Hungary

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TYPES OF DISPUTE RESOLUTION

1. Please give a brief overview of the main dispute resolution methods used in your jurisdiction to settle large commercial disputes, identifying any recent trends.

Overall, the court system is capable of handling large and complicated commercial disputes. However, there are certain drawbacks, including:

- The length of court proceedings.
- The relatively rigid procedural rules.
- The tendency of judges to over-emphasise the formal aspects of a case.

Arbitration is the preferred method for settling medium and large commercial disputes, particularly in the case of international transactions. This is partly due to the actual or perceived limitations of the domestic court system.

Arbitration practice is in line with internationally accepted principles. A modern Arbitration Act was enacted in 1994, based on the UNCITRAL Model Law on International Commercial Arbitration 1985.

Although frequently talked about in professional circles, other ADR mechanisms (apart from arbitration) are uncommon. Many commercial agreements require the parties to attempt an amicable settlement of disputes. However, few agreements require the parties to resort to other ADR mechanisms, such as professional mediation, before initiating litigation or arbitration.

The business community does not appear to be either prepared or properly educated to embrace other ADR mechanisms at this time. If a dispute cannot be settled through direct negotiations, the parties do not usually consider other ADR mechanisms. Instead, litigation or arbitration is commenced.

COURT LITIGATION - GENERAL

2. What limitation periods apply to bringing a claim and what triggers a limitation period? Please briefly set out any different rules for particular areas of law relevant to large commercial disputes, for example contract, tort and land disputes.

The general limitation period is five years starting from the date the claim arose. However, the law sets out a shorter limitation period for certain claims. These include claims:

- Requesting judicial supervision of administrative decisions.
- In corporate matters against corporate resolutions.
- In competition matters.
- In actions relating to trespass.

The parties can also agree on a shorter limitation period in writing.

3. Please give a brief overview of the structure of the court where large commercial disputes are usually brought. Are certain types of dispute allocated to particular divisions of this court (for example, IP, competition or maritime disputes)?

There are no specific courts specialising in commercial disputes. The county courts (or the Metropolitan Court in Budapest) have jurisdiction in all civil cases, including commercial cases, if the amount of the claim exceeds HUF5 million (about US$29,000).

County courts also have jurisdiction in other matters, such as in cases relating to:

- Copyright or patents.
- International delivery of goods.
- Securities.
- Unfair contractual terms.

First instance tribunals usually consist of a single judge. In certain cases, however, a first instance tribunal consists of a three-judge panel, for instance in cases concerning patents (where two of the three professional judges are required to have a technical degree) and trade marks.

The answers to the following questions relate to procedures that apply in all civil courts.

4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought and what requirements must they meet? Can foreign lawyers conduct cases in these courts?

In Hungary, an attorney-at-law who has been admitted to any of the Hungarian bar associations can act before any Hungarian

court regardless of the amount in dispute. There is no distinction between lawyers similar to that in the UK, where there are solicitors and barristers.

Lawyers from within the EEA wishing to practise law in Hungary on a permanent basis must apply for admission into the register of European Community lawyers kept by the competent bar association. Lawyers from the European Economic Area (EEA) wishing to practise law in Hungary on a temporary basis can also apply for entry in this register.

A European Community lawyer can, among others:

- Represent clients.
- Provide legal counselling services.
- Prepare various documents.

If a European Community lawyer provides legal services in Hungary on a temporary basis he is required, at the request of the relevant bar association, court or authority, to prove that he is entitled to practise legal activities in his country. If a European Community lawyer provides, on a temporary basis, services of representation before a court or an authority in Hungary, he must also notify the competent bar association of this representation.

In those cases where legal representation is compulsory, a European Community lawyer can only provide services of representation if he has concluded an agreement on co-operation with a Hungarian attorney or law firm for that purpose.

Lawyers registered outside the EEA are not authorised to act before Hungarian courts. Such a lawyer (foreign legal counsel) is only allowed to advise in connection with the law of the country in which he is a registered lawyer, international law and the practice regarding his national law, as well as international law, provided that certain conditions are met. For a foreign lawyer to become a foreign legal counsel, he is required to conclude an agreement on co-operation with a Hungarian attorney or law firm and to register with the bar association.

FEES AND FUNDING

5. What legal fee structures can be used? For example, hourly rates, task-based billing, and conditional or contingency fees? Are fees fixed by law?

