New Arbitration Act in Hungary

Kluwer Arbitration Blog
October 15, 2017

Zoltán Novák (TaylorWessing)

Please refer to this post as: Zoltán Novák, 'New Arbitration Act in Hungary', Kluwer Arbitration Blog, October 15 2017,
http://arbitrationblog.kluwerarbitration.com/2017/10/15/new-arbitration-act-hungary/

The Hungarian Parliament has recently adopted a new Act on Arbitration, which will enter into force on 1 January 2018 (the Act). The new Act (based on the UNCITRAL Model Law on International Commercial Arbitration as amended in 2006 (the Model Law)) implements changes that are likely to have a considerable impact on the Hungarian dispute resolution landscape. The previous Arbitration Act from 1994 was based on the 1985 UNCITRAL Model Law, but it was found to be outdated in several aspects. The new Act basically applies the same rules for domestic and international arbitration but provides that, in the case of international arbitration, the presiding arbitrator should have a nationality different from that of the parties.

The new Act adopts the Model Law's broad concept of arbitrability. Previously, arbitration was restricted to cases in which the parties could "freely dispose of the subject matter". In the new Act arbitration is defined simply as a dispute resolution method chosen by the parties in the event of a dispute arising from a commercial relationship. The term "commercial" covers all commercial or business matters, whether contractual or not. Only certain special procedures – like family or employment matters – and consumer cases shall be excluded from arbitration. The new approach may mean that the range of arbitrable matters shall widen in the future.

The new Act adopts the provisions on interim measures and preliminary orders included in the Model Law. Accordingly, the arbitral tribunal can – at any time prior to the award – order a party to maintain or restore the status quo, to take actions preventing harm or prejudice to the arbitral process or to preserve evidence relevant to the case. If the tribunal considers that prior disclosure of the request for interim measure would jeopardize its purpose, it may grant a preliminary injunction without hearing the affected party.

The new Act also contains new provisions that have not been taken from the Model Law but had been inspired from from ordinary litigation procedure. One of these innovations is the opportunity of intervention. Upon the request of any of the parties, the arbitrators can invite a third party to join that party in order to support its cause. The intervener may submit evidence and take part in hearings.

Another important litigation concept the new Act introduces into arbitration is retrial. In case any relevant new fact or evidence emerges within one year upon receipt of the award that was not known at the time of arbitration, a party may request retrial of the case by the arbitral tribunal. If the retrial is likely to succeed, the arbitrators may suspend the enforcement of the contested award. This procedure may go against the principle of finality of awards but its applicability is very limited and the parties can exclude its application in the arbitration agreement.

The law also tries to increase the accountability of arbitrators by providing that arbitration will become free of charge with regard to arbitrators' fees in case the award is set aside. This means that

the arbitrators shall reimburse their fees to the parties if the award rendered by them does not stand up to scrutiny by the courts. This rule might encourage arbitrators to conduct proceedings more carefully.

Another change in the landscape is that the leading Hungarian arbitration institution (the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry) will merge with two specialised arbitration courts (the Permanent Arbitration Court for Energy Matters and the Permanent Arbitration Court for Money and Capital Markets) to form the “Commercial Arbitration Court”. This new arbitration institution will have almost complete jurisdiction to act as the permanent arbitration court for the administration of arbitration cases in Hungary. Only sport and agricultural matters shall retain their specialized arbitral institutions. Apart from these courts, only ad hoc arbitration tribunals may be set up to hear individual cases.

A practical example of the possible impact of the new Act concerns avoidance actions in liquidation procedures. If the receiver of a company under liquidation files a court action for the avoidance of a contract containing an arbitration clause, the other contracting party as defendant often moves for the court to refer the dispute to arbitration. Under the previous law, courts usually declined such motions holding that such cases were not arbitrable. In reaching this conclusion, courts referred to two main reasons: First, the parties no longer disposed freely of the subject matter because, in the context of liquidation, the interests of creditors of the insolvent company also needed to be taken into account. Second, the unavailability of intervention made the assertion of these third party interests practically impossible in arbitration. In the new Act, both obstacles have been removed, which may cause courts to reconsider the issue of arbitrability of avoidance actions and honour arbitration clauses even in contracts challenged during liquidation. Of course this would be a most welcome change for foreign investors, who expect arbitration clauses to preclude state courts from any interference with their contract and particularly from declaring it void.

All in all, the above mentioned changes might help international investors to feel more comfortable in doing business in Hungary by having the safeguard of a modern dispute resolution system.