Arbitration Court
attached to the
Hungarian Chamber of Commerce and Industry

GUIDELINES

TO CONDUCT ARBITRATION UNDER THE RULES OF PROCEEDINGS 2018 OF THE ARBITRATION COURT ATTACHED TO THE HUNGARIAN CHAMBER OF COMMERCE AND INDUSTRY (BUDAPEST RULES 2018)

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Guidelines To Conduct Arbitration Under The Rules Of Proceedings 2018 Of The Arbitration Court Attached To The Hungarian Chamber Of Commerce And Industry (Budapest Rules 2018)

The effective Rules of Proceedings of the HCCI Arbitration Court enable parties and arbitrators to conduct the arbitration with a great amount of flexibility, without determining the exact way and course of the proceedings. Due to the open character of the Rules the parties and the arbitral tribunals may develop such an effective course of the proceedings which is tailored to the features and requirements of the given arbitration. The present Guidelines are intended to provide practical guidance when conducting proceedings under the Budapest Rules, and to serve as a blueprint how to conduct the arbitral proceedings successfully.

The Arbitration Court Attached To The Hungarian Chamber Of Commerce And Industry (Commercial Court of Arbitration)

The Commercial Court of Arbitration is an independent institution that operates attached to the HCCI. It administers the cases falling under its jurisdiction and ensures that arbitrations are conducted in accordance with its own rules and with the rules agreed on by the parties involved, respectively. The Commercial Court of Arbitration is directed by the President and the Presidium, and the administrative duties are carried out by the Secretariat, including day-to-day case management until the constitution of the arbitral tribunals and monitoring the course and progress of the proceedings afterwards.

Appointment of Arbitrators, Constitution of the Arbitral Tribunals

Part II.2 of the Rules of Proceedings – „The Constitution of the Arbitral Tribunal" – provides in details on the appointment of arbitrators. It is one of the parties' most important basic rights in arbitration that they may nominate arbitrators. The party-appointed arbitrators (or the arbitrators appointed for the parties upon request or due to their default by the Arbitration Court) elect the presiding arbitrator of the arbitral tribunal. The arbitral tribunal shall be deemed to have been constituted when the statements of acceptance of both the arbitrators nominated by the parties and the presiding arbitrator are received by the Arbitration Court (Art. 29 of the Rules).

By signing the statement of acceptance the arbitrator undertakes to perform his / her duties in the given arbitration independently, impartially, at a high professional level and in possession of the required language skills. It is also a must against the arbitrator that throughout the course of the proceedings he / she can devote the necessary and reasonable time to perform his / her obligations as arbitrator and no other duties prevent him / her doing so. In case of any doubt

in respect of any of these requirements, the appointment shall not be accepted.

As a general principle, arbitrators shall disclose at the time of accepting the appointment and also at any time later during the course of the proceedings any circumstances which may give rise to justifiable doubts as to their impartiality or independence. A disclosure does not imply that any conflict exists, on the contrary, despite the disclosed facts the arbitrator who makes the disclosure considers himself / herself to be independent and impartial. In relation to this issue the IBA (International Bar Association) published its „IBA Guidelines on Conflicts of Interest in International Arbitration" which guidelines - though not being part of the Rules of Proceedings of the Commercial Court of Arbitration - shall serve for the arbitrators as general standards to be followed in any case.

Challenges submitted against the arbitrators and the challenge procedure, respectively, are governed by Articles 27 and 28 of the Rules of Proceedings.

In case of proceedings with a sole arbitrator, if the parties cannot agree on the person of the sole arbitrator, the sole arbitrator shall be appointed by the President of the Arbitration Court (Art. 21 (3) of the Rules).

Pursuant to Article 29 (2) of the Rules: „From its constitution all measures necessary for the conduct of the arbitration shall be taken by the arbitral tribunal, whereby it may seek assistance from the organs of the Arbitration Court."

The Secretariat assists the parties and the arbitral tribunals on any questions relating to the conduct of the proceedings, provides support in resolving technical – organizational tasks.

Communication and Submissions

In arbitral proceedings conducted before the Commercial Court of Arbitration the order of submissions, as well as the delivery of the decisions of the arbitral tribunal and other communications are set

down in Article 3 – „Submissions, Delivery, Time Limits" - of the Rules of Proceedings. After its constitution the arbitral tribunal may decide what further documents shall or may be submitted by the parties in addition to the statement of claim and the statement of defence to which the Secretariat draws the parties' attention already at the early stage of the proceedings.

It is important that the way and means of communication between the parties and the arbitral tribunal, and the Arbitration Court, respectively, shall be determined at the outset of the proceedings. Article 3 (5) of the Rules provides that written communications shall simultaneously be sent also in electronic form (by e-mail). For this all parties and their representatives, respectively, and also the arbitrators shall give their electronic contact details to the Arbitration Court.