Lawyers' fees are typically agreed with the client. Although lawyers' fees are usually based on hourly rates, contingency fees are not prohibited. If there is no agreement between the parties, the fees are calculated as a percentage of the amount of the claim.

6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

Funding

Litigation is generally funded by clients. There is no rule against funding by third parties.

Insurance

There is no rule against insurance-based funding of litigation. This is a matter to be negotiated between the insurance provider and the party concerned.

COURT PROCEEDINGS

7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

The general rule is that court proceedings are public. However, in certain cases, the judge can decide that hearings will be private, in whole or in part. The judge can prohibit publicity if it is deemed necessary to protect:

- State, official, business or other statutory secrets.
- Public morality.

Parties can also request that the proceedings be conducted confidentially to protect their privacy.

The general public is not allowed access to either:

- The documents filed by the parties during proceedings.
- The minutes of the hearing established by the court.

Such access is only allowed to:

- The parties.
- The state prosecutor.
- Other participants in the proceedings.

As of 1 July 2007, certain court decisions are available on the internet.

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

Once a claim has been lodged, the court examines whether the claim complies with compulsory statutory provisions. The party submitting the claim must inform the court whether there have been any mediation proceedings to settle the dispute amicably.

If a required element is missing from the claim, the court sets a short deadline for the submitting party to properly supplement the claim. If the party making the submission fails to fulfil the instructions of the court, the court rejects the claim.

9. Please briefly set out the main stages of typical court proceedings, including the time limits (if any) for each stage, any penalties for non-compliance and the role of the courts in progressing the case. In particular:

- **How a claim is started.**
- **How the defendant is given notice of the claim and when the defence must be served.**
- **Subsequent stages.**

Starting proceedings

Proceedings are initiated by filing a written claim. Courts must examine the claim within 30 days from receipt, and if a claim does not comply with the applicable law, or must be supplemented for other reasons, the court requires the claimant to supplement the claim within a deadline set by the court. If the claim complies with the law, the court will schedule the first hearing.

Notice to the defendant and defence

When the court schedules the first hearing, it sends the notice of the hearing, together with the claim and its annexes, to the defendant. The defendant must submit its statement of defence no later than at the first hearing. However the court, when necessary, can require the defendant to submit its statement before the first hearing and can schedule a deadline for submissions (which cannot be less than 15 days).

Subsequent stages

Generally, the first hearing must be scheduled within four months, and in all cases no later than nine months, from receipt of the claim.

At the first hearing, the claimant presents its claim and the defendant presents its defence. Witnesses can also be heard at the first hearing and experts can be heard at subsequent hearings if summoned by the court. When it has all the information necessary to render judgment, the court must decide on the case. Otherwise, the court can postpone the hearing and schedule a date for a further hearing. Any further hearings must be scheduled within four months of the previous hearing. The court can hold as many hearings as it deems necessary before issuing its judgment.

The full judgment is announced orally at the hearing. The announcement can be postponed in complex cases, but only for eight days. Judgments must be set out in writing within 15 days and delivered to the parties within another 15 days.

A penalty can be imposed on a party or other participant who does not exercise its rights in accordance with the law or in good faith. The maximum penalty is HUF 500,000 (about US $2,900).

INTERIM REMEDIES

10. What actions can a party bring for a case to be dismissed before a full trial (for example, summary judgment or for a claim to be struck out)? On what grounds must such a claim be brought? Please briefly outline the procedure that applies.

The court can issue summary judgment (unless the claim must be refused as a matter of law) following the claimant's request, if the defendant has neither:

- Appeared at the first court hearing.
- Submitted a statement of defence in writing.

The court must refuse claims that:

- Are premature.
- Are submitted after the limitation period.
- Cannot be enforced by judicial proceedings.
- Are not submitted by the party entitled to make the claim.

A claim can be refused before its examination on the merits, either *ex officio* (of the court's own initiative) or following a request by the defendant. The reasons for refusing a claim in these cases may be based on:

- Certain procedural reasons (for example, where the court has no jurisdiction over the dispute).
- If the claimant withdraws the claim or the parties settle the claim.
- If a party (either corporate or individual) ceases to exist without a legal successor.

In addition, the court will refuse the claim, following a request by the defendant, if the claimant both:

- Fails to appear at a court hearing.
- Has not previously requested the holding of the hearing in his absence.

