CIVIL LITIGATION

1. In what language(s) may court proceedings be conducted? What arrangements can be made for translation/interpreter services?

Court proceedings are conducted in the Hungarian language, however, as a principle no one may suffer any disadvantage for not understanding the Hungarian language. In order to ensure this the court is required to use an interpreter where necessary for the implementation of this principle. Moreover, in court proceedings – to the extent provided for by international agreement – parties shall be entitled to use their native language, or the language of their region or nationality.

In case of documents in languages other than Hungarian, the court may order the party adducing evidence to provide a certified or non-certified translation of any document made out in a language other than Hungarian. Courts usually do require an official translation. In Hungary a certified translation of any foreign document may only be prepared by Hungarian Office for Translation and Attestation Ltd. (OFFI). OFFI appends an authentication clause to all certified translations to attest that the translated text is identical with, and equivalent to, the original document for content and sense. Certified translations are printed on special, numbered security paper which bears the coat of arms of Hungary and unique identification marks, and is only used by OFFI Ltd. Certified translations are inseparably attached to the original documents or their certified true copies. Please note that in case of official translations for company extracts, data and company documents to be registered in the companies' registry, the translation of professional translators are also acceptable.

2. What types of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

According to the applicable rules in legal disputes between business entities with legal personality, the parties shall make an attempt before lodging the claim to settle the case out of court. This procedure is not required if the parties make out a joint statement on their disagreement.

It is also possible before filing a lawsuit to request a citation for settlement proceedings before the local court of competent jurisdiction to hear the case. In case during this a settlement is reached, it shall be fixed in a report and shall be approved. However, please note that this possiblity is hardly ever used.

Although sending a warning letter is generally not an obligation, this is usually done prior to the commencement of legal procedures in front of courts with reference to the parties' obligation to cooperate with each other. However, in case of the initiation of the liquidation of a company, sending a letter is an obligation as the procedure may only be commenced upon the debtor's failure to settle or contest his previously uncontested and acknowledged contractual debts within twenty days of the due date, and failure to satisfy such debt upon receipt of the creditors written payment notice. Such payment notice shall be attached to the request submitted at the competent court.

Following the submission of a claim (counterclaim) the court, upon request, may implement provisional measures ordering satisfaction of the claim (counterclaim), or compliance with the application requesting provisional measures, where this is deemed necessary to prevent any imminent threat of damage, to preserve the status quo giving rise to the dispute, or with a view to underlying the requirement for the special protection of the applicant’s rights, where the advantages to be gained must always supersede the disadvantage obtained by the measure. The court may render the implementation of provisional measures subject to the provision of security. The facts underlying the necessity of the protective measures shall be substantiated. The court shall adopt its decision regarding provisional measures in priority proceedings and the ruling is provisionally enforceable.

Moreover please note that the parties are always free to settle their dispute prior to the commencement of any procedure and the possibility of reaching an agreement remains open throughout the court procedure.

3. What are the costs of civil and commercial proceedings? Who bears the costs?

The costs of civil and commercial cases vary depending on the type of the case that is brought to court and also depends on the amount contested.

As a general rule the rate of duty in court proceedings is 6 per cent of the amount contested but not less than HUF 15,000 and not more than HUF 1,500,000. In other non-judicial proceedings, excluding administrative proceedings without litigation, 3 per cent of the value of the subject matter of the proceeding but not less than HUF 5,000 and not more than HUF 250,000.

However in other cases (mainly where the contested value cannot be determined or the type of the dispute is special) itemized duty is determined. Thus for example the duty on divorce actions is HUF

30,000, on proceedings instituted for the judicial review of administrative resolutions shall generally be HUF 30,000, on the liquidation and bankruptcy proceedings of economic operators with legal personality, shall be HUF 50,000 and HUF 30,000 respectively, while for unincorporated business associations the duty on liquidation and bankruptcy proceedings shall be HUF 25,000 and HUF 20,000 respectively. Itemized duty applies to the registration of companies (depending on the form from HUF 30,000 to HUF 600,000) and to the registration of the changes of the data of the companies (usually HUF 15,000). Please note that a detailed system of exemptions from the costs and expenses exists.

The court shall decide as to the bearing of court costs in its judgment or other decision delivered in conclusion of the proceedings. If each party succeeds on some and fails on other heads, the court shall decide on court costs in proportion to the degree of success and in consideration of the sums advanced by the parties. If the difference between the ratio of success and losing, and between the sums advanced is insignificant, the court shall order that the parties bear their own costs.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

The parties, the public prosecutor and other persons participating in the action, and their representatives shall have access to the documents of the case - with the exception of draft resolutions and any dissenting opinion - any time during the litigation without special permission, and shall have the right to make copies (extracts) thereof.