Time Limits, First Procedural Order on the Course of the Proceedings

In the practice of the Commercial Court of Arbitration the arbitral tribunal shall basically establish the manner and course of the given arbitration, taking, however, the terms agreed by the parties on procedural issues into consideration. Albeit in many cases it is not possible to determine all steps of the proceedings in advance, it is expedient to set a procedural timetable which foresees the course of the proceedings at least until the first hearing. Further issues may be established also at a later time. In order to prepare the hearing properly, the arbitral tribunal may render procedural orders, and pursuant to Article 36 of the Rules, respectively, it holds a case management conference with the aim to establish the rules to be applied during the proceedings.

Ensuing from the nature of arbitration, in practice the parties may agree on certain procedural issues either on their own, or at the invitation of the arbitral tribunal and the agreed terms shall be complied with (unless the arbitral tribunal makes a proposal which is accepted by all parties). If the parties cannot come to terms, with the knowledge of the parties' positions the

arbitral tribunal shall take procedural measures as it deems appropriate.

Within thirty days following its constitution the arbitral tribunal shall establish the procedural timetable, together with the applicable procedural rules, during the case management conference to be held with the parties, unless in light of the circumstances of the case the arbitral tribunal decides to set a hearing directly. The procedural timetable enables the arbitral tribunal to set time limits – agreed with the parties – for the submission of further documents, it sets the date(s) of the hearing(s), and might as well the time of rendering the final award, further any other procedural act deemed necessary. The arbitral tribunal shall communicate the procedural timetable and any eventual amendments made thereto with the parties and the Secretariat of the Arbitration Court.

The purpose of the procedural timetable is to set a clear time frame from the beginning of proceedings before the arbitral tribunal, which enables a more efficient planning and as a result a faster conduct of the proceedings. A well-prepared procedural timetable may be of high importance also in view of Article 5 of the Rules of Proceedings which provides that the arbitral tribunal shall to the extent possible close the proceedings within six months from its constitution.

Efficient and Fast Conduct of the Arbitration, Equal Treatment of the Parties

The arbitral tribunal shall conduct the proceedings in accordance with the Budapest Rules and the agreement of the parties, while at the same time in a cost-effective manner and avoiding unreasonable delay, ensuring a fair and effective resolution of the dispute.

In the interest of cost-effectiveness the arbitral tribunal shall take it into account that no unnecessary costs or disproportionately high costs considering the amount in dispute arise in the course of the proceedings, furthermore it shall keep in mind that

procedural actions and measures are taken without unreasonable delays.

When setting time limits, the arbitral tribunal shall pay regard to the requirement to conduct the arbitration in an expeditious and cost-effective manner in a way that at the same time on the basis of the principle of equal treatment each party is given a reasonable and fair opportunity to present its case at the appropriate stage of the proceedings.

The above mentioned Article 36 of the Rules of Proceedings provides that the arbitral tribunal shall at the initial stage of the proceedings come to terms with the parties, or shall render after consultation with the parties an order on the main procedural issues and actions. In the light of this the arbitral tribunal may hold a case management conference with the parties to discuss the issues, procedural rules to be included in the first procedural order, with the aim to put down the scheduled, agreed course of the proceedings in writing. This first procedural order includes as a rule the procedural timetable and the time limits for each procedural act.

Case Management Conference

Proposed Agenda of the Case Management Conference

Minutes / Memorandum

Claimant vs. Respondent; at (venue), on (date)

a) the presiding arbitrator opens the meeting
b) introduction of the parties to the proceedings and their representatives, respectively, verification of the exact names and addresses
c) potential procedural issues to be addressed (if they have not been dealt with by the parties):
   - place of the arbitration;
   - language of the proceedings;
   - any issues as to the appointment of the arbitral tribunal;

- any issues as to the jurisdiction of the Arbitration Court

d) procedural timetable

e) bifurcation of the proceedings

f) written submissions
- the number and sequence of submissions;
- translations (if any);
- copies and numbering of documents;
- way and means of communication between the parties and the arbitral tribunal, and the Arbitration Court, respectively, delivery addresses

g) motions for taking of evidence, eventual completion of the procedural rules with principles (IBA Rules or other) established in the practice of international arbitration
- production of evidence;
- hearing of witnesses (written testimonies, (cross-)questioning of witnesses);
- written private expert opinions presented by the parties, hearing and questioning of expert witnesses of the parties

h) the expected conduct of the parties during the proceedings
- confidentiality

i) preparatory arrangements for oral hearings
- way of taking the minutes;
- translations of written documents;
- interpretation

j) any other procedural issues.

