

ARBITRATION IN ROMANIA

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1. Historical background

- 1.1.1 Arbitration in Romania has been regulated since 1865 by the provisions on arbitration contained in the fourth book of the Romanian Civil Procedure Code (**CPC**).¹ Subject to various amendments, these provisions are still in force.
- 1.1.2 In 1953, the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (**International Arbitration Court**) was established. During the communist era, the International Arbitration Court settled only international commercial disputes. In 1990, a new law establishing the International Arbitration Court was enacted, enabling this institution to also handle domestic commercial disputes. In 1993, the fourth book of the CPC was substantially amended. The Romanian legal provisions on arbitration now largely follow the principles and the structure of the Model Law (1985).²
- 1.1.3 The recognition and enforcement of foreign awards is comprehensively regulated by the CPC,³ and by Law No 105/1992 on the Settlement of Private International Law Relations. Romania has also ratified the New York Convention and other relevant international conventions and bilateral treaties on arbitration.

2. Scope of application and general provisions of the fourth book of the CPC

2.1 Subject matter

- 2.1.1 The provisions of the fourth book of the CPC constitute a basic framework for all forms of arbitration: they apply to ad hoc and institutional arbitration, to domestic and international arbitration as well as to arbitration at law and *ex aequo et bono*. The parties may choose to conduct their arbitrations on an ad hoc basis or may refer their dispute to a specialised arbitral institution, such as the International Arbitration Court.
- 2.1.2 Similar to the approach taken by the arbitration legislation of other Central European countries, the fourth book of the CPC draws a distinction between

¹ CPC, art 340–371.

² For the full text of the Model Law (1985), see CMS Guide to Arbitration, vol II, appendix 2.1.

³ See CPC, art 370 to 370³. (In Romanian practice, references to articles of the CPC which include a superscript number are to articles inserted into the CPC by way of amendment. Superscript numbers which appear in this chapter immediately after CPC article numbers and before any punctuation are references to superscript numbers in the CPC.)

domestic and international arbitration and contains specific provisions for international arbitration in Chapter X (Articles 369 to 369⁵) of the CPC.

2.1.3 An arbitration taking place in Romania is considered international if it arises out of a private law relationship with a foreign element.⁴ An arbitration is considered international when at least one aspect of the matter in dispute is not related with the seat of arbitration.⁵ In general, it is considered that an international arbitration is one that concerns contracts that have a foreign element such that a conflict of laws could arise with respect to such contract.

2.2 Structure of the law

2.2.1 Chapters I to VII of the fourth book of the CPC deal with general provisions regarding arbitration (the arbitration agreement, composition and constitution of the arbitral tribunal, conduct of arbitral proceedings, costs of arbitration and the award). Chapter VIII deals with challenging the award, Chapter IX with its enforcement, Chapter X concerns special provisions applicable only to international arbitration and Chapter XI deals with the recognition and enforcement of foreign awards.

2.3 General principles

2.3.1 The CPC expressly stipulates three of the most important principles governing Romanian arbitration:

- (i) Fairness: The parties must be treated equally by the arbitral tribunal and each party is entitled to a fair hearing.
- (ii) Right to a defence: The parties must be given a full opportunity to present their cases and the arbitral tribunal must hear both sides.
- (iii) The principle of hearing both sides. All parties must be properly served in order for the arbitral proceedings to take place. Each party must be given the opportunity to respond to all legal and factual aspects of the arbitration raised by the other party or by the arbitral tribunal before the arbitral proceedings close and an award is rendered.⁶

2.3.2 Failure to comply with these principles may render the award null and void.

⁴ CPC, art 369.

⁵ E.g. the parties in dispute have different nationalities, the substantive applicable law is different than that of the *lex fori*, the object of the dispute is in a different jurisdiction, or the place of performance of the contractual undertakings is different than *lex fori*, etc.

⁶ CPC, art 358.

- 2.3.3 In addition, the CPC contains some further mandatory provisions which may also be regarded as general principles of arbitration in Romania, such as party autonomy, confidentiality and non-intervention by the courts.
- Party autonomy: The parties are free to agree on the procedure to be followed between them in their arbitration agreement, in a subsequent separate written agreement or by reference to arbitration rules, provided that there is no conflict with Romanian public policy and good morals.⁷
 - Confidentiality: The appointed arbitrators are liable for damages caused by the non-observance of their confidentiality obligation.⁸ This obligation to keep the arbitral proceedings confidential represents one of the main differences between arbitration and court litigation, which is governed by the principle of public hearings. However, there is no legal obligation for the parties to keep the arbitral proceedings confidential (except when confidentiality has been mutually agreed).
 - Non-intervention by the courts: A valid arbitration agreement excludes the jurisdiction of the courts to settle the dispute to which the arbitration agreement relates.⁹ The court that would have been competent to determine the dispute if no arbitration agreement had been concluded retains, according to the CPC, jurisdiction in relation to certain matters, such as ordering interim measures, ruling on conflicts of jurisdiction and other matters (as detailed in sections 8 to 10 below).

3. The arbitration agreement

3.1 Definitions

- 3.1.1 An arbitration agreement is an agreement by which the parties agree that disputes arising out of or in connection with a contract are to be settled by arbitration. The arbitration agreement has to include the name of the arbitrators or the method of appointing the arbitral tribunal.¹⁰

3.2 Formal requirements

- 3.2.1 The arbitration agreement may be in the form of an arbitration clause in a larger contract or in the form of a separate agreement (otherwise known as a submission agreement). An arbitration agreement must be in writing, otherwise it is null and

⁷ *Ibid*, art 341(2).

⁸ *Ibid*, art 353(c).

⁹ *Ibid*, art 343³(1).

¹⁰ *Ibid*, art 340¹.

void.¹¹ Any written document that confirms the will of the parties to arbitrate a dispute may be considered a valid arbitration agreement (e.g. letters, faxes, invoices, purchase orders and email correspondence).

- 3.2.2 In an arbitration clause, the parties agree to settle future disputes arising out of or in connection with the contract that contains the arbitration clause through arbitral proceedings. The arbitration clause shall specify the names of the arbitrators or the method of their appointment.¹² However, failure to satisfy these requirements will not automatically render an arbitration clause invalid. If the parties have failed to establish the number of arbitrators, the dispute shall be arbitrated by three arbitrators, each party having the right to appoint one arbitrator, the chair being appointed by the other two arbitrators.¹³ In addition, the CPC contains default provisions for the appointment of the arbitrators where the parties have failed to nominate the arbitrators or to provide the method of appointment in an arbitration agreement (see for details paragraph 4.1.3 below).¹⁴
- 3.2.3 In a submission agreement, the parties agree that a dispute that has already arisen between them shall be settled by arbitration. The requirements under the CPC in respect of submission agreements are the same as for arbitration agreements, i.e. a submission agreement shall specify the subject matter of the dispute and the names of the arbitrators or the method of their appointment. However, unlike the requirements for arbitration agreements, where a submission agreement fails to satisfy these requirements, it is null and void.¹⁵
- 3.2.4 Subject to the rules of Romanian public policy, good morals and the mandatory provisions of the law, the parties may, by the arbitration agreement, by a subsequent written agreement or by reference to established arbitral rules, make provision for:
- the composition of the arbitral tribunal;
 - the appointment, challenge and replacement of arbitrators;
 - the time and place of the arbitral proceedings;
 - the procedural norms to be followed by the arbitral tribunal (including a possible preliminary conciliation);

¹¹ *Ibid*, art 343.