In every other case, the court must examine and decide on the merits of the claim.

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

A foreign claimant must, at the request of the defendant, provide sufficient security to cover the costs associated with the legal action. No provision of security is required if any of the following apply:

- An international agreement so provides.
- The reciprocity of the affected countries so suggests.

- The amount claimed by the claimant and recognised by the defendant serves as sufficient security.
- The court has fully exempted the claimant from bearing litigation costs.

12. In relation to interim injunctions granted before a full trial:

- **Are they available and on what grounds are they granted?**
- **Can they be obtained without prior notice to the defendant and on the same day in urgent cases?**
- **Are mandatory interim injunctions to compel a party to do something available in addition to prohibitory interim injunctions to stop a party from doing something?**

In addition to summary judgment and an order for security for costs, the following interim injunctions can be granted before a full trial:

Interim injunctions

On the claimant's application, the court can grant an interim injunction on the terms set out in the application. Courts have, in general, the authority to issue interim injunctions where deemed necessary to:

- Prevent imminent damage;
- Maintain the status quo pending the resolution of the case; or
- Secure the legitimate interests of a party when its claim on the merits appears well-founded but its remedy is at risk.

Procedural law does not list what interim injunctions can be granted; this depends on the ultimate aims of the case. Interim injunctions are subject to appeal, while the original tribunal retains the authority to amend its decision at the request of any party. The court can also decide that the issue of an interim injunction is conditional on the requesting party providing sufficient security. If sufficient security is not provided, the injunction will not be issued.

Applications for interim injunctions cannot be submitted before the statement of claim. The court does not decide on applications for interim measures in the order that they are made. In IP matters, the court has 15 days to decide on an application, although in practice this timeframe is about one to two months.

Registration at the land registry office

In relation to a dispute over real property, the court issues a preliminary writ of execution to the relevant land registry on application by the claimant, directing it to register the fact that a legal action has been filed.

After registration, any other rights in relation to the relevant real property can only be registered after, and according to, the court's final decision in the legal action. Such orders are frequently sought in practice.

Where there is a registration at the land registry office, the court must notify the Land Registry Office of a claim immediately, even before notifying the defendant of the submission of the claim by the claimant.

Prior notice and timing

All the above interim remedies can be obtained without prior notice but only in urgent cases. The court usually decides after having heard from the parties. In practice, interim remedies will not be made available on the same day as the application, even in urgent cases.

13. In relation to interim attachment orders to preserve assets pending judgment or a final order (or equivalent):

- **Are they available and on what grounds must they be brought?**
- **Can they be obtained without prior notice to the defendant and on the same day in urgent cases?**
- **Do the main proceedings have to be in the same jurisdiction?**
- **Does attachment create any preferential right or lien in favour of the claimant over the seized assets?**
- **Is the claimant liable for damages suffered as a result of the attachment?**
- **Does the claimant have to provide security?**

A creditor can apply to the court for a securing order, on the basis that a delay in enforcement will jeopardise the recovery of his claim, for either of the following:

- Sufficient security (in relation to monetary claims) requiring the debtor to provide security for his debt.
- Sequestration (seizure or attachment) of specific assets, if the claim relates to a particular property.

The court in which the action has been filed will grant the protective measure. The court issues a decree on the application after no more than eight days, and also sends a copy immediately to the applicant.

If the main proceedings are initiated outside Hungary but in another EU member state, the claimant can apply for interim injunctions for those protective measures that may be available under Hungarian law (related to property situated in Hungary) even if the courts of the other state have jurisdiction over the matter (*Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation)*).

With sequestration of specific assets, the security holder can seek priority to other claims over the property pledged (*Hungarian Civil Code*).

Generally, the claimant does not have to provide security but the court can grant an interim injunction subject to the claimant providing security. The defendant can claim damages if an interim injunction or security action should not have been granted.

14. Are any other interim remedies commonly available and obtained? If yes, please give brief details.

There are no other interim remedies commonly available and obtained in addition to those listed above (*see Questions 10 to 13*).

FINAL REMEDIES

15. What remedies are available at the full trial stage (for example, damages and injunctions)? Are damages just compensatory or can they also be punitive?

Remedies available after trial are:

- Compensatory damages.
- Declaratory judgment.
- Specific performance.

