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More Than a Facelift? – New Hungarian Arbitration Rules Take Off in 2023

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The Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (The Hungarian Commercial Arbitration Court or 'HCAC') has recently adopted its revised rules of proceedings that went into effect on 31 December 2022. This development is particularly significant for the Hungarian arbitration landscape given that HCAC has exclusive competence over commercial, financial and energy arbitrations in Hungary. Does this revision count as a mere facelift of the former regime, or will the new provisions increase speed and effectiveness in HCAC arbitral proceedings? This post introduces the context surrounding the revision of the rules before focusing on five of the key novelties that they will introduce from 2023 onwards.

Background

In 2018, the Hungarian dispute resolution landscape changed radically. In addition to the entry into force of the new Hungarian Arbitration Act and the former arbitration rules ("**Former Rules**") of the HCAC, the new Hungarian Code of Civil Procedure ("**CPC**") went into effect in that year as well.

The new CPC entirely reshaped the first instance court procedure, by splitting it into preparatory phase and evidentiary phase, significantly restricting the modification of the claim in the latter. As a result, the length of civil and commercial litigations has been significantly decreased in the last several years in Hungary. This, in turn, exerted pressure on arbitration, which is always considered by dispute resolution users as an alternative to litigation.

With a track record of practice for almost 5 years in this new framework, in late 2022 the time became ripe for the HCAC to review what soon will be the Former Rules.

The objective of the revised arbitration rules ('**Revised Rules'**) is to accelerate arbitral proceedings and increase the effectiveness of arbitral awards in order to cope with the competition from domestic courts.

As already noted, the Revised Rules have entered into force on 31 December 2022, and will be applied in arbitral proceedings started after this date. Instead of presenting an exhaustive list of all of the changes under the Revised Rules, this post sheds light on the reasons behind the 5 key changes, and it evaluates the possible effects of the Revised Rules.

Accepting Arbitral Appointments – Deadline

Article 5 of the Former Rules set forth a general rule in relation to the duration of the arbitral proceedings by providing that arbitral proceedings shall be closed within 6 months as of the formation of the arbitral tribunal, to the extent possible. At the same time, the Former Rules failed to impose any express obligation for arbitrators to act promptly during the formation of the arbitral tribunal.

While the Revised Rules do not change the general 6 months rule, by leaving it as a soft-law obligation for the tribunal to close the arbitral proceedings within the abovementioned time frame, Article 22 (1) introduces a 30 days' time limit for arbitrators to accept their appointment.

It is not clear how the failure to respect the new 30 days deadline will be sanctioned in practice, since the mandate of arbitrators comes into existence upon accepting the appointment. By regulating the period before that point, the Revised Rules raise the issue of retroactive application of a legal norm. This issue aside, the new provision sends a clear policy message to would-be arbitrators in Hungary to act diligently under the Revised Rules.

Case Management Conference – More Flexibility

Inspired by the arbitration rules of leading arbitral institutions, case management conferences had already been used on an *ad hoc* basis in Hungarian arbitrations in the past, with the introduction of this procedural technique being one of the most important novelties of the Former Rules.

At the same time, a firm obligation that the Former Rules imposed on arbitrators to hold a case management conference within 30 days after the formation of a tribunal proved to be a rule that is too rigid in practice.

It was not unusual for respondents, after appointing an arbitrator, to request an extension of the 30-day deadline for submitting their statement of defence. In case the time extension would be granted by the tribunal, this would occasionally lead to a situation whereby, at the time of the case management conference, the statement of defence would either not be submitted by respondent, or it would be submitted only a few days prior to the case management conference date. This would in essence result in information asymmetry, since at the time of the case management conference, it was only the respondent who really knew the standpoint of both parties to the proceedings.

In such cases, the vast majority of tribunals acting under the Former Rules decided to set a new case management conference date, which lengthened the proceedings.

To avoid the above, Article 36 (1) of the Revised Rules provides for a more flexible rule, enabling the arbitral tribunal to hold the case management conference within 30 days after the respondent has filed the statement of defence, or after the deadline for the statement of defence has expired.