¹² *Ibid*, art 343¹.

¹³ *Ibid*, art 345(2).

¹⁴ *Ibid*, art 347 and 348.

¹⁵ *Ibid*, art 343².

- payment of the costs of the arbitration as between the parties;
- the form and contents of the award; and
- any other details that are necessary for the proper conduct of the arbitral proceedings.¹⁶

3.2.5 In addition, the parties should also identify the language of the arbitration and the substantive law applicable to the merits of their dispute in their arbitration agreement (further information on this point is set out at paragraph 6.3.2 below).

3.3 Special tests and requirements of the jurisdiction

3.3.1 Persons with full legal capacity to exercise their rights may agree to settle patrimonial disputes by arbitration, except for disputes affecting rights which cannot by law be freely alienated.¹⁷ The term “patrimonial disputes” is commonly interpreted as referring to disputes involving a financial interest.

3.3.2 Under Romanian law, contracts may not resolve matters such as the civil status of persons, collective labour conflicts, certain shareholder disputes,¹⁸ annulment of intellectual property rights or bankruptcy proceedings. Accordingly, disputes concerning such legal relationships are not arbitrable.

3.4 Separability

3.4.1 The validity of the arbitration agreement is treated as independent from the validity of the main contract in which it has been incorporated.¹⁹ However, certain defects affecting the main contract, such as the legal incapacity of a contracting party, would also affect the validity of an arbitration agreement contained in the main contract.

3.5 Legal consequences of a binding arbitration agreement

3.5.1 The conclusion of an arbitration agreement excludes the jurisdiction of the courts to settle the dispute to which the arbitration agreement relates. If during proceedings before a State court a party invokes an arbitration agreement, then the court is obliged to verify if it has jurisdiction before it may resolve the dispute.

¹⁶ *Ibid*, art 341(2).

¹⁷ *Ibid*, art 340.

¹⁸ Disputes regarding the validity of the decisions taken by the General Meeting of Shareholders are not arbitrable.

¹⁹ CPC, art 343¹(2).

4. Composition of the arbitral tribunal

4.1 Constitution of the arbitral tribunal

4.1.1 In an international arbitration, any natural person of Romanian nationality and full legal capacity may be an arbitrator.²⁰ However, in a domestic arbitration governed by Romanian law, the parties may only appoint Romanian nationals as arbitrators. Arguably, in an international arbitration subject to the 1961 European Convention, a Romanian party may appoint a foreign national as arbitrator (despite the law that only a foreign party may appoint a foreign citizen as arbitrator). Law number 59/2003 regarding international treaties stipulates that international treaties supersede national legislation and the 1961 European Convention expressly stipulates that foreign nationals may be arbitrators. In any event, under Romanian law, the parties may agree that the sole arbitrator or the chair of an arbitral tribunal consisting of several arbitrators shall be a citizen of a third state not connected with the dispute.

4.1.2 The CPC provides that arbitrators shall be appointed, dismissed or replaced in accordance with the terms of the arbitration agreement.²¹ In the case of international arbitration, the dispute shall be settled by an uneven number of arbitrators.²²

4.1.3 The CPC sets out a default procedure applicable in the event that the sole arbitrator or the arbitrators were not designated in the arbitration agreement and no provision was made for the method of their appointment.²³ The claimant shall invite the other party in writing either to consent to the appointment of the proposed arbitrator in the case of a sole arbitrator, or to nominate its arbitrator in the case of an arbitral tribunal consisting of two or more arbitrators. The notice shall give full details of the proposed sole arbitrator or the arbitrator appointed by the claimant. The party so notified must respond within ten days of receipt of the notice with its comments on the appointment of the sole arbitrator or with the details of the arbitrator appointed by it, as the case may be.

4.1.4 In the absence of an agreement by the parties, the arbitral tribunal shall be composed of three arbitrators, one appointed by each party and the third (who shall be the chair of the arbitral tribunal) appointed by the two party-appointed

²⁰ *Ibid*, art 344.

²¹ *Ibid*, art 347(1).

²² In domestic arbitration, the parties are free to agree whether the dispute shall be settled by a sole arbitrator or by two or more arbitrators; see CPC, art 345(1).

²³ See CPC, art 347 and 348.

arbitrators.²⁴ If there are several claimants and/or respondents, the parties with a common interest shall together appoint an arbitrator.²⁵

- 4.1.5 The International Arbitration Court has a list of 112 Romanian arbitrators and 42 foreign arbitrators.²⁶ Parties conducting arbitral proceedings under the auspices of the International Arbitration Court must appoint their arbitrator(s) from that list.
- 4.1.6 The proposed arbitrators must accept (or decline) their appointment in writing and notify each party of their acceptance within ten days of receipt of the appointment proposal.²⁷ In domestic arbitration, the acceptance term is five days from receipt of the appointment proposal. The two party-appointed arbitrators shall appoint the chair within twenty days from the date of the last acceptance.²⁸ In domestic arbitration, the appointment term for the chair is ten days from the date of the last acceptance. The arbitral tribunal shall be regarded as constituted on the date on which the last arbitrator accepts his or her mandate.²⁹
- 4.1.7 Any clause in an arbitration agreement stipulating that one party may appoint an arbitrator instead of the other party or that one party may have more arbitrators than the other shall be null and void.³⁰
- 4.1.8 Either party may make a request to the competent court that it appoints an arbitrator in circumstances where the parties have agreed that the arbitral tribunal shall consist of a sole arbitrator but cannot reach an agreement on his or her appointment, a party fails to appoint its arbitrator, or the party-appointed arbitrators cannot agree on the appointment of the chair.³¹ The court shall summon the parties and make the appointment within ten days of the petition being submitted. The court's decision cannot be appealed.

4.2 Procedure for challenging and substituting arbitrators

- 4.2.1 An arbitrator may be challenged on legal or contractual grounds in circumstances that give rise to justifiable doubts concerning his or her impartiality or independence. An arbitrator may also be challenged if he or she does not fulfil the requirements

²⁴ *Ibid*, art 345(2).

²⁵ *Ibid*, art 345(3).

²⁶ This private arbitral institution is the most used in Romania.

²⁷ CPC, art 349 and 369³.

²⁸ *Ibid*, art 350 and 369³.

²⁹ *Ibid* art 353².

³⁰ *Ibid*, art 346.

³¹ *Ibid*, art 351(1).

or possess the qualifications agreed between the parties.³² The legal grounds for challenging a judge are also applicable for the challenging of arbitrators and are expressly set out in the CPC.³³ A party may not challenge an arbitrator it has appointed except on grounds that become apparent only after the appointment was made.³⁴

4.2.2 A person who has been invited to act as an arbitrator must disclose all circumstances that could give rise to justifiable doubts as to his or her impartiality or independence and any other circumstances that may otherwise constitute a reason to challenge his or her appointment.³⁵ The arbitrator must also immediately disclose any such circumstances if they arise at any point between the date of his or her appointment and the conclusion of the arbitral proceedings. In such circumstances, the arbitrator cannot further participate in the decision making of the arbitral tribunal unless all parties have been apprised of the relevant circumstances and have informed the arbitrator or, as the case may be, the arbitral tribunal in writing that they do not intend to challenge the arbitrator in question.³⁶

4.2.3 Any challenge to an arbitrator must be made within twenty days of the appointment of the arbitrator or of the occurrence of the circumstances giving rise to justifiable doubts as to the arbitrator's impartiality or independence, as the case may be. In domestic arbitration, the time limit for a party to challenge an arbitrator is ten days from the appointment of the arbitrator or the occurrence of the circumstances giving rise to justifiable doubts as to the arbitrator's impartiality or independence, as the case may be. In ad hoc arbitrations, such a challenge shall be determined by the court.³⁷ In the case of institutional arbitrations, all the powers conferred to the court by Chapter III (Arbitrators, Constitution of the Arbitral Tribunal, Time and Place of the Arbitration) of the CPC shall be exercised by that institution according to its regulations unless they provide differently.³⁸ Non-compliance with the time limit may result in the right to challenge the arbitrator or the subsequent award being lost. The parties and the challenged arbitrator must be notified of the challenge. The court's decision on the challenge is not subject to appeal.