Punitive damages cannot be awarded under Hungarian law.

EVIDENCE

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

There is no duty on a party to disclose documents to the other party. A discovery procedure of the type available in litigation before UK courts is not known in Hungary.

However, while there is no general duty to disclose documents, the tribunal can order a party, at the request of the other party, to disclose certain documents, including documents that could be harmful to the interests of the disclosing party.

In certain matters, some documents must be disclosed under the rules of civil law. These include documents proving an ownership or usage right, or where the requested documents were issued on behalf of the requesting party. Disclosure must also be ordered for documents establishing a legal relationship with the requesting party.

17. Are any documents privileged (that is, they do not need to be shown to the other party)? In particular:

- **Would documents written by an in-house lawyer (local or foreign) be privileged in any circumstances?**
- **If privilege is not recognised, are there any other rules allowing a party not to disclose a document (for example, confidentiality)?**

Privileged documents

There is no concept of privilege (as exists in the UK) in Hungarian law. However, lawyers do owe a duty of confidentiality.

Other non-disclosure situations

All documents prepared by a lawyer, and all documents containing facts or data are confidential. While the lawyer cannot disclose and cannot be obliged to disclose confidential information, the information itself or the document as such does not enjoy specific protection (*Act on Attorneys, Act XI of 1998*).

Therefore documents considered confidential under the Act on Attorneys could still be used in legal proceedings if those documents were properly obtained by the other party.

In-house lawyers are deemed employees of their company and, as such, do not enjoy any special treatment. Therefore, in relation to confidentiality and the treatment of documents they produce, there is no difference between them and other employees.

18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

The main purpose of hearing witnesses is to obtain oral evidence. However, the court can call a witness to supply his notes, documents or certain objects that have, or might have, relevance to the matter at issue at the relevant court hearing.

As a general rule, it is the court that hears witnesses and questions them. Under Hungarian law, the litigating parties can propose certain questions to be asked of the witness. The court can also, on request, allow the parties to directly ask the witness questions. Ultimately though, it is the court that decides on the permissibility of questions proposed or asked. Therefore, cross-examination of witnesses as practised in the UK is not a feature of the Hungarian legal system.

19. In relation to third party experts:

- **How are they appointed (for example, are they appointed by the court or by the parties)?**
- **Do they represent the interests of one party or provide independent advice to the court?**
- **Is there a right to cross-examine (or reply to) expert evidence?**
- **Who pays the experts' fees?**

Appointment procedure

The court appoints experts during the proceedings, either of its own initiative or following a request by one of the parties. Experts must be primarily appointed from the listed experts or institutes authorised to give expert opinions. The parties can agree on the expert chosen. Failing agreement, the court decides on the person to be appointed.

Court-appointed experts provide independent advice to the court.

Role of experts

Expert opinions are intended to:

- Prove or disprove witness statements and establish matters of fact during the proceedings.
- Be given in areas that are relevant but where the court does not have the necessary expertise.

Although expert opinions are not to be considered determinative in the case, in practice, judges tend to "blindly" follow the opinions provided by court-appointed experts irrespective of the position of party-appointed experts. This practice may sometimes lead judges to not exercise their fact-finding function.

Right of reply

Parties (and the court itself) have the right to reply and request the appointment of another expert for the purposes of cross-examination if the expert's opinion is any of the following:

- Unclear.
- Contradictory.
- Incomplete.
- There is reasonable doubt as to its accuracy.

Fees

Experts' fees are initially paid by the party requesting the appointment and, at the end of the case, by the unsuccessful party.

APPEALS

20. In relation to appeals of first instance judgments in large commercial disputes:

- **To which courts can appeals be made?**
- **What are the grounds for appeal?**
- **Please briefly outline the typical procedure and timetable.**

Generally, first instance judgments can be appealed within 15 days from receipt. In commercial matters with a value above HUF5 million (about US$29,000), first instance decisions can be appealed to the Court of Appeal on matters of law and fact. Decisions by the Court of Appeal can be submitted to the Supreme Court for judicial review on questions of law only.

