The parties shall be given sufficient advance notice of the hearing and of any procedural acts taken by the arbitral tribunal for the purpose of inspection.

(4) Statements, documents or other information submitted to the arbitral tribunal by one party shall be communicated to the other party; furthermore, any pieces of evidence that the arbitral tribunal may 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.

## **28. Default of a party**

### *Section 38*

Unless otherwise agreed by the parties, if, without showing sufficient cause,

- a) the claimant fails to present his claim in accordance with section 34 (1), the arbitral tribunal shall terminate the proceedings;
- b) the respondent fails to present his defence in accordance with 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 of the arbitral tribunal, or fails to produce evidence, the arbitral tribunal may continue the proceedings and make the award on the basis of the evidence before it.

## **29. Expert**

### *Section 39*

- (1) Unless otherwise agreed by the parties, the arbitral tribunal
  - a) may appoint one or more experts to give expert opinion on issues 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 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, following the presentation of his written or oral opinion, participate in a hearing where the parties have the opportunity to put questions to him and to present experts in order to testify on the issues under dispute.
- (3) A person formerly participating as a mediator or a representative of one of the parties, or an expert in the legal 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 court assistance in taking evidence. 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.

## **31. Applicable substantive law**

### *Section 41*

- (1) The arbitral tribunal shall decide the legal dispute in accordance with the provisions of the law chosen by the parties as applicable to the assessment on the merits of the disputed matters. Unless otherwise agreed by the parties, any designation of the law or legal system of a State shall be construed as directly referring to the substantive law of the State concerned and not to its private international law rules.
- (2) In the absence of a choice of law by the parties, the arbitral tribunal shall determine the applicable substantive law in accordance with the private international law rules which it considers applicable.
- (3) The arbitral tribunal shall decide *ex aequo et bono* only if the parties have expressly authorised 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 consideration the commercial usages applicable to the transaction.

### **32. Decision-making by panel of arbitrators**

#### *Section 42*

(1) Unless otherwise agreed by the parties, any decision of the arbitral tribunal shall b[e] made by a majority of the members of the panel; in the absence of a majority position, the presiding arbitrator shall decide.

(2) Procedural questions may be decided by the presiding arbitrator if so authorised by the parties or the members of the arbitral tribunal.

### **33. Settlement**

#### *Section 43*

(1) If, during the proceedings, the parties settle the legal dispute, the arbitral tribunal shall terminate the proceedings.

(2) If so requested by the parties, 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 have the same effect as any other award on the merits of the case.

### **34. Form and content of the arbitral award**

#### *Section 44*

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

(2) The arbitral award shall include the reasons on which it is based, unless the award is an award on agreed terms under 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 arbitral award and the order terminating the proceedings shall state its date and the place of arbitration as determined in accordance with section 31 (1). The award and the order terminating the proceedings shall be deemed to have been made at the place of the arbitration stated therein.

(5) After the arbitral award and the order terminating the proceedings is made, a copy signed by the arbitrators in accordance with paragraph (1) shall be sent to each party.

### **35. Termination of the proceedings**

#### *Section 45*

(1) The arbitral proceedings shall be terminated by the award of the arbitral tribunal or by its order terminating the proceedings in accordance with paragraph (2).

(2) The arbitral tribunal shall terminate the proceedings 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 recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
- c) the parties agree to terminate 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 shall terminate with the termination of the proceedings, but the arbitral tribunal shall proceed in cases specified in sections 46, 47 (4), and 50 to 52.

### **36. Correction, interpretation and supplementation of the arbitral award**

#### *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 clerical or typographical errors or any errors in computation.

(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 with respect to a specific part of the award.

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

(4) The arbitral tribunal may, even in the absence of a request, correct the error referred to in paragraph (1) within thirty days of the 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 supplement the award with respect to claims presented in the arbitral proceedings but not assessed in the arbitral award. If the arbitral tribunal considers the request to be justified, it shall make, based on a hearing if necessary, a supplementary arbitral award within sixty days.

(6) The arbitral tribunal may extend, if necessary, the period of time set in this section for correction, interpretation and the making of the supplementary arbitral award by a maximum of an additional thirty days.

(7) The provisions of section 44 shall apply to the correction, interpretation and supplementation of the arbitral award.



## CHAPTER VIII. ANNULMENT OF THE ARBITRAL AWARD

### *Section 47*

(1) There shall be no appeal against an arbitral award. An arbitral award may be reviewed by a court only in an action for the annulment of the arbitral award.

(2) An arbitral award may be annulled by the court specified in section 7 (2) on the basis of an action brought against the other party only if

- a) the plaintiff of the action for the annulment provides proof that
  - aa) a party to the arbitration agreement had no legal capacity or capacity to act; or the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of such law, under Hungarian law; or
  - ab) the party was not given proper notice of the appointment of an arbitrator or of the proceedings of the arbitral tribunal, or was otherwise unable to present his case; or
  - ac) the arbitral 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, with the proviso that, if the matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be annulled; 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 Act, or, failing such agreement, was not in accordance with the provisions of this Act; or
- b) the court finds that
  - ba) the subject matter of the dispute is not capable of settlement by arbitration under Hungarian law; or
  - bb) the arbitral award is contrary to the public policy of Hungary.