³² *Ibid*, art 351¹ and 351².

³³ *Ibid*, art 27.

³⁴ *Ibid*, art 351¹(2).

³⁵ *Ibid*, art 351¹(3).

³⁶ *Ibid*, art 351¹(4).

³⁷ *Ibid*, art 351² and 369³.

³⁸ *Ibid*, art 353¹.

4.2.4 If the appointment of an arbitrator is terminated (by challenge, resignation, dismissal, death or for any other reason), a substitute arbitrator shall be appointed in accordance with the same rules as those applicable to the original appointment of the arbitrator to be replaced,³⁹ unless a substitute arbitrator has been named in the arbitration agreement.

4.3 Responsibilities of an arbitrator

4.3.1 One of the most important differences between a state court judge and an arbitrator is that the arbitrator may be liable for damages if he or she:

- resigns from the office without good reason after having accepted appointment as an arbitrator;
- fails without good reason to participate in the hearings and deliberations of the arbitral tribunal or to issue the award within the time frame established by the arbitration agreement or by law;
- does not observe his or her confidentiality obligation and discloses information obtained through his or her capacity as arbitrator without the approval of the parties; or
- is otherwise in material breach of an arbitrator's obligations.⁴⁰

4.4 Arbitration fees

4.4.1 The definition of arbitration expenses and the question of how these expenses shall be allocated between the parties in the award and paid is dealt with further in section 7.4 below.

4.4.2 The arbitral tribunal may make a provisional assessment of the amount of the arbitrators' fees at the outset of the arbitration and order the parties to deposit that sum in equal amounts. The arbitral tribunal may also order such a deposit to be paid by the parties jointly and severally.⁴¹ Likewise, the arbitral tribunal may order the parties to pay other arbitral expenses in advance.⁴² If the respondent fails to pay the required deposit within the time limit established by the arbitral tribunal, the claimant shall pay the whole deposit and the arbitral tribunal shall subsequently establish in its award the amount of the fees due to each arbitrator, the amount of any other expenses and how these amounts are to be paid by the parties.⁴³

³⁹ *Ibid*, art 352.

⁴⁰ *Ibid*, art 353.

⁴¹ *Ibid*, art 359¹.

⁴² *Ibid*, art 359¹(4).

⁴³ *Ibid*, art 359¹(3).

- 4.4.3 In any event, the arbitral tribunal shall not proceed with the arbitral proceedings until the deposits or advance payments requested have been made.⁴⁴
- 4.4.4 Either party may request the competent court to review the measures ordered by the arbitral tribunal, and to establish the amount of the arbitrators' fees and of any deposits or advances requested.⁴⁵
- 4.4.5 The arbitrators' fees shall be paid to the arbitrators after the award has been communicated to the parties. If arbitral proceedings are commenced but do not proceed to the making of an award, the arbitrators' fees shall be reduced accordingly.⁴⁶
- 4.4.6 Where the arbitral tribunal has ordered payment of a deposit on account of arbitration expenses, the amount of such expenses (and any surplus or deficit) shall subsequently be regulated in the award and be paid before the award is communicated to the parties or deposited with the court.⁴⁷
- 4.4.7 In institutional arbitral proceedings the arbitrators' fees and expenses shall be established and paid in accordance with the rules of the relevant arbitral institution (see paragraph 7.4.4 below).⁴⁸

4.5 Arbitrator immunity

- 4.5.1 The CPC does not provide any specific provisions with respect to the immunity of arbitrators. However, it is implied that an arbitrator may not be held liable for the award rendered except in case of fraud or other misconduct as detailed in paragraph 4.3.1 above.

5. Jurisdiction of the arbitral tribunal

5.1 Competence to rule on jurisdiction

- 5.1.1 The CPC gives the arbitral tribunal the power to rule on its own jurisdiction.⁴⁹ At the outset of the arbitral proceedings, the arbitral tribunal examines whether it has jurisdiction to determine the dispute between the parties, even if no party has

⁴⁴ *Ibid*, art 359².

⁴⁵ *Ibid*, art 359³.

⁴⁶ *Ibid*, art 359⁴.

⁴⁷ *Ibid*, art 359⁵.

⁴⁸ *Ibid*, art 359⁶.

⁴⁹ *Ibid*, art 343³(2).

challenged the jurisdiction. It may issue an interim award on jurisdiction. Such an award may only be challenged before the courts, together with the final award of the arbitral tribunal.

5.2 Power to order interim measures

- 5.2.1 The arbitral tribunal has jurisdiction to order interim or protective measures during the arbitration. If the parties do not voluntarily comply with such measures, they may be enforced with the permission of the court.⁵⁰ After the permission has been granted by the court, the enforcement shall be made via an enforcement officer. The courts also have parallel jurisdiction to order interim measures.⁵¹

6. Conduct of proceedings

6.1 Commencing an arbitration

- 6.1.1 In the absence of agreement by the parties stating otherwise, the arbitral proceedings commence when the claimant serves on the respondent a copy of its written statement of claim together with copies of the relevant documents on which it relies as evidence in support of its claim.⁵² The claimant has to serve copies of the request for arbitration and related annexes to each of the arbitrators.

6.2 General procedural principles

- 6.2.1 The arbitral tribunal shall conduct the arbitral proceedings:
- on the basis of the rules set out in the arbitration agreement concluded between the parties (subject to mandatory provisions of public policy and good morals);⁵³
 - if the parties have not agreed the procedure to be followed, at its procedural discretion;⁵⁴ or
 - if the arbitral tribunal does not establish any procedural norms, in accordance with the optional procedural rules for the conduct of arbitral proceedings in the provisions of the fourth book of the CPC (as to which see further below).⁵⁵
- 6.2.2 In practice, parties from Romania frequently provide in their arbitration agreement for their disputes to be resolved by arbitration before the International Arbitration

⁵⁰ *Ibid*, art 358⁹.

⁵¹ On which see paragraph 8.3.1 below.

⁵² CPC, art 355 and 356.

⁵³ *Ibid*, art 341(1) and 341(2).

⁵⁴ *Ibid*, art 341(3).

⁵⁵ *Ibid*, art 341(4).