However, the law sets out certain matters where judgments are enforceable despite the filing of an appeal. These matters include:

- If the court renders a decision that is preliminarily enforceable without regard to the filing of an appeal, including:
  - judgment for the claimant in a claim that has been acknowledged by the defendant;
  - financial judgment for the claimant based on an obligation in an official document or a non-official document of full evidentiary force, if all circumstances forming the basis of the judgment are proven by such documents;
  - non-financial judgment for the claimant, if the claimant would suffer damages that are disproportionately grave or difficult to ascertain, and if the claimant provides sufficient security;
  - a judgment for the cessation of trespass or nuisance.
- Appeals made against judgments approving settlements.

COSTS

21. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors do the court consider when awarding costs (for example, any pre-trial offers to settle)?

Generally, the unsuccessful party pays the successful party's costs, including its lawyers' fees. However, the court can decide to take into account only part of the successful party's legal expenses, if it considers those expenses excessive. The courts usually set these fees at about 5% of the amount of the claim.

The court can also deny the successful party's costs if, for example, there was no reason to initiate the proceedings or if the other party acknowledged the claim at the first hearing. Similarly, costs incurred unnecessarily cannot be recovered. If one party is partially successful, the court splits the costs among the parties.

22. Is interest awarded on costs? If yes, how is it calculated?

There is no interest awarded on costs.

ENFORCEMENT

23. What are the procedures to enforce a local judgment in the local courts?

Enforcement of domestic judgments must be implemented by court execution proceedings (governed by *Act LIII of 1994 on Judicial Enforcement* (*Act on Judicial Enforcement*)).

The court of first instance issues a certificate of enforcement based on a court decision delivered in a civil matter or a settlement that has been approved by the court. The certificate of enforcement is an enforceable document. An enforceable document can only be issued if the decision in connection with which enforcement is sought satisfies the following:

- It contains an obligation.
- It is final and enforceable or is subject to preliminary enforcement.

- The deadline for performance has expired.
- The court then sends the enforceable document to the bailiff as well as to the person requesting enforcement.

There are two main types (and several sub-types) of enforcement procedures, namely:

- The enforcement of financial claims, which includes:
  - garnishment of amounts handled by financial institutions;
  - enforcement regarding movable property; and
  - enforcement regarding immovable property.
- The special enforcement procedures, which include:
  - enforcement of a specific act;
  - enforcement of interim injunctions; and
  - enforcement of foreign judgments.

Enforcement relating to movable and immovable property usually takes place by auction. At auction, movable property can only be sold at a purchase price that reaches at least 25% of the appraised value of the relevant asset. For immovable property, this percentage is set at 50% of the appraised value.

The rules governing the different sub-types of enforcement procedures vary from one sub-type to another.

CROSS-BORDER LITIGATION

24. Do local courts respect the choice of law in a contract (that is, if the parties agree that the law of a foreign jurisdiction will govern the contract)? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

In international transactions, the parties are free to choose the law that applies to their agreement. However, when local laws implement strict public policy, there are certain areas in which local law applies irrespective of the parties' choice of law, for example:

- Consumer protection.
- Competition.
- Labour relations between employers and employees, or the employment relationship based on which work is performed.
- Corporate matters regarding companies registered in Hungary.
- The ownership of real property in Hungary.
- If the application of the chosen law would contradict public order or policy.
- Bankruptcy and liquidation of companies registered in Hungary.
- Certain tax issues.

25. Do local courts respect the choice of jurisdiction in a contract (that is, if the parties agree that claims will be brought in the courts of a foreign jurisdiction)? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

If at least one party is domiciled in an EU member state, the parties can agree that a court of a member state has jurisdiction to settle disputes between them (*Brussels Regulation*). Such a stipulation is deemed to be exclusive unless the parties agree otherwise. An agreement conferring jurisdiction must be one of the following:

- In writing, including in electronic format.
- In a form that accords to the practices established among the parties.
- In international trade or commerce, a form that is widely-known and should be familiar to the parties in the particular trade or commerce concerned.

If jurisdiction is conferred in an agreement where neither party is domiciled in an EU member state, the courts of other members states will not have jurisdiction over the disputes, unless the chosen court has declined jurisdiction.

Under Hungarian law, parties can stipulate the jurisdiction of a specific court for commercial matters. Hungarian courts, however, exercise exclusive jurisdiction for certain matters, such as real estate matters. The required form of such jurisdiction clauses or stipulations corresponds to the requirements under the Brussels Regulation. Unless the parties agree otherwise, the stipulated court has exclusive jurisdiction. However, if the parties stipulate the jurisdiction of a foreign court and this court declares that it does not have jurisdiction, a Hungarian court can declare its jurisdiction under the general rules.