However, court records of any hearing that was held in closed session with a view to protecting classified information, and any document that contains classified information may not be copied and no extracts can be made thereof. In these cases the documents may be reviewed in possession of a special authorization, subject to the conditions established by the presiding judge in accordance with the applicable rules.

The parties, the public prosecutor and other persons participating in the action, and their representatives may exercise the right to access documents for inspection and to make copies, where such documents contain business secrets, privileged information and other secrets described in specific other legislation, subject to a confidentiality agreement made out in writing, according to the rules and under the conditions laid down by the judge hearing the case.

If, however, the party entitled to grant an exemption from the obligation of confidentiality made a statement in due time in which he refused to allow access to the document containing any business secret or privileged information, apart from the court and the clerk keeping the records no other person shall be allowed to have access to that part of the document containing such secrets, and it may not be copied and no extracts can be made thereof.

Apart from the persons mentioned above information on the proceedings may only be given to persons with legitimate interest as to the conduct and the outcome of the proceedings. The presiding judge of the court seised – subject to verifying legal interest – shall be authorized to access the documents and to make copies and extracts thereof, and/or to release information.

The electronic disclosure of documents is not yet an accepted way of discloing information in legal procedures. However, the parties, the public prosecutor and other persons participating in the action, and their representatives may request – in writing or during the hearing – the court to send electronic copies of documents to the e-mail address they supplied, provided that they have proper entitlement for receiving a copy of such documents, and the given document is available at the court in electronic format, in the form of an electronic document, or as an electronic duplicate of paper-based documents. In such form the documents are forwarded free of charge. Documents available in electronic format are not recognized as certified copies, and shall not be used as evidence.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?

If a party wishes to corroborate his argument with witnesses, he shall indicate the facts in question and supply the name and address of summons of the witnesses. The witness is summoned by the presiding judge. The writ of summons may specify the subjects on which the witness should be examined, and the witness shall be advised to bring his related notes and documents, and other articles that may be used as evidence.

The witness may not attend the hearing and the taking of evidence before questioning, and may leave the court room after questioning if so permitted by the court. Before proceeding with questioning the witness shall be advised of the legal consequences of perjury moreover the witness shall be asked to

declare if he wishes to have his personal data handled confidentially.

Before questioning the witness shall be asked to state some of his personal data, as well as his relationship to the parties, and of any bias on that count. The witness shall answer these questions also if he can rightfully refuse to testify. Next the witness shall be examined thoroughly, clarifying the sources of his information as well. The witness, unless exempted from the obligation of confidentiality, shall not be questioned in respect of any subject that is treated as classified information, moreover in soma cases giving testimony may be refused (eg. by any close relative of the parties, doctors, attorneys). The witness shall be examined by the presiding judge. Other members of the court shall also be entitled to ask questions from the witness. The parties may also put questions forward. The presiding judge may authorize the parties, upon request, to address question directly to the witness. The decision for permitting the parties to put questions forward or to ask them directly from the witness lies with the presiding judge. If the testimony given by a witness is contradictory to the testimony of another witness or any other person heard in person, the disagreement shall be clarified by way of confrontation if deemed necessary.

The witness, in the process of questioning, is required to make available the document in his possession, or the part of this document that pertains to the case on hand, to the court for inspection, with the exception if the document belongs to a third person who is not involved in the proceedings. If the witness refuses to make the document available without cause, the sanctions for refusing to testify shall apply.

After questioning, the witness' testimony transcribed in the court records shall be read to the witness, unless such reading is waived by the witness and by the parties. Reading the testimony, or the omission thereof shall be indicated in the court records. Any correction or addition made by the witness in his testimony during the reading shall also be indicated in the court records.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e: may not be disclosed to the court)?

The court may attempt at any time during the proceedings to steer the parties towards a settlement concerning the whole or certain parts of the dispute. Also the court - if there is any possibility to make it successful, particularly if requested by either of the parties – shall inform the parties as to the essence of mediation proceedings, on the availability of such proceedings, and in that context, on the rules for the stay of proceedings. In this case the parties turn to mediation and the court procedure shall be stayed, thus the negotiations between the parties are not conducted by the court.

If the parties reach a settlement in the mediation proceedings, it may be submitted to the court for approval. If the settlement is found in conformity with the relevant legislation, the court shall approve it by way of a ruling, or shall refuse it and move on with the proceedings. A court-approved settlement is enforceable in the same manner as a judgment; an appeal lodged against the ruling of approval shall have no suspensory effect on the enforcement of the settlement.

The settlement correspondance may be conducted between the parties and their representatives as well, however in the latter case the representatives shall have authoriztaion to take part in the negotiations and enter into a settlement. The correspondnace is not *per se* privileged information, however – in case of mediation, as a main rule – any statement or recommendation made during the mediation process by a party in connection with a potential solution for the dispute, and any statement of acceptance or disclaimer made by a party in the mediation process shall be inadmissible in court or arbitration proceedings initiated after the mediation process.