Court, in accordance with its sets of procedural rules.⁵⁶ The CPC expressly provides that the parties may agree that the arbitration be administered by such a permanent arbitral institution.⁵⁷

6.3 Seat, place of hearing and language of the arbitration

6.3.1 The parties are free to agree the seat of the arbitration. Failing such an agreement, the arbitral tribunal determines the seat of the arbitration.⁵⁸ In international arbitration, the parties may stipulate in their arbitration agreement that the arbitral proceedings shall take place in Romania or in another country.⁵⁹

6.3.2 Domestic arbitral proceedings shall be conducted in the Romanian language. In relation to international arbitral proceedings, the language of the arbitral proceedings shall be that chosen by the parties in their arbitration agreement or, absent a contractual choice or any subsequent agreement, in the language of the contract giving rise to the dispute, or in another international language chosen by the arbitral tribunal.⁶⁰ The arbitral tribunal shall arrange for the services of a translator at the request of a party which is not familiar with the language of the arbitral proceedings and at that party's expense. The parties are free to use their own translators for the purposes of the arbitral proceedings.

6.4 Multi-party issues

6.4.1 As with any other type of agreement, an arbitration agreement is only binding upon the parties to that arbitration agreement. Therefore, in principle, a non-party to the arbitral agreement may only join the arbitration if all of the parties to those arbitral proceedings agree.

6.4.2 In the case of multi-party agreements including an arbitration clause, any party to that agreement may intervene in the arbitral proceedings upon its own will, or may join the arbitration upon the request of one of the parties to the arbitration.⁶¹ The parties that have common interests may appoint a single arbitrator.⁶²

⁵⁶ A copy of the arbitration rules of this institution is available at [<http://arbitration.ccir.ro/engleza/rulesarb.htm>] (accessed 16 December 2011).

⁵⁷ CPC, art 341¹.

⁵⁸ *Ibid*, art 354.

⁵⁹ *Ibid*, art 369¹(1).

⁶⁰ *Ibid*, art 369⁴.

⁶¹ *Ibid*, art 49 to 66.

⁶² *Ibid*, art 345(3).

6.5 Oral hearings and written proceedings

6.5.1 The requirements as to the contents of the written statement of claim are set out in the CPC. It has to contain:

- the name, domicile or residence of the parties or, in the case of legal persons, their name and seat, as well as their company registration number, telephone number and bank account details;
- the name and capacity of any representatives of the claimant (documentary evidence of such capacity should be attached to the statement of claim);
- reference to the arbitration agreement or the submission agreement (copies of the main agreement containing the arbitration agreement or of the submission agreement should also be attached to the statement of claim);
- the subject matter and value of the claim and of the calculation by which that value was determined;
- the factual and legal grounds and the evidence on which the claim is based;
- the names and places of residence of the members of the arbitral tribunal; and
- the signature of the claimant.⁶³

6.5.2 Within 30 days of receipt of a copy of the statement of claim, the respondent must serve its defence.⁶⁴ The defence must include:

- any objections with regard to the statement of claim;
- the factual and legal reply to the statement of claim and the evidence relied upon; and
- the content set out in paragraph 6.5.1 above as applicable to the statement of defence.

6.5.3 If the arbitral proceedings are delayed because of the respondent's failure to submit its statement of defence on time, the respondent must pay the costs caused by such delay.⁶⁵

6.5.4 After the defence has been filed, additional objections or defences may only be raised prior to the first hearing.⁶⁶ If the respondent has counterclaims arising out of the same contractual relationship, it may submit them to the arbitral tribunal together with the defence, but no later than at the first hearing. The counterclaim must meet the same requirements as the statement of claim.⁶⁷ Each party may

⁶³ See *ibid*, art 355.

⁶⁴ *Ibid*, art 356¹.

⁶⁵ *Ibid*, art 356¹(3).

⁶⁶ *Ibid*, art 356¹(2).

⁶⁷ *Ibid*, art 357.

amend its written submissions in the course of the arbitral proceedings, but only prior to the first hearing before the arbitral tribunal.

- 6.5.5 All statements of case, written documents and other notifications that are submitted to the arbitral tribunal by one party must be copied to the other party. All communications between the parties and the arbitral tribunal shall be made by registered letter with receipt of delivery or confirmation of receipt.⁶⁸ Information may also be transmitted by fax or by any other means of communication that provides evidence of the transmission and of the transmitted text. Documents may also be delivered directly to a party against signature of a receipt.
- 6.5.6 Immediately after the expiration of the time limit for the filing of the statement of defence, the arbitral tribunal shall examine whether the dispute is ready to be heard and, if necessary, order adequate measures for the completion of any outstanding matters.⁶⁹ Afterwards, the arbitral tribunal must fix the time for the hearing and summon the parties once the case is ready to be heard and the submissions have to be filed.⁷⁰ There must be an interval of at least 30 days between the date of receipt of the summons by the parties and the date of the hearing.⁷¹ In domestic arbitration, there must be an interval of at least 15 days between the date of receipt of the summons by the parties and the date of the hearing.
- 6.5.7 The parties may participate in the arbitral proceedings (and attend the hearing) personally or through any representative, though arbitral hearings are not open to the public.⁷² A party that attended or was represented at a hearing shall not be summoned again to every hearing in the course of the arbitral proceedings, but is deemed to have knowledge of the next hearing date by virtue of its attendance at the previous hearing. Hearing dates of which the parties have been informed or for which summonses have been served may only be changed for good reasons and if the parties are notified thereof.
- 6.5.8 The parties must raise any objections to the existence and validity of the arbitration agreement, the constitution of the arbitral tribunal, the scope of the arbitral tribunal's jurisdiction and the conduct of the arbitral proceedings up to that point

⁶⁸ *Ibid*, art 358¹.

⁶⁹ *Ibid*, art 358²(1).

⁷⁰ *Ibid*, art 358²(2).

⁷¹ *Ibid*, art 358³ and 369³.

⁷² *Ibid*, art 358⁴.

no later than at the first hearing, unless a shorter time limit has been agreed. The right to raise such objections may otherwise be lost.⁷³

6.5.9 The parties must also present their petitions and any documentary evidence no later than at the first hearing.⁷⁴ Any evidence which has not been identified by the parties before the first hearing cannot be invoked in the arbitral proceedings, except in cases where the need for further evidence has resulted from the arbitral proceedings, or the additional evidence does not delay the resolution of the dispute.⁷⁵

6.5.10 The CPC requires that the arbitral proceedings shall be recorded in a minute (*incheiere*).⁷⁶ Any decision of the arbitral tribunal and the grounds for that decision shall be recorded therein.

6.5.11 The minutes of each session of the arbitral tribunal shall contain:

- the composition of the arbitral tribunal;
- the date and place of the session;
- full details of the parties, their representatives and any other persons who participated in the arbitral proceedings;
- a brief description of the proceedings at that session;
- the requests and arguments of the parties;
- the reasons for any measures ordered;
- the order of the arbitral tribunal; and
- the signatures of the arbitrators.⁷⁷

6.5.12 The parties are entitled to review the contents of the minutes and the documents on the file. The arbitral tribunal may amend or complement the minutes of a session by other minutes upon the parties' request or *ex officio*. A copy of the minutes of each session shall be served on the parties at their request.

6.6 Default by one of the parties

6.6.1 The failure by a party to attend a hearing, although duly summoned, shall not prevent the progress of the arbitral proceedings, unless the absent party submits, no later than on the day before the hearing, a request to the arbitral tribunal for

⁷³ *Ibid*, art 358¹²(1).

⁷⁴ *Ibid*, art 358¹²(2).

⁷⁵ *Ibid*, art 358¹².

⁷⁶ *Ibid*, art 358¹³.