Certain courts have exclusive jurisdiction in specified matters, under the applicable laws. For example, the Metropolitan Court in Budapest has exclusive jurisdiction in relation to:

- Specific IP-related legal disputes.
- Disputes involving administrative or governmental authorities.

If a court has exclusive jurisdiction over a dispute under law, that court can claim jurisdiction whatever the choice of jurisdiction in the contract.

26. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, please briefly outline the procedure to effect service in your jurisdiction. Is your jurisdiction party to any international agreements affecting this process?

EU member states

For documents originating from another EU member state, service on a party in Hungary is effected through reference to Regula-

tion (EC) No. 1348/2000 on the service in the member states of judicial and extra-judicial documents in civil and commercial matters (Service Regulation). This allows service of judicial documents through a transmitting agency (the Ministry of Justice), diplomatic or consular agents or registered mail. While requests for service can be made in German, English or French, the receipt of judicial documents not in the Hungarian language can be refused by the recipient. Direct service of documents is not available in Hungary.

Non-EU member states

For documents originating from outside the EU, reference can also be made to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965 (Hague Service Convention). Service of documents sent under the Hague Service Convention must be made exclusively through the Ministry of Justice, and will only be carried out if an official translation is attached.

27. Please briefly outline the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction. Is your jurisdiction party to an international convention on this issue?

EU member states

Council Regulation (EC) No. 1206/2001 on co-operation between the courts of the member states in the taking of evidence in civil or commercial matters (Evidence Regulation) provides for co-operation between the courts of EU member states in the taking of evidence for use in proceedings in another member state.

The Evidence Regulation provides for the direct transmission of requests for the taking of evidence between the competent courts of member states. The Ministry of Justice is the central body responsible for supplying information to the competent courts and seeking solutions to any difficulties that may arise in respect of requests. Requests to take evidence can be transmitted to the competent courts in English or Hungarian via mail, fax or e-mail. Generally, within 90 days of the receipt of the request, the requested court carries out the request according to the provisions of Hungarian law on the taking of evidence.

Non-EU member states

To take evidence from a witness for use in proceedings in a non-EU member state, the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 (Hague Evidence Convention) provides for Letters of Request to be sent to the Hungarian Ministry of Justice to obtain evidence by competent authorities in Hungary. The Letters of Request must be sent in Hungarian and the evidence is taken according to under Hungarian law.

28. What are the procedures to enforce a foreign judgment in the local courts?

Non-EU member states

Under Law Decree no. 13 of 1979 on private international law, judgments from non-EU member states will be recognised if the following conditions are met:

- The foreign court has jurisdiction over the subject matter of the dispute.
- The judgment is final.
- There is reciprocity between Hungary and the country in which judgment was given.

However, judgments that address areas over which the Hungarian courts have exclusive jurisdiction, such as real estate, will not be enforced. In addition, the following grounds will also exclude enforcement:

- Breach of Hungarian public policy.
- The decision was not properly served on the party against whom it was given, therefore not allowing the preparation of a defence.
- The decision was based on findings of a procedure that seriously violates the basic principles of Hungarian law.
- Proceedings involving the same matter have already been brought before a Hungarian court before the foreign proceedings.
- The case has already been resolved by a final decision of a Hungarian court (*res judicata*).

EU member states

The enforcement of judgments from other EU member states is subject to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Enforcement Regulation). According to this, a judgment given in a member state is to be recognised in another member state without any special procedure being required. However, a judgment may not be recognised if, for instance:

- Recognition is manifestly contrary to the public policy in the member state in which recognition is sought.
- The judgment was given in default of appearance, if the defendant was not served with the document that started the proceedings or with an equivalent document in sufficient time and in a way to enable it to arrange its defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for it to do so.

Regulation (EC) No. 1346/2000 on insolvency proceedings (Insolvency Regulation) provides that the member state in which the centre of a debtor's main interests is located has jurisdiction to open insolvency proceedings. Judgments issued by a tribunal of such a member state must also be recognised in all other member states and must produce the same effects in other member states as in the issuing member state without additional formalities.