Please note that it is also possible before filing a lawsuit to request a citation for settlement proceedings before the local court of competent jurisdiction to hear the case, but there are no detailed rules given for this procedure. In case during this a settlement is reached, it shall be fixed in a report and shall be approved. However, this possiblity is hardly ever used.

7. How can foreign judgments be enforced?

As a main rule the resolutions of foreign courts and foreign arbitration tribunals shall be executed on the basis of law, international convention or reciprocity.

In case of EU-member countries Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is applicable.

However, in case of non EU-member countries, the procedure and the conditions of the enforcement of foreign decisions depend on whether there is a bilateral or multilateral agreement on this question between Hungary and the country in which the decision was rendered.

ARBITRATION

1. **Are mediation clauses in commercial contracts binding and enforceable?**

Mediation clauses do not bind the courts or arbitral tribunals/arbitrators (however, these latter tend to handle it as binding) and there is no way to enforce mediation.

2. **What is the procedure for mediation? Is it a popular method for resolving commercial disputes?**

Please note that mediation clauses are not particularly common between business players.

The rules of mediation are contained in Act LV of 2002 on mediation. According to the rules, upon agreement in the selection of a mediator, the parties shall invite the natural or legal person selected in writing or by way of electronic mail. If the mediator accepts the invitation, he shall send the parties a statement of acceptance, and invites the parties to the first mediation hearing and informs them of their right to obtain representation.

Where either of the parties fails to appear in the first mediation session, the mediator shall not start the mediation process.

The mediator in the first mediation session shall inform the parties on the details of the mediation procedure. If in the first mediation session the parties invariably request continuation of the mediation process, it shall be recorded in writing signed by both parties and the mediator. Signing this statement shall constitute commencement of the mediation process.

The mediator shall hear the opinion of both parties in the mediation process and ensure equal treatment for all parties. In this stage, the parties shall present their case supported by any documentary evidence they may have. Subject to the agreement of the parties concerned, the mediator may conduct the mediation process with all parties present or by hearing the parties separately and the mediator may convey any information received from one of the parties to the other party for reply, unless the party supplying the information expressly forbids the mediator to convey it to the other party. The mediator may request the assistance of an expert subject to approval by the parties. At the request of the parties, the mediator may interview other persons as well in the mediation process who have knowledge of the circumstances of the case.

According to the applicable rules the mediation process is deemed concluded

a) on the day the settlement is signed,

b) on the day on which one of the parties informs the other party and the mediator of his withdrawal from the mediation process,

c) on the day on which the parties unanimously declare in front of the mediator their request to close the mediation process, or

d) after the end of the fourth month following the signing of the statement, unless otherwise agreed by the parties.

In case a settlement is reached, the mediator shall record it in the presence of the parties in the language selected for the mediation process and shall supply a copy of the settlement document to each of the parties. The settlement document shall be signed by the mediator and by the parties at the same time. Please note that an agreement made in conclusion of the mediation process shall have no bearing in terms of the parties' right to seek a solution for their dispute in court or by way of arbitration.

3. **Are arbitration clauses in commercial contracts binding and enforceable?**

Yes, they are binding and enforceable. Any court in which an action is filed in a matter that is the subject of an arbitration agreement shall reject the statement of claim without issuing any summons or shall dismiss the action upon the request of either party, unless it declares the arbitration agreement null and void, inoperative or inadmissible.

4. **What type of arbitration is commonly used for resolving commercial disputes: ad hoc arbitration or institutional arbitration?**

Institutional arbitration is more popular.

5. **Which arbitration institutes are most popular?**

In international cases – unless otherwise provided by law – the Arbitration Tribunal attached to the Hungarian Chamber of Commerce and Industry shall function as a standing arbitration tribunal. In non-international cases as well this arbitral court is the most popular.

6. **What influence can the parties have on the identity of the arbitrator(s)?**

The influence of the parties is rather big. According to the applicable national rules the parties may freely agree upon the number of the arbitrators as long as it is an odd number. Failing an agreement of the parties, the number of arbitrators appointed to a tribunal shall be three. Subject to certain provisions

the parties may freely agree on a procedure for the appointment of the arbitrator or arbitrators.

In the absence of such agreement, the rules for the appointment of the members of the tribunal or the arbitrator are determined by law. In connection with an arbitration tribunal which consists of three arbitrators, each party shall have the right to appoint one arbitrator, and the two arbitrators thus appointed shall designate the third arbitrator. Where either party fails to appoint its own arbitrator within thirty days from the date of receipt of the other party's request to do so, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the third arbitrator shall be appointed - upon the request of any of the parties - by the court.

If the tribunal consists of a sole arbitrator - if the parties fail to agree on the person of the arbitrator - he shall be appointed upon the request of either party by the court.