⁷⁷ *Ibid*, art 358¹³(3).

adjournment of the hearing on good grounds and notifies the other party thereof.⁷⁸ Only one adjournment may be granted.

6.6.2 Either party may request in writing that the dispute be settled in its absence on the basis of the documents filed.⁷⁹

6.6.3 In the event that both parties do not attend a hearing on the appointed date although duly summoned, the arbitral tribunal shall proceed with the determination of the dispute, except where the parties have requested an adjournment on good grounds.⁸⁰ Alternatively, the arbitral tribunal may also postpone the determination of the dispute and summon the parties where their presence at the hearing or the production of evidence is deemed necessary.

6.7 Taking of evidence

6.7.1 The rules on evidence are set out in Articles 358¹⁰ and 358¹¹ of the CPC. However, in addition to these arbitration specific rules, arbitral tribunals also frequently apply the rules of the CPC that govern witness and expert evidence in court proceedings.

6.7.2 Each party has the burden of proof in relation to the facts on which it bases its claim or defence. In determining the dispute, the arbitral tribunal may request the parties to file written submissions on the claim and the facts of the dispute and may order the production of any evidence as provided by the law.

6.7.3 Evidence shall be produced during the sessions of the arbitral tribunal. Witnesses and experts shall be heard without taking an oath. The arbitral tribunal cannot compel witnesses or experts to give evidence but may request the assistance of the courts in taking the required measures. The courts may order witnesses to give evidence and make statements and may impose sanctions for failure to do so. Cross-examination is not normally part of the arbitration procedure in Romania but the parties under the control of the arbitral tribunal may put questions to the opponent's witnesses.

6.8 Appointment of experts

6.8.1 The arbitral tribunal may order the use of an expert to clarify technical or accounting issues at the request of any of the parties or *ex officio*. The tribunal-appointed expert may request that the parties produce documents or other information and must take the parties' statements into account when preparing his or her report.

⁷⁸ *Ibid*, art 358⁵.

⁷⁹ *Ibid*, art 358⁶.

⁸⁰ *Ibid*, art 358⁷.

If a party acts in such a way as to hinder the production or completion of an expert report, for example, by failing to provide the expert with documentation he or she has requested, the arbitral tribunal may impose a fine on such party.⁸¹ A party may also apply to the arbitral tribunal for an order that another party produce documents that it holds.⁸² Failure to produce such documents entitles the arbitral tribunal to draw an adverse inference from a party's failure to produce a requested document.

- 6.8.2 Experts normally summarise their findings in a written report, which is submitted to the arbitral tribunal and communicated by the arbitral tribunal to the parties. The parties may submit comments and questions on the report prior to the hearing. The expert may be questioned by the parties at the hearing under the control of the arbitral tribunal. The parties are entitled to appoint party-appointed experts which may render their own report in which they agree or disagree with the tribunal-appointed expert/experts.

6.9 Confidentiality

- 6.9.1 Confidentiality is one of the distinguishing factors of arbitration. Arbitrators may be held liable for damages in the event that they breach the confidentiality of the arbitration and disclose information relating to the arbitral proceedings without the prior approval of the parties.⁸³
- 6.9.2 The hearings are not public, however, if the parties did not previously agree to keep the arbitral proceedings confidential, they may disclose the details of the arbitral proceedings.

6.10 Court assistance in taking evidence

- 6.10.1 Any interested party may institute proceedings before the court in order to remove any impediments that might arise in the composition of the arbitral tribunal or conduct of the arbitration.⁸⁴ Such proceedings should be brought before the court of first instance that, absent the arbitration agreement, would normally have jurisdiction over the dispute. The court shall settle such petitions summarily and as a matter of priority.⁸⁵

⁸¹ *Ibid*, art 108¹(1)(d).

⁸² *Ibid*, art 172 to 176.

⁸³ *Ibid*, art 353(c).

⁸⁴ *Ibid*, art 342(1).

⁸⁵ *Ibid*, art 342(3).

7. Making of the arbitral award and termination of proceedings

7.1 Choice of law

- 7.1.1 The arbitral tribunal shall make its award on the basis of the provisions of the main contract and the applicable rules of law, taking into consideration the usage of the trade applicable to the dispute.⁸⁶
- 7.1.2 The law applicable to contractual obligations is to be determined in accordance with the regulations of the European Union.⁸⁷
- 7.1.3 The arbitral tribunal may only decide a dispute *ex aequo et bono* if the parties have expressly authorised it to do so.⁸⁸

7.2 Timing, form, content and notification of an award

- 7.2.1 The award shall be drawn up in writing and shall include:
- the names of the members of the arbitral tribunal and the place and date of the making of the award;
 - the parties and their addresses (domicile, residence or place of incorporation) as well as the full names of the parties' representatives and of any other persons who participated in the arbitral proceedings;
 - reference to the arbitration agreement on which the arbitral proceedings were based;
 - the subject matter of the dispute and a summary of the parties' cases;
 - the *de facto* and *de jure* reasons for the award or, in case of an award made *ex aequo et bono*, the grounds on which the decision is based;
 - the decisions and orders of the arbitral tribunal; and
 - the signatures of all arbitrators.⁸⁹
- 7.2.2 Unless otherwise agreed by the parties, the arbitral tribunal shall make its award within five months from the date on which the arbitral tribunal is constituted.⁹⁰ The parties may agree to extend this term,⁹¹ and the term may also be extended by the arbitral tribunal by up to two months if there are good reasons for doing

⁸⁶ *Ibid*, art 360(1).

⁸⁷ (EC) Regulation 593/2008 (Rome I); Romanian Civil code, art 2.640.

⁸⁸ CPC, art 360(2).

⁸⁹ *Ibid*, art 361.

⁹⁰ *Ibid*, art 353³(1).

⁹¹ *Ibid*, art 353³(3).

so.⁹² In addition, the CPC sets out circumstances in which the term of the arbitration is extended or suspended automatically as a matter of law, such as when an arbitrator is challenged or a court is seized with respect to a matter relating to the arbitration.⁹³ If any of the parties, prior to the first hearing, notified the arbitral tribunal and the other party about the necessity of the arbitration to be terminated within the five month term, the arbitral proceedings may be terminated if not resolved within the applicable term.⁹⁴

- 7.2.3 The award must be notified to the parties within one month of being made and, at the request of a party, the arbitral tribunal shall issue a certificate of service. Within 20 days of communicating the final award to the parties, the arbitral tribunal shall deposit the file with the competent court, for archiving purposes, except if the arbitration was administered by a specialised arbitral institution, in which case that arbitral institution archives the file.

7.3 Settlement

- 7.3.1 The provisions of the CPC relating to arbitral proceedings are silent with respect to the possibility of entering into a settlement. However, based on the general rules of the CPC and of the Romanian Civil Code, parties are allowed to end an arbitrable dispute by a settlement agreement.
- 7.3.2 Once the parties agree on the terms of the settlement, they may request the arbitral tribunal to issue an award that includes the terms of the settlement. This award will have the same effect as any final award.

7.4 Power to award interest and costs

- 7.4.1 The arbitral tribunal is entitled to award interest. If the underlying agreement between the parties makes provision for payment of interest at a certain rate, the arbitral tribunal may award interest at the contractually agreed rate until the date of payment. If no contractual interest has been stipulated, and the Romanian substantive law is applicable to the arbitration, the arbitral tribunal may award legal interest (6% if the payment obligation was established in foreign currency) or at the official bank rate of the National Bank of Romania plus 4 points (if the payment obligation was established in Romanian currency).⁹⁵

⁹² *Ibid*, art 353³(4).