Hearings

Section 36 (1) of the Act on Arbitration provides that "unless otherwise agreed by the parties, …..the arbitral tribunal may decide whether to hold a hearing for the presentation of the standpoints and the evidence". (The Sub-Rules of Expedited Proceedings pursuant to Article 52 of the Budapest Rules form an exception to this

provision where as a fundamental rule no oral hearing shall be held, unless either party files a written request or the proceeding sole arbitrator considers this reasonable.)

The provisions for preparing and organizing the oral hearing(s) are set down in Articles 36 and 37 of the Rules of Proceedings, including the rules applicable to the participation of the parties and whatever presence of any person at the hearing (Article 37 (2) of the Rules).

The arbitral tribunal may invite the parties to submit written statements, evidences and any other additional documents it deems necessary; it may render a preliminary decision on some issues; it may order the taking of expert evidence or the hearing of witnesses presented by the parties on the facts (Art. 36 (2)).

In order to make proper arrangements for the hearing, the arbitral tribunal may seek assistance from the Secretariat of the Arbitration Court as regards the time of the hearing, provision of hearing-rooms or other technical – organizational services. The order summoning the parties to appear shall be served on the parties so that they have at least fifteen days to prepare for the hearing.

Pursuant to Article 2 of the Rules of Proceedings, the place of the hearings is fundamentally Budapest, the seat and hearing-rooms of the Arbitration Court, however, if necessary or at the parties' request, hearings may be held also at some other location.

Time of the hearing

The arbitral tribunal shall strive to conduct the proceedings as efficient and fast as possible, for this reason the hearing shall be set to a date as soon as possible. Pursuant to Article 5 of the Rules the arbitral tribunal shall to the extent possible close the proceedings within six months from its constitution (the attainment of this depends, however, considerably on the parties' intentions and willingness to co-operate, as well as on the complication and complexity of the case, too).

Who may participate in the hearing?

The arbitral tribunal shall draw the parties' attention during the first hearing that in accordance with Section 36 (7) of the Act on Arbitration, furthermore pursuant to Articles 37 (2) and 49 of the Budapest Rules, the arbitral proceedings are not public, any details and data provided during the course of the proceedings are confidential and constitute the business secret of the parties. Unless expressly agreed by the parties to the contrary, they shall understand and consider as binding for themselves that they shall treat the information received during the proceedings, and the rendered decisions, respectively, as confidential, they may not give any information to third persons and may not disclose the contents of any decision to the public.

In view of the above, the circle of persons who may be present at the hearing is limited reasonably to those the presence of whom is important for the fair and efficient conduct of the hearing. Accordingly, in addition to the members of the arbitral tribunal, the parties and/ or their representatives, the recording secretary, occasionally interpreters, experts and witnesses any other person may participate only, if the arbitrators and all parties have consented thereto. Provisions on the due representation of the parties are included in Article 6 of the Rules.

Taking the Minutes of the Hearings

Pursuant to Section 36 (6) of the Act on Arbitration, as well as in accordance with Article 37 of the Rules of Proceedings minutes shall be drawn up during the oral hearings to which the recording secretary is provided by the Secretariat of the Arbitration Court. The way of drawing up the minutes shall be determined by the arbitral tribunal.

In the practice of the Commercial Arbitration Court, as a rule, the minutes of the oral hearing are not taken verbatim, it is the presiding arbitrator who makes a summary of all that has been told and dictates to the recording secretary. In some cases, however, verbatim

recording may be required, and in such cases a sound recording of the hearing may be ordered. One copy of the minutes signed by all members of the arbitral tribunal shall be served also to the parties each.

The minutes of the hearings are taken in the language of the proceedings which means at the Commercial Arbitration Court fundamentally Hungarian, English or German. If the proceedings are conducted in either of these languages, the parties incur no additional expenses of the arbitration. If a translator / interpreter shall be ordered for a party, expert or eventually arbitrator not knowing the language of the arbitration, Article 4 of the Budapest Rules shall apply which may result in a considerable increase of the costs and the duration of the proceedings and / or the oral hearing.

Taking of Evidence

Article 40 of the Rules of Proceedings 2018 provides how to produce documents and any other evidence, how to conduct the procedure of taking evidence, it contains detailed provisions as to the issues connected to the appointment of experts and taking expert evidence. In this regard it is highly recommended to take the IBA Rules on Taking of Evidence adopted in May 2010 by the International Bar Association and widely applied in international arbitration into consideration. The arbitral tribunal may also order the taking of evidence ex officio, failing a motion from the parties to do so.

If the arbitral tribunal orders on the motion of any party or ex officio the appointment of an expert, it shall determine the duties of the expert in an order, exactly giving the specific issues on which the expert shall prepare a written opinion. A copy of this order shall be sent simultaneously also to the parties. Besides the expert designated by the arbitral tribunal also the parties may appoint private experts, and during the proceedings, in order to come to the right decision, the arbitral tribunal may cross-check the expert opinions by questioning all the experts at an oral hearing.