Please note that the rules mentioned above are rules of the relevant national legislation, and more detailed rules may be found in the procedural codes of the arbitral institiutions.

7. In what language is an arbitration proceedings conducted?

The parties may freely agree on the language to be used in the proceedings in case of arbitration between Hungarian parties. Failing such agreement, the Hungarian language shall be used in the proceedings. The freedom of choice is ensured for the parties in case of international arbitral proceedings as well. However, in such cases, failing such agreement the language or languages to be used in the course of the proceedings shall be defined by the arbitration tribunal.

Please note that disputes involving a right in rem connected to any real estate property that is located in Hungary under contract between parties established or operating exclusively in Hungary, and disputes concerning lease and usufruct agreements - if the contract or agreement is governed by Hungarian law - may only be heard by a permanent arbitration tribunal which has its seat in Hungary, under its own rules of procedure. The language of the procedure in such cases shall be Hungaian.

Please note that more detailed rules might be found in the procedural codes of the arbitral institiutions.

8. What types of pre-arbitration measures are available and what are their limitations?

According to the relevant rules, unless otherwise agreed by the parties, the arbitral tribunal may, upon request, order either party to implement provisional measures to the extent the arbitration tribunal deems it necessary with respect to the subject-matter of the dispute. The arbitration tribunal may require either party to provide appropriate security in connection with such measure. A decision adopted with respect to the provisional measure shall remain in force until a new decision of the arbitration tribunal is adopted to replace it or until it makes an award in the same issue.

It is also possible for the parties to submit a request before or during arbitration proceedings to a court to impose provisional measures. The court's granting of such measures, shall not be deemed incompatible with the arbitration proceedings.

Moreover the court may order protective measures in a case pending before an arbitration tribunal, if the party requesting the protective measure is able to produce an authentic instrument or a private document with full probative force in proof of the inception, quantity, and expiry of his claim.

9. What are the costs of arbitration proceedings and who bears these costs?

It is the award or the ruling terminating the proceedings that shall contain provisions concerning the costs of the proceedings – including the remuneration of the arbitrators – and the manner in which they are to be satisfied. Naturally, the procedural codes of the arbitral institutes can stipulate more detailed rules.

10. What are the basic rules of document disclosure in arbitration? Which documents do not require disclosure?

The relevant legal sources do not contain special rules concerning the accessability of the documents. Thus these questions are regulated by either the procedural codes of the arbitral institutes or – in lack of this – the arbitral tribunal.

11. What is the procedure for witness evidence in arbitration (namely, is it deposition based or witness examination or cross-examination)?

The relevant legal sources do not contain special rules concerning witness evidence. Thus these questions are regulated by either the procedural codes of the arbitral institutes or – in lack of this – the arbitral tribunal.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence

between the parties and/or counsel privileged (i.e., may not be disclosed to the Arbitrator)?

In the course of the arbitral proceedings as well the parties are free to reach a settlement. If this happens the arbitration tribunal shall terminate the proceedings by way of a ruling. If requested by the parties, the arbitration tribunal shall fix the settlement in the form of an award under the agreed terms, provided that it finds the settlement in compliance with the law. An award under agreed-upon terms has the same effect as that of any other award made by the arbitration tribunal.

Please note, however, that the relevant legal sources do not contain special rules concerning the conduct of settlement discussions. Thus these questions are regulated by either the procedural codes of the arbitral institutes or – in lack of this – the arbitral tribunal.

13. Under what circumstances can an Arbitration Award be enforced, challenged or annulled?

Decisions of an arbitral tribunal may not be appealed, however, a request for having the award overturned may be submitted to the court of law – within sixty days of the date of delivery of the award of the arbitration tribunal – by the party, or any person who is affected by the award for the following reasons:

a) the party having concluded the arbitration contract was lacking legal capacity or competence;

b) the arbitration agreement is not considered valid under the law to which the parties have subjected it, or in the absence of such indication, under Hungarian law;

c) the party was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or was unable to present his case due to other reasons;

d) the award was made in a legal dispute to which the clause for submission to arbitration did not apply or that was not covered by the provisions of the arbitration agreement; if the award contains decisions on matters beyond the scope of the arbitration agreement where the decisions on matters submitted to arbitration can be separated from those to which the clause for submission to arbitration did not apply, only that part of the award which contains decisions not submitted to arbitration may be overturned;

e) the composition of the arbitration tribunal or the arbitration procedure did not comply with the agreement of the parties, unless such agreement was in conflict with any provision of the relevant national rules from which the parties cannot derogate, or failing such agreement, was not in accordance with rthe relevant national rules.

An action for overturning the arbitration award may also be filed alleging that:

a) the subject-matter of the dispute is not capable of settlement by arbitration under Hungarian law; or

b) the award is in conflict with the rules of Hungarian public policy.