⁹³ *Ibid*, art 353³(2) and (5).

⁹⁴ *Ibid*, art 353³(6).

⁹⁵ Government Ordinance 13/2011.

7.4.2 The CPC contains detailed provisions in relation to expenses relating to arbitral proceedings, including expenses for the:

- administration and conduct of the arbitral proceedings;
- taking of evidence;
- cost of travel for parties, arbitrators, experts and witnesses; and
- arbitrators' fees.

7.4.3 The CPC provides that such expenses shall be paid by the parties in accordance with their agreement. In the absence of any agreement, they shall be borne by the losing party or, if the claimant is only partially successful, by the parties in proportion to their respective success and failure. Unless the parties agree otherwise, the arbitration expenses payable by the losing party do not normally include the legal fees and other costs of representation of the successful party.⁹⁶

7.4.4 For institutional arbitral proceedings, the arbitration expenses, including the charges for organising the arbitration and the arbitrators' fees, shall be established and paid in accordance with the rules of the relevant arbitral institution.⁹⁷ The International Arbitration Court, for example, has detailed provisions in relation to costs in its arbitration rules and has established a fee schedule.⁹⁸

7.4.5 For international arbitral proceedings, the fees of the arbitrators and their travel expenses shall be borne by the respective parties that appointed them, unless otherwise agreed. In the case of a sole arbitrator or chair, these expenses shall be shared equally between the parties.⁹⁹

7.5 Termination of the proceedings

7.5.1 Once all of the evidence has been submitted, the parties will be required to submit their final conclusions on the merits of the case during an oral hearing. Once this final hearing has taken place, the arbitral proceedings are closed and the arbitral tribunal will start the deliberation process.

7.5.2 The CPC requires that in all cases the arbitral tribunal must participate in private deliberations before issuing the final decision. Such participation must be recorded in the award.¹⁰⁰

⁹⁶ CPC, art 359.

⁹⁷ *Ibid*, art 359⁶.

⁹⁸ [<http://arbitration.ccir.ro/engleza/fees.htm>] (accessed 16 December 2011).

⁹⁹ CPC, art 369⁵.

¹⁰⁰ *Ibid*, art 360¹(1).

- 7.5.3 Where the arbitral tribunal is composed of an uneven number of arbitrators, the award shall be made by a majority of votes. Any dissenting opinion must be recorded in writing and signed by the relevant arbitrator, stating the reasons on which it is based.¹⁰¹
- 7.5.4 Where the arbitral tribunal is composed of an even number of arbitrators and no majority can be formed, an umpire shall be appointed in accordance with the terms of the parties' arbitration agreement or, in the absence of an agreement, by the competent court.¹⁰² The appointed umpire shall either accept the decision proposed by one of the arbitrators, which he or she may amend, or render another decision. However, the umpire may not undertake either action until hearing both parties and following consultation with the other arbitrators.

7.6 Effect of an award

- 7.6.1 An award which has been served on the parties has the same effect as a judicial decision; it is final and binding and also enforceable (see further below at section 10).¹⁰³

7.7 Correction, clarification and issuance of a supplemental award

- 7.7.1 If the award contains any material errors in the text of the award (e.g. calculation or typographical errors or similar obvious errors), the arbitral tribunal may correct such errors by an award of correction on its own initiative or at the request of one of the parties made within twenty days of receipt of the award.¹⁰⁴ In domestic arbitration, the term for submitting such request is ten days. All of the parties need to be notified of the application for correction and a new hearing shall be established to discuss the application.
- 7.7.2 Either of the parties may also request, within ten days of receiving the award, that the arbitral tribunal make an additional award in respect of any claim that was presented to the arbitral tribunal but not dealt with by the arbitral tribunal in its issued award. The arbitral tribunal may only agree to such an additional award after summoning the parties.¹⁰⁵

¹⁰¹ *Ibid*, art 360².

¹⁰² *Ibid*, art 360³.

¹⁰³ *Ibid*, art 363(3).

¹⁰⁴ *Ibid*, art 362(1) and 369³.

¹⁰⁵ *Ibid*, art 362(1).

- 7.7.3 The award of correction – as well as an additional award – forms an integral part of the award. However, the parties are not obliged to pay any additional costs in respect to such further awards.¹⁰⁶
- 7.7.4 The CPC does not contain provisions specifically dealing with the interpretation of awards by the arbitral tribunal, but arbitral tribunals may arguably respond to applications by a party for clarification of the award by applying the general rules of the CPC accordingly.

8. Role of the courts

8.1 Jurisdiction of the courts

- 8.1.1 Jurisdiction for applications for court measures in support of the arbitral process generally lies with the court that would have had jurisdiction to determine the merits of the dispute in the absence of a valid and binding arbitration agreement.¹⁰⁷ This includes applications:
- to remove any impediments that may arise in the administration or conduct of the arbitration;¹⁰⁸
 - to appoint or replace arbitrators;¹⁰⁹
 - for interim protective measures;¹¹⁰
 - for taking of evidence where the attendance of witnesses has to be compelled;¹¹¹
 - to review arbitrators' fees, deposits, advances or other payments required by the arbitral tribunal;¹¹² and
 - for leave for the enforcement of domestic awards.¹¹³
- 8.1.2 The court immediately superior to that identified pursuant to Article 242 of the CPC has jurisdiction in respect of applications for:¹¹⁴

¹⁰⁶ *Ibid*, art 362(4).

¹⁰⁷ *Ibid*, art 342.

¹⁰⁸ See *ibid*, art 342.

¹⁰⁹ See *ibid*, art 351, 351(2) and 352.

¹¹⁰ See *ibid*, art 258(8).

¹¹¹ See *ibid*, art 358¹¹.

¹¹² See *ibid*, art 359³.

¹¹³ See *ibid*, art 367(1).

¹¹⁴ See *ibid*, art 342.

- setting aside of awards;¹¹⁵ and
- settling any conflict of jurisdiction between the arbitral tribunal and the court identified pursuant to Article 242 of the CPC.¹¹⁶

8.1.3 Jurisdiction for recognition and enforcement of foreign awards under the provisions of Law No 105/1992 lies with the county court in the district where the person refusing to fulfil the foreign award has its domicile or place of incorporation, or where the award is to be enforced.¹¹⁷

8.2 Rulings on jurisdiction

8.2.1 As stated above at paragraph 5.1.1, the arbitral tribunal is the judge of its own jurisdiction (*competence-competence*). The arbitral tribunal's decision on jurisdiction is subject to challenge only together with the final award (see further below).

8.2.2 Where a party commences court proceedings in relation to subject matter that is covered by an arbitration agreement concluded between the parties, and the other party invokes the arbitration agreement before the court, the court shall determine its jurisdiction.¹¹⁸

8.2.3 The court retains jurisdiction to decide the dispute on its merits if it finds that:

- the arbitration agreement is null and void, inoperative or incapable of being performed;
- the respondent has already submitted its defence on the merits (and any counterclaims) without any jurisdictional reservation based on the arbitration agreement; or
- the arbitral tribunal cannot be constituted for reasons which fall within the sphere of responsibility of the respondent, for example if the respondent repeatedly appoints arbitrators that it knows will refuse such appointments with a view to causing excessive delay to the constitution of the arbitral tribunal.¹¹⁹

8.2.4 Otherwise, the court shall declare at the request of one of the parties that it lacks jurisdiction and refer the parties to arbitration.¹²⁰ In the case of a conflict of

¹¹⁵ See *ibid*, art 365.