Article 40 of the Rules allows the arbitral tribunal also to decide if in order to establish disputed facts and to get an overall picture of the circumstances relevant for the decision on the dispute it wishes to take oral testimony of witnesses at a hearing, or pursuant to Article 40 (2), as well as in accordance with Article 39 the arbitral tribunal renders its decision on the basis of documents and evidence available to it, i.e. without the hearing of witnesses.

Closing of the Proceedings

At the end of the hearing (or possibly at a last hearing set just for this purpose) the parties may make final statements and the arbitral tribunal hears the closing arguments of the parties, or the arbitral tribunal invites the parties to file post-hearing briefs, giving a summary of their legal standpoints and the relevant evidences in writing.

At the end of the last hearing or after receipt of the post-hearing briefs the arbitral tribunal shall declare the taking of evidence completed and in compliance with Article 41 (1) of the Budapest Rules it shall close the proceedings by order. After closing the proceedings the arbitral tribunal shall present its award to the Arbitration Court within 45 days the latest. The award will be delivered by the Arbitration Court to the parties, provided that payment of the advance on all the arbitral costs and expenses has been made (Article 43 (3) of the Rules).

Provisions as to the contents, form and delivery of the arbitral award are included in Section 44 of the Act on Arbitration and in Articles 42 – 44 of the Budapest Rules. The arbitral award shall have the same effect as a final and binding judgement of the state court.

The termination of the proceedings may take place ex officio or at the parties' request also without rendering an award, by order, in accordance with Article 46 of the Rules of Proceedings, for the reasons set down therein. In case proceedings are terminated by order,

the parties have the right to assert their claims eventually in new proceedings.

Remedies

Article 47 of the Rules of Proceedings contains the provisions as to the correction, interpretation and completion of the final and legally binding arbitral award. Considering that no appeal may be lodged against the arbitral award, the arbitral award may be reviewed by an ordinary court in proceedings initiated for the setting aside of the arbitral award only. The reasons establishing the setting aside of an arbitral award are listed in Section 47 of the Act on Arbitration.

Chapter IX of the Act on Arbitration allows the possibility of and regulates retrial proceedings which may be requested within one year from receipt of the arbitral award, if – contrary to the Model Arbitration Clause included in the Budapest Rules - the parties did not previously exclude this possibility in their arbitration agreement.

To the enforcement of an arbitral award the provisions stated in Chapter X of the Act on Arbitration shall apply.

Arbitration Fees and Expenses

The amount of the arbitration fee shall be determined by the Secretariat of the Arbitration Court upon filing the statement of claim by the claimant with the Arbitration Court, in a way proportional to the amount in dispute. For paying the advance on the arbitration fee – pursuant to Article 10 (1), furthermore Article 17 (2) and Article 18 (6) – claimant and respondent shall be invited in equal shares, i.e. 50 – 50 %. The claimant may choose at its discretion to pay the advance on the total arbitration fee, this declaration of claimant may as well be included in its statement of claim. If the respondent fails to fulfil the invitation to pay an advance, the claimant shall pay the respondent's share, as well. The taxes and duties stated in Section 55 of Act No. XCIII of 1990 on taxes and duties constitute part of the arbitration fee and are transferred by the

Arbitration Court to the account of the national tax office after the closure of the proceedings.

On the bearing of the arbitration fees and costs the arbitral tribunal shall decide in its final decision (award / termination order) in accordance with Articles 11 – 13 of the Rules. The accounts of the arbitration fees and costs, including the arbitrators' fees, administrative costs, duties and taxes to be paid to the state, expert and other costs are settled by the Secretariat of the Arbitration Court after delivery of the final decision to the parties.

Conduct of Participants that can be expected in Arbitration

Arbitral tribunals, parties and their representatives are expected to abide by the highest standards of correctness, integrity and honesty, to conduct themselves with honour, courtesy and professionalism, and to encourage all other persons taking part in the arbitral proceedings to do so.

An arbitrator or prospective arbitrator may not engage in ex parte communications with a party or party representative concerning the arbitration, however:

a) A prospective arbitrator may communicate with a party or party representative on an ex parte basis to determine his or her expertise, skills, experience and availability for accepting the invitation, and if any potential conflicts of interest exist, respectively;
b) In so far as the parties so agree, arbitrators may communicate with parties or party representatives on an ex parte basis for the purpose of the election of the presiding arbitrator of the arbitral tribunal; with the proviso that
c) in such ex parte communications the arbitrator or prospective arbitrator shall refrain from expressing any views on the merits of the dispute.