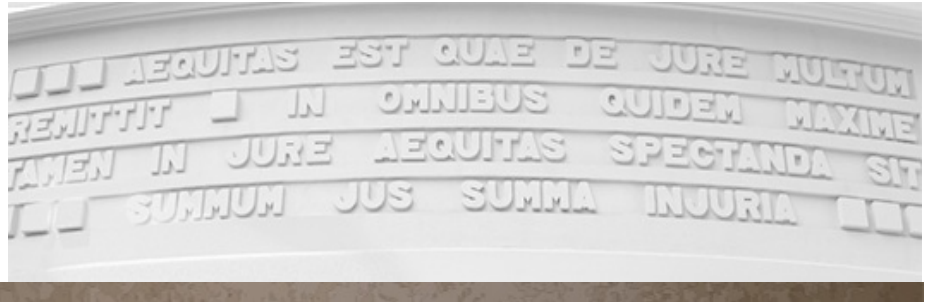




February 2018

# Newsletter



## The New Rules of Arbitration established by the Court of International Commercial Arbitration attached to the CCIR

The Board of the Court of International Commercial Arbitration attached to the National Chamber of Romania has adopted a new set of rules of arbitration, applying to the proceedings organised by the leading Romanian arbitration institution starting from January 1<sup>st</sup>, 2018 (the "New Rules of Arbitration"). Highly receptive to the demands and expectations of the business environment, the New Rules of Arbitration are aligned to the standards of the most reputed international arbitral institutions from Paris, Stockholm or Honk Kong, marking a turning point in the Romanian arbitration.

One could notice from the very beginning the *lex voluntatis principle* as the main pillar concept which underlies the New Rules of Arbitration in all aspects involving the arbitral dispute. Also, *new procedural instruments and a new terminology* were included therein, following the example of various international arbitration models of proceedings.

Thus, as recognition of the said *lex voluntatis principle*, the New Rules of Arbitration do not contain any provision on the conclusion, validity and effects of the arbitration agreement, which is in line with the ICC Arbitration Rules, as amended in 2017; a recommended draft of arbitration agreement is contained in Annex I to the rules.

Referring to the composition of the arbitral tribunal, as one of the first aspect of an arbitral dispute, the New Rules of Arbitration provide for the parties' freedom to set forth the number of arbitrators and to appoint them. Provided that the parties were silent in determining the number of arbitrators, the arbitral tribunal shall be limited to three arbitrators. At its turn, *the emergency arbitrator* will conduct the expeditious procedure as a sole arbitrator.

Failing to make an appointment, the President of the Court has to designate the arbitrator(s). The election of the chairman is left to the agreement of the appointed

Part of the written stage is based on the parties' freedom to evidence their claims and defences. The evidences should be referred and submitted by the parties together with the request for arbitration/reply to the request for arbitration and with any subsequent memorial. The New Rules of Arbitration grant the parties *the option to apply the IBA Rules on the Taking of Evidence in International Arbitration*, both in domestic and international disputes. Thus, the parties are free to submit the document and to ask for document production from the opposing parties. The statements of witnesses may be submitted by the parties as an affidavit or as written statement certified by the lawyer. Each party may submit side expert report in connection with the matters in dispute or ask the arbitral tribunal to appoint an independent expert to render a report.

The New Rules of Arbitration provide as well about a *simplified procedure for disputes* amounting to less than lei 50.000 and such disputes will be conducted by a sole arbitrator, either appointed by the parties or designated by the President of the Court. The maximum term for arbitration is of 3 months since the first arbitration date.

*More efficient ways for solving the dispute* in a speedy manner were introduced by the New Rules of Arbitration: the bifurcation of the proceeding (to solve gradually and separately preliminary legal aspects of the dispute, without being necessary to administrate evidence or to debate on the subject matter or when the liability of one of the parties is concerned); the rendering of partial awards; the settlement by parties' agreement; rules on document presentation by the parties in dispute following a calendar established in this respect; the limitation of the volume of information to what is essential, avoiding duplication of written evidences; using of audio and video ways for the communication during the proceedings; establishing a procedural calendar; selection of specialised experts or

or designated arbitrators, in absence of which such designation is subject to the President of the Court's decision.

Any objection to the existence, the validity and the enforceability of the arbitration agreement has to be raised by the respondent in a timely manner, respectively in the reply to the request for arbitration. Where the respondent objected to the competence of the arbitral tribunal, as a case management technique, the arbitrator(s) may order *the bifurcation of the proceedings* for ruling on this issue with priority. Annex IV to the New Rules of Arbitration provides such case management techniques.

The proceeding conducted by the arbitral tribunal encompasses *a written stage and a hearing stage*, if deemed necessary by either the arbitrator(s) or requested by one party. The proceeding starts with a *case management conference* in the form of a meeting in person, by videoconference, telephone or similar means of communications, ensuring a direct communication between all the participants to the proceeding. This moment is of importance, as it establishes the final deadline until the parties may amend or supplement their reliefs and call for third parties to join the dispute in arbitration, save when the arbitral tribunal decides the contrary.

*The written stage* covers the initial phase of a submission by the claimant of the request for arbitration and of the reply to the request for arbitration by the respondent. The second phase deals with the filing of parties' memorials. The decision on to whether such memorials are needed from the parties is subject to the discussions and the agreement of the parties before or during the case management conference.

of specialists, disposing of valuable knowledge and experience for the case in dispute.

The arbitral award is issued and drafted in maximum one month as of the date the debates are closed/the final written memorials are submitted, with the possibility to extend this term, based on a grounded request of the arbitral tribunal.

As a final conclusion, the New Rules of Arbitration are conceived, on the whole, to better respond to the implementation of traditional principles guiding an arbitration procedure: good faith, rapidity, efficiency. And, above all, they tend to be much better harmonised with the current tendency to make a common platform where similar principles are applying internationally.

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*STOICA & Asociații extended its litigation practice during the years with a large number of arbitral disputes, either in front of Romanian arbitral institutions or in front of reputed international arbitration courts. Also, STOICA & Asociații has a wide expertise in drafting or coordinating the drafting of legal opinions on Romanian law to be used as expert opinions in international arbitration. Some of the attorneys enjoyed experience as arbitrators or are involved in international work related to arbitration. Arbitration experience of the law firm covers mainly energy, construction, PPP and financial sectors.*

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