¹¹⁶ See *ibid*, art 343⁴.

¹¹⁷ International Relations Law, art 170(1) and 173(1).

¹¹⁸ CPC, 343⁴(1).

¹¹⁹ See CPC, art 343⁴(2).

¹²⁰ CPC, art 343⁴(3).

jurisdiction between the arbitral tribunal and the court, the appropriate higher court shall decide the issue.¹²¹

8.3 Interim protective measures

- 8.3.1 Before or during the arbitral proceedings, any party may request that the court grant interim injunctions or order other conservatory or protective measures related to the subject matter of the arbitration,¹²² or establish relevant factual circumstances (i.e. preserve evidence). A copy of the statement of claim and of the arbitration agreement must be submitted to the court in support of the petition.¹²³ The party requesting such measures before the court shall immediately notify the arbitral tribunal once they have been granted by the court.¹²⁴

8.4 Obtaining evidence and other court assistance

- 8.4.1 Any interested party may institute proceedings before the court which, in the absence of the arbitration agreement, would have had jurisdiction to judge the merits of the dispute at first instance in order to remove any impediments that might arise in the administration or conduct of the arbitration. The court shall settle such petitions summarily and as a matter of priority.¹²⁵

9. Challenging and appealing an award through the courts

- 9.1.1 Parties may agree that an award shall be subject to appeal to a second tier arbitral tribunal. However, there is no right to appeal an award to the courts.
- 9.1.2 The award may only be set aside following a petition for annulment for the following limited reasons:
- the dispute was not arbitrable;
 - the arbitral tribunal decided the dispute in the absence of an arbitration agreement or on the basis of a void or inoperative arbitration agreement;
 - the arbitral tribunal was not constituted in accordance with the requirements of the arbitration agreement;

¹²¹ *Ibid*, art 343^a(4).

¹²² *Ibid*, art 358⁵(1).

¹²³ *Ibid*, art 358⁸(2).

¹²⁴ *Ibid*, art 358⁸(3).

¹²⁵ *Ibid*, art 342(3).

- a party was not present when the arbitral proceedings took place and the legal requirements of the summoning procedure were not complied with;
- the award was rendered after expiry of the five month arbitration term provided under Article 353³(1) of the CPC for making the award;
- the arbitral tribunal decided matters which were not the subject of the claim, has failed to decide upon a claim submitted for decision in the request for arbitration or has awarded more than requested;
- the award does not include the arbitral tribunal's decision or does not give reasons, does not state the date and place where it was made or it is not signed by the arbitrators;
- the decision in the award includes provisions which cannot be implemented; or
- the award is contrary to public policy, good morals or mandatory provisions of the law.¹²⁶

9.1.3 The parties cannot waive in advance the right to institute proceedings for the setting aside of the award. Such right may only be waived after the award is made.¹²⁷ The waiver can be made by way of agreement or unilateral declaration of the party waiving such right.

9.1.4 The appropriate court for proceedings to set aside the award is the court immediately superior to the court which would have had jurisdiction to determine the dispute in the absence of the arbitration agreement.¹²⁸ Proceedings to set aside the award may be instituted within one month from the date of communication of the award.¹²⁹ Pending its substantive decision, the court may, after requiring security in an amount fixed by it, suspend the enforcement of the award against which setting aside proceedings have been instituted.¹³⁰

9.1.5 The court will decide the request in accordance with the provisions of Article 366 of the CPC. If the court finds the request justified, it shall set the award aside and, if the dispute is ready to be determined, it shall make a decision on the merits within the limits of the arbitration agreement. If further evidence is needed before a decision on the merits can be made, the court will request the parties to submit that evidence and make its decision on the merits after that evidence has been submitted. Irrespective of the reasons for which the award was set aside, the court

¹²⁶ See CPC, art 364.

¹²⁷ CPC, art 364¹.

¹²⁸ *Ibid*, art 365(1).

¹²⁹ *Ibid*, art 365(2).

¹³⁰ *Ibid*, art 365(3).

shall always render a judgment on the merits of the case in order to solve the dispute between the parties.

- 9.1.6 If the court proceeds to determine the dispute on the merits, the court's judgment setting aside the award can only be challenged together with the judgment on the merits. The judgment of the court on the setting aside of the award is subject to a final appeal (*recurs*) before the superior court.

10. Recognition and enforcement of awards

10.1 Domestic awards

- 10.1.1 An award is binding and shall be complied with by the party against whom it was made immediately or within the time limit specified in the award.¹³¹ If necessary, the successful party may apply for leave to enforce the award (*exequatur*).¹³²
- 10.1.2 Leave for enforcement shall be granted without a hearing unless there are doubts as to the regularity of the award, in which case the court will summon the parties to attend a hearing. Once leave for enforcement of the award has been granted, the award may be enforced in the same way as a court judgment.¹³³ The enforceable award represents a writ of execution based on which the party in whose favour it was made may commence the enforcement proceedings.

10.2 Foreign awards

Arbitral awards subject to international arbitration treaties

- 10.2.1 Romania ratified the New York Convention in 1961 and is also a party to the 1961 European Convention (as well as other international arbitration conventions and treaties). The vast majority of foreign awards will be subject to the provisions of one of these treaties.
- 10.2.2 When signing the New York Convention, Romania stated that it will apply the New York Convention only to the recognition and enforcement of awards made in the territory of another contracting state. Also, Romania will apply the New York Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law. With regard to awards made in the territory of non-contracting states, Romania will apply the New York Convention only to the extent to which those states grant reciprocal treatment.

¹³¹ *Ibid*, art 367.

¹³² *Ibid*, art 367¹.

¹³³ *Ibid*, art 368.

- 10.2.3 If no multi- or bilateral treaty applies, the procedure for recognition and enforcement of foreign awards is set out in Romanian law.¹³⁴ However, in practice, even if the award is subject to international treaties, the Romanian courts apply a mixture of the conditions set forth in the international convention and Law No 105/1992 (the Law on the Settlement of Private International Law Relations) (**International Relations Law**). In any case, as set forth below, the provisions regarding the recognition and enforcement of awards set forth in the International Relations Law represent, in general, a duplication of the conditions contained in the New York Convention.
- 10.2.4 An award is considered foreign if it was made in the territory of a foreign state.¹³⁵ Foreign awards acquire the force of *res judicata* in Romania if they are recognised pursuant to Articles 167 to 172 of the International Relations Law.¹³⁶ A foreign award that is not complied with voluntarily by the party against which it was made may be enforced in Romania under the provisions of the International Relations Law.¹³⁷
- 10.2.5 Foreign awards may be recognised either directly pursuant to an application for recognition or indirectly if they are relied upon in different substantive proceedings pending in the Romanian courts.¹³⁸ Foreign awards made by a competent arbitral tribunal have evidential force before the Romanian courts with regard to the facts which they establish, regardless of whether they are formally recognised.¹³⁹
- 10.2.6 Foreign awards granting interim measures of protection or awards which are only provisionally enforceable cannot be enforced in Romania.¹⁴⁰

Conditions for the recognition of a foreign award

- 10.2.7 Pursuant to the International Relations Law, foreign awards may be recognised in Romania, provided that the following conditions are cumulatively met:
- the award is final under the national law of the state where it was issued. It therefore follows that the respondent has notice of the award, which would allow it to exercise any available right of appeal against the award;

¹³⁴ See CPC, art 370 to 370³ and International Relations Law, s 4, art 167–177.