(3) The action for annulment may be brought within sixty days from the date on which the party bringing the action had received the award or, if a request had been made under section 46, from the date on which that request had been disposed of by the arbitral tribunal. 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 hearing in the proceedings for the annulment of the arbitral award 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 procedural acts as in the opinion of the arbitral tribunal will eliminate the grounds for annulment. In this case, the arbitral proceedings terminated by the award shall continue for the purpose and duration determined by the court. The annulment 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 arbitral award is annulled, 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 arbitral 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. ENFORCEMENT OF THE ARBITRAL AWARD

### *Section 53*

(1) An arbitral award shall have the same effect as a final and binding court judgment, and shall be enforced subject to the laws on judicial enforcement.

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

#### *Section 54*

Enforcement of an arbitral award shall be refused if the court finds that:

- a) the subject matter of the dispute is not capable of settlement by arbitration under Hungarian law; or
- b) the arbitral award is contrary to the public policy of Hungary.

### 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 arbitral award is annulled, the arbitral proceedings terminated by the annulled award shall be free of arbitrator's fees, and the arbitral tribunal that made the annulled award shall not be entitled to a fee. In the continued proceedings following the annulment, the parties shall not be obliged to pay 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 in accordance with this Act and the UNCITRAL Model Law on International Commercial Conciliation of 2002.

#### **41. Institutional arbitration in Hungary**

##### *Section 59*

(1) The Court of Commercial Arbitration and the arbitral tribunal established in accordance with its rules of proceedings shall proceed as permanent arbitration court in Hungary.

(2) According to the provisions of the Act on sport, the Permanent Court of Arbitration for Sport or the arbitral tribunal established according to its rules of proceedings shall proceed in cases determined therein; while according to 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 operated by the agricultural chamber or the arbitral tribunal established according to its rules of proceedings shall proceed in cases determined therein.

#### **42. Court of Commercial Arbitration**

##### *Section 60*

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

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

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

#### **43. Presidium**

##### *Section 61*

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

(2) The President and two members of the Presidium shall be nominated by the Hungarian Chamber of Commerce and Industry, while one member 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. The nominated member shall not be instructed in connection with his duties as member of the Presidium by the organization having nominated him.

(3) The office of the Vice-President shall be filled by a member nominated 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 expertise in a legal profession who passed the professional examination in law or the corresponding professional examination according to their national law, and have considerable experience in the application of the rules on arbitration.

(5) The term of office of the members of the Presidium shall be three years, and they may be re-nominated once.

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

(7) At least four members of the Presidium may initiate the revocation of any member of the Presidium, becoming unworthy of his function. The nominating organization shall decide within thirty days on the motion for revocation. In case of revocation of the member, the nominating organization shall simultaneously nominate 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 Court of Commercial Arbitration, 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 mandate as a member of the Presidium started, respectively. A member of the Presidium shall not proceed as a legal representative in proceedings falling within the jurisdiction of the Court of Commercial Arbitration.

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

(10) The member of the Presidium shall perform personally his duties stipulated in this Act.

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

##### *Section 62*

##### **(1) The Presidium**

- a) shall adopt the order of business and the rules of proceedings of the Court of Commercial Arbitration, and shall publish them on the website of the Court of Commercial Arbitration,
- b) shall draw up a list of recommended arbitrators which it reviews at least every three years,
- c) shall exercise its 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 tribunal,
- e) shall determine in the rules of proceedings the amount of the fee of main proceedings and retrial,
- f) shall specify in the rules of proceedings the cases falling within the jurisdiction of the Court of Commercial Arbitration 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.

##### **(2) The President**

- a) shall control the Secretariat,
- b) shall ensure that six months after an arbitral tribunal proceeding in the framework of the Court of Commercial Arbitration made an award, an anonymised extract of the award and of the order terminating the proceedings that excludes the possibility of recognising the parties is published and to be found on the website of the Court of Commercial Arbitration in a searchable format.

(3) The members of the Presidium shall be entitled to a monthly fee; the legal persons nominating members to the Presidium shall determine the amount of the fee 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 nomination requirements laid down in this Act.

#### **45. List of recommended arbitrators**

##### *Section 63*

(1) The Court of Commercial Arbitration shall draw up a list of recommended arbitrators (hereinafter "list").

(2) As part of the list, the Court of Commercial Arbitration 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 names of lawyers with excellent professional knowledge

- a) who request it,
- b) who have at least 10 years of professional experience in a legal profession,
- c) who passed the professional examination in law or the corresponding professional examination according to his national law,
- d) who are capable of fulfilling the arbitrator's tasks according to the opinion of the majority of the Presidium, and
- e) who have not yet reached the age of 70.

(6) The names of those

- a) who have reached the age of 70, or
- b) who request the deletion of their name

shall be deleted from the list.

(7) The Court of Commercial Arbitration 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 subject to the agreement of the Hungarian Energy and Public Utility Regulatory Authority with respect to the members of the energy section, and to 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 Court of Commercial Arbitration 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 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 Court of Arbitration of 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 term of office of the office-holders 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 Court of Commercial Arbitration shall be nominated as of 1 January 2018.

(5) The presidiums of the terminating arbitration courts shall prepare a list of the pending arbitration cases, and shall transfer the documents thereof to the Court of Commercial Arbitration 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 Court of Commercial Arbitration shall have jurisdiction to settle the legal 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 Court of Commercial Arbitration.

(7) In pending cases that were commenced before the terminating arbitration courts, the tasks of the arbitration court shall be performed by the Court of Commercial Arbitration 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 Court of Commercial Arbitration in accordance with this Act.

(9) By 31 January 2018, the Presidium of the Court of Commercial Arbitration 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 Court of Commercial Arbitration, 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]