Remote Hearings – Expressly Addressed

Being adopted before the COVID19 pandemic, the Former Rules did not expressly address the possibility to hold arbitral hearings remotely through means of modern telecommunication.

Even if the parties' right to a physical hearing could not be inferred either from the Hungarian Arbitration Act or from the Former Rules, this gap had the potential to lead to legal uncertainty. This prompted considerations whether tribunals should obtain the parties' preliminary consent before holding hearings remotely, or not.

This regulatory loophole was posing a risk to the effectiveness of arbitral awards delivered under the auspices of HCAC, as it could not be fully excluded that the tribunal's decision to hold a remote hearing without preliminary party consent could be invoked as a ground for setting aside the award.

The modified Article 37 (1) of the Revised Rules now expressly sets forth that the arbitral hearing can be held through means of telecommunication "in justified cases", making it clear that this issue falls into the discretionary powers of the arbitral tribunal.

Besides the effectiveness of the award, the new provision contributes to the speeding up of the arbitral proceedings especially in cases, involving parties and busy arbitrators from different jurisdictions.

Unjustified Delay in Rendering the Award – Possibility to Decrease Arbitrator's Fee

Probably the most debated provision of the Revised Rules will be Article 53 (4) that allows the HCAC to decrease the fee of the arbitral tribunal in case it fails to respect the 45-day deadline for delivering a written arbitral award, counting from the closing of the arbitral proceedings. The HCAC can decrease the arbitrators' fee, save in case the tribunal requested the prolongation of the said deadline.

While it cannot be questioned that assigning cost consequences to the unjustified delay of the arbitral tribunal can place a pressure on arbitrators to deliver the award in a timely manner, which can prevent the unreasonable lengthening of the arbitral proceedings, the absence of any clear regulations as to the exact amount of the reduction creates legal uncertainty.

In addition, the lack of transparency can easily lead to a diverging practice in relation to the day-to-day application of fee reductions, which can undermine the integrity of the whole institution.

Truncated Tribunals and Dissenting Opinions – Detailed Regulation

The Former Rules allowed arbitrators to attach dissenting opinions to the award, expressing a disagreement with the reasoning and the result of the award adopted by the majority of the tribunal, but neither the possible content of the dissenting opinion nor the rules governing the parties' right to get insight into such opinion were clarified.

The above gap in the Former Rules led to situations where dissenting opinions were attached to the award, and the award-debtor used the opinion to fuel its court action for setting aside the award, by

utilizing the arguments of the dissenting arbitrator in the litigation.

In another case, the dissenting arbitrator failed to sign the award. Later on, after the award was delivered and signed by the two remaining members of the truncated tribunal, the dissenting arbitrator made handwritten notes on the award, expressing his dissenting opinion.

To avoid the above situations, capable of undermining the integrity of the arbitral institution, two new provisions have been introduced by the Revised Rules.

First, Article 43 (2) of the Revised Rules clarifies that the absence of the signature of any arbitrators on the award delivered by the truncated tribunal shall be indicated and certified by the HCAC itself.

Second, Article 44 (3) of the Revised Rules clarifies that only the arbitrator, who signs the award can provide a dissenting opinion.

In addition, Article 44 (3) provides that the dissenting arbitrator cannot divulge any information in relation with the in-camera deliberation of the award in its dissenting opinion. Finally, it sets forth that the dissenting opinion shall be put in a closed envelope among the files of the case, and only the President of the HCAC can allow access to the dissenting opinion in justified circumstances.

Concluding Remarks

Based on the above, the changes entering into force on the very last day of 2022 are certainly more than a mere facelift of the former regime.

While it is doubtful whether the deadline for accepting appointment, or the blanket rule about decreasing arbitrators' fees will have the desired positive impact, the more flexible new provisions regarding the timing of the case management conference, the express regulation of remote hearings and the more sophisticated regime regarding dissenting opinions will presumably contribute to the effectiveness of awards and will potentially increase the speed of arbitral proceedings.

Hopefully, due to these minor, but nonetheless, important modifications, HCAC administered arbitrations will be able to stand up to the competition from the Hungarian state courts.