¹³⁵ CPC, art 370.

¹³⁶ The provisions of International Relations Law, s 4 relate primarily to the effect given to foreign court decisions in Romania. However, International Relations Law, art 181 clarifies that art 167–178 regarding the recognition and enforcement of foreign judicial decisions also apply to foreign awards.

¹³⁷ CPC, art 370² and International Relations Law, art 173–177.

¹³⁸ Law No 105/1992, art 170(2).

¹³⁹ CPC, art 370³ CPC; and International Relations Law, art 178.

¹⁴⁰ Law No 105/1992, art 173(2).

- the arbitral tribunal that issued the award must have been competent to determine the case under the national law of the state where the award was issued;
- there is reciprocity regarding the recognition of foreign awards between Romania and the state where the arbitral tribunal that issued the award had its judicial seat;¹⁴¹ and
- in the case of an award made in the absence of the losing party, it is shown that that party was properly notified of the claim, summonsed to the arbitral hearing and was given the opportunity to defend itself against the claim.¹⁴²

10.2.8 The recognition of a foreign award may be refused in any of the following situations listed in the International Relations Law:

- the foreign award is the result of a fraud committed in the foreign proceedings;
- the foreign award violates the public policy of Romanian private international law;¹⁴³ or
- the dispute was resolved between the same parties by an earlier judgment issued by a Romanian court or was in the process of being adjudicated by a Romanian court on the date when the claim in the arbitral proceedings was received by the arbitral tribunal.¹⁴⁴

10.2.9 The recognition of a foreign award may not be refused for the sole reason that the arbitral tribunal applied a different substantive law to the merits of the case than would have been applicable pursuant to the rules of Romanian private international law. An exception to this rule applies if the proceedings concerned the legal status or capacity of a Romanian citizen and application of the foreign law produced a different result than would have been reached under Romanian law.¹⁴⁵

10.2.10 Quite importantly, but for limited exceptions, the Romanian courts may not re-examine the merits of the foreign award or modify it.¹⁴⁶

¹⁴¹ It is not necessary to prove that formal legal or diplomatic reciprocity is granted as the law presumes that reciprocity is granted unless the contrary is shown.

¹⁴² International Relations Law, art 167.

¹⁴³ Romanian law does not define the concept of public policy, except in respect of certain grounds of exclusive jurisdiction of the Romanian courts. Doctrine and jurisprudence have established that, for instance, the violation of the right to defence falls under this concept.

¹⁴⁴ International Relations Law, art 181.

¹⁴⁵ *Ibid*, art 168.

¹⁴⁶ See International Relations Law, art 169. The limited exceptions concern the review of the compliance of the foreign award with the requirements of International Relations Law, on which see International Relations Law, art 167 and 168.

Procedure for recognition of a foreign award

- 10.2.11 The request for recognition of a foreign award must be drawn up in accordance with the requirements of Romanian procedural law and must be accompanied by the following documents:
- a copy of the foreign award;
 - proof that it is a final award;
 - a copy of the proof of notification of the summons and the statement of claim to a party which was not present before the foreign arbitral tribunal, as well as of the award; and
 - proof that the foreign award meets all other conditions of Article 167 of the International Relations Law.¹⁴⁷
- 10.2.12 All documents need to be accompanied by authorised translations and authenticated by the competent authority in the state of the foreign arbitral tribunal, by the relevant Romanian consulate and by the Romanian Ministry of Foreign Affairs.¹⁴⁸ Romania is a party to the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.
- 10.2.13 The request for recognition will be resolved in adversarial proceedings (i.e. the respondent will be summonsed and will be allowed to state its defence) but limited strictly to the grounds in the International Relations Law upon which recognition of the foreign award may be resisted. The request for recognition may be determined without hearing the parties if it follows from the award that the respondent admitted the claim.¹⁴⁹ The court decision on recognition is subject to two tiers of appellate jurisdiction.

Conditions for authorisation of enforcement of a foreign award

- 10.2.14 In addition to the conditions for the recognition of a foreign award set out above, two further conditions must be met in order to obtain authorisation to enforce a foreign award:
- the award must be enforceable according to the national law of the state where the award was issued; and
 - the right to request enforcement must not be time barred under Romanian law.¹⁵⁰

¹⁴⁷ International Relations Law, art 171.

¹⁴⁸ *Ibid*, art 162.

¹⁴⁹ *Ibid*, art 172.

¹⁵⁰ *Ibid*, art 174. The time period is three years under Romanian law, however, if a shorter limitation period exists under the national law of the state where the award was issued, then enforcement should be sought within this shorter period in order to satisfy the first condition that the award must be enforceable according to the national law of the state where it was issued.

10.2.15 As with the recognition of a foreign award, when considering a request for enforcement, the court will not review the merits of the foreign award, save for compliance with the requirements of the International Relations Law.

Procedure for enforcement of foreign awards

10.2.16 The documents set out in paragraph 10.2.11 above, must also be attached to a request for enforcement. In addition, proof that the award is enforceable must be presented (e.g. in the form of a certificate from the arbitral tribunal confirming enforceability of the award). Usually, this follows from the final character of the award.¹⁵¹

10.2.17 Upon application for the enforcement of an award, the respondent will be summonsed and allowed to state its defence, but again not on the merits of the case. For instance, the respondent may contend it has paid after the award was issued. The court decision on enforcement is subject to two tiers of appellate jurisdiction.¹⁵²

10.2.18 Once enforcement of the foreign award in Romania has been authorised, such an award may be enforced in the same way as a domestic award.¹⁵³

11. Special provisions and considerations

11.1 Consumers

11.1.1 There are no specific legal provisions with respect to arbitration of disputes relating to consumer rights. Therefore, the consumer is free to enter into an agreement to arbitrate a dispute relating to his or her consumer rights (prior to or after a dispute has arisen). However, due care has to be taken when entering an agreement including an arbitration clause, as the standard for assessing the abusive nature of contractual clauses in the case of a consumer is higher. If the contract is deemed non-negotiated, it may consequently be held that the arbitration clause is ineffective.

11.2 Employment law

11.2.1 Only collective labour disputes are arbitrable and not individual labour disputes. In accordance with the provisions of Article 179 of Law No 62/2011 of the social dialogue, if the parties agree, the disputes are subject to arbitration organised by

¹⁵¹ *Ibid*, art 175.

¹⁵² *Ibid*, art 176.

¹⁵³ *Ibid*, art 177.

the Office for Mediation and Arbitration of Collective Labour Disputes attached to the Ministry of Labour, Family and Social Protection. The awards rendered under the auspices of this office are binding upon the parties, will amend the collective labour agreement and are enforceable.

12. Concluding thoughts and themes

12.1.1 Arbitration is an increasingly popular method for resolution of commercial disputes in Romania and Romanian arbitration law is in line with modern international practice. Added attractions of arbitration include the wide international enforceability of awards, the ability for parties to avoid the often substantial delays encountered in the Romanian courts and the relative lack of judicial experience in the field of complex commercial disputes.

13. Contacts

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