If the debtor has an establishment in Hungary, liquidators or other authorised authorities must register judgments opening insolvency proceedings abroad in the Hungarian land, trade and other applicable public registries. Proceedings for such registrations belong to the jurisdiction of the Municipal Court of Budapest, which examines whether insolvency proceedings have indeed been opened in another member state. In the absence of such registration, the liquidator is liable for damages caused by the

omission to third parties that rely on the content of the public registries in good faith (*Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings*).

According to the Insolvency Regulation, judgments handed down by courts of the relevant jurisdiction are enforced according to the Brussels Regulation.

ALTERNATIVE DISPUTE RESOLUTION

29. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Please briefly outline the procedures that are typically followed, and any rules that apply.

In Hungary, the main ADR mechanism is arbitration. Other ADR tools, such as mediation, are rarely used.

30. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

ADR mechanisms only apply based on an agreement between the parties. They do not form part of court procedures and their use cannot be compelled by the courts.

31. Is ADR confidential?

With respect to arbitration and mediation, in the absence of agreement between the parties, arbitral and mediation proceedings are held in private (*Arbitration Act*).

32. How is evidence given in ADR? Can documents or admissions made or produced in (or for the purposes of) the ADR later be protected from disclosure by privilege?

The manner in which evidence is given in ADR is determined by the parties to the process. With respect to arbitration, rules of proceedings of the Court of Arbitration attached to the Chamber of Commerce and Industry stipulate that the arbitral tribunal can instruct the parties to:

- Submit evidence in support of a claim.
- Order the presentation of expert opinions.
- Obtain evidence from third persons.
- Order for the hearing of witnesses.

How evidence is taken is at the discretion of the arbitral tribunal.

33. How are costs dealt with in ADR?

Fees are freely negotiated between the lawyer and the client. Although lawyers' fees are usually based on hourly rates, contingency fees are not prohibited. There are no legal rules in relation to the payment of the successful party's costs. The obligation to pay the successful party's costs depends on the procedural rules of the respective arbitration body and on the decision of the arbitrator.

34. Is ADR used more in certain industries? If yes, please give examples.

Aside from arbitration, ADR is rarely used in any area of business in Hungary. More sophisticated clients, in particular foreign-owned companies, may try to use ADR in exceptional cases.

35. Please give brief details of the main bodies that offer ADR services in your jurisdiction.

The following arbitration bodies are commonly used to resolve large commercial disputes:

- **Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry (Court of Arbitration).** This is the leading institutional arbitration body in Hungary to resolve large commercial disputes. The arbitration rules of the court are modelled on the UNCITRAL Arbitration Rules 1976.
- **Money and Capital Markets Arbitration Tribunal.** This tribunal was established by the trade organisations of the exchange markets, credit institutions and investment enterprises. It has broad mandatory jurisdiction in financial and capital markets related matters. If the parties agree to use arbitration, the law grants exclusive and broad jurisdiction to this institution to settle disputes in certain financial and capital markets related matters.
- **Hungarian Bar Association.** Although not an arbitral body, the Hungarian Bar Association has published a set of arbitration rules that can be voluntarily adopted in ad hoc arbitrations. In the scope of these rules, the Hungarian Bar Association provides limited assistance and acts as the nominating authority if the parties fail to agree on the nomination of a tribunal.

REFORM

36. Please summarise any proposals for dispute resolution reform and state whether they are likely to come into force and, if so, when.

Work has been undertaken to reform the Code of Civil Procedure, to accelerate court proceedings in commercial cases. The concept, issued by the Ministry of Justice and Law Enforcement in July 2006, is part of the government's initiatives implemented between 2006 and 2010.

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Szecskay Attorneys at Law is a progressive business law firm, recognised as one of the top legal advisers in Hungary. The Firm provides innovative solutions to a diverse multinational and local client base, typically large and medium-sized businesses from Hungary and abroad, representing a full spectrum of industry, trade, and services.

The Firm has extensive experience in handling local and international cases in institutional and ad hoc arbitrations, including cases under Bilateral Investment Treaties in matters involving the protection of foreign investors. Attorneys from the Firm are regularly appointed to act as arbitrators in domestic and international disputes.

The approach of the Firm is practical and client-oriented, taking into account its clients' business, demands and cultural perspectives. In addition to dispute resolution, the Firm has significant expertise in various other legal areas including Banking and Finance, Competition Law, Corporate/M&A, Intellectual Property and Real Property/Project Finance/PPP/Public Procurement.