PANORAMIC

ARBITRATION

Romania

LEXOLOGY

Arbitration

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LAWS AND INSTITUTIONS

Multilateral conventions relating to arbitration

Is your jurisdiction a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Romania is a jurisdiction that promotes domestic and international arbitration. To this end, it is a signatory party to the most important international instruments dealing with arbitration. In 1961, through Decree No. 186 of 24 July 1961, Romania became a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. As of the date of ratification (24 July 1961), a declaration was made by Romania specifying that the Convention applies only to contractual or non-contractual disputes that are deemed commercial by Romanian legislation, and that it shall apply to arbitral awards issued in non-contracting states based only on reciprocity established by the state parties' agreement.

Romania is also a state party to the European Convention on International Commercial Arbitration, which was adopted by the United Nations in Geneva on 21 April 1961 and subsequently ratified by Decree No. 281 of 25 June 1963, and the Convention on the Settlement of Investment Disputes between States and Nationals of other States dated 18 March 1965, which was ratified by Decree No. 62 of 30 May 1975.

Under article 11(2) of the Constitution, the treaties ratified by Parliament are part of domestic law.

Law stated - 9 January 2024

Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

As at January 2024, Romania is party to 98 bilateral investment treaties (BITs), of which 53 are still in force. Twenty-two BITs concluded in the past by Romania with EU member states were declared terminated by mutual agreement or by unilateral termination by the Romanian parliament, which approved those terminations through Law No. 18/2017.

On 5 May 2020, Romania and 22 other EU member states executed the Agreement for the Termination of Bilateral Investment Treaties (the Termination Agreement) concluded between EU member states. Article 4 of the Agreement confirms that member states do not have recourse to arbitration for intra-EU disputes, regardless of the arbitration rules governing arbitration; therefore, BITs listed under Annex A of the Agreement are terminated in accordance with the terms set out in the Agreement. This means that the sunset clauses of BITs listed in Annex A are invalid and do not have legal effect (article 2).

Subsequently, the Official Journal of the European Union Series L 281 (28 August 2020) published information concerning the entry into force of the Termination Agreement, specifying that the Agreement, signed in Brussels on 5 May 2020, would enter into force

on 29 August 2020, in accordance with article 16(1) of the Agreement. At the Romanian national level, Law No. 2/2022 ratifying the Termination Agreement was published in the Official Gazette No. 27 of 10 January 2022. It entered into force and has legal effect from 13 January 2022.

Law stated - 9 January 2024

Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary domestic sources of law regarding domestic and foreign arbitral proceedings are contained in the Civil Procedure Code (CPC), in force since 15 February 2013, in Book IV entitled 'About Arbitration' (articles 541 to 621), dealing with domestic arbitration, and in Book VII, Title IV regarding 'International Arbitration and the Effects of Foreign Awards' (articles 1,111 to 1,133). The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Romania is a signatory, is also part of the Romanian framework on the recognition and enforcement of foreign awards.

At the arbitration institutional level, the Court of International Commercial Arbitration attached to the National Chamber of Commerce and Industry of Romania (the Court of Arbitration) – the leading Romanian arbitration institution – has adopted and subsequently modified its own rules on arbitral proceedings (the Rules of the Court of Arbitration). The most recent version, in force since 1 January 2018, is aligned with the arbitration rules adopted by the most reputable international arbitration institutions worldwide, such as the American Arbitration Association and the London Court of International Arbitration.

Law stated - 9 January 2024

Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The domestic law on arbitration is contained in articles 541 to 621 of the CPC (Book IV), whereas international arbitration is regulated under articles 1111 to 1133 of the same CPC (Book VII, Title IV). The provisions are modern and flexible and are attractive for both domestic and international arbitration.

Nothing prevents the parties from referring in their arbitration agreement to any of the provisions contained in the UNCITRAL Model Law applying to their arbitration, and the provisions of the CPC largely resemble the UNCITRAL Model Law (eg, in the case of international arbitration, the possibility for an arbitral tribunal to issue partial awards as long as a contrary provision is not included in the arbitration agreement; the recognition of the equal treatment of parties' principle; and the scope of the written form of an arbitration agreement). A difference from the UNCITRAL Model Law exists regarding the regime of interim measures and preliminary orders: the Romanian provisions do not contest the existence of the right to apply for those measures and orders. Although a detailed regime

in this respect is not provided by the CPC, article 40 of the Rules of the Court of Arbitration contains provisions that regulate requests for the application of interim measures before the commencement of the arbitration procedure or before the case file is referred to the arbitral tribunal in cases where the requests are settled by an emergency arbitrator.

Law stated - 9 January 2024

Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The parties may not derogate from the rules regarding public policy or from mandatory provisions of the law. Mandatory provisions from which the parties cannot deviate include the following:

- clauses under which a party nominates an arbitrator instead of the other party or appoints a higher number of arbitrators than the other party are null and void;
- parties are not entitled to waive their right to challenge the arbitral award by inserting a clause in respect thereof in the arbitration agreement; and
- the arbitration proceedings must ensure the equality of treatment, the right to defence and the ***audiatur et altera pars*** principle.

Law stated - 9 January 2024

Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Romania is an EU member state; therefore, the EU sources of law in connection with the conflict of laws are subject to scrutiny before referring to domestic provisions. The main EU sources of law are Regulation No. 593/2008 of the European Parliament and of the Council on the Law Applicable to Contractual Obligations (Rome I), and Regulation No. 864/2007 of the European Parliament and of the Council on the Law Applicable to Non-Contractual Obligations (Rome II).

Where EU law is not applicable, the conflict of laws rules are mainly provided under articles 2557 to 2663 of the Romanian Civil Code, which entered into force on 1 October 2011. Both EU law and the Civil Code allow the parties to elect the governing law as the substantive law applying to the merits of an arbitral dispute. The same applies in international arbitration under the Rules of the Court of Arbitration. If the parties fail to agree on the law governing the merits of a dispute, both EU law and the Civil Code provide the rules for determining the applicable substantive law.

Law stated - 9 January 2024

Arbitral institutions

What are the most prominent arbitral institutions situated in your jurisdiction?

Under Law No. 335/2007, the most prominent permanent non-corporate arbitration institution is the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania.

Court of International Commercial Arbitration

The Chamber of Commerce and Industry of Romania

2, Octavian Goga Blvd

3rd district

Bucharest

Romania

http://arbitration.ccir.ro/en

As the court of arbitration system is organised on a cameral basis, it follows that in each of the 41 administrative counties, there is a chamber of commerce attached to which there is a court of arbitration. The rules of arbitration of these courts are almost identical to the CPC (Book IV) Rules of Arbitration, which represent Romanian arbitration law. However, in practice, the activity of these arbitration institutions is very limited, both as to registered cases and case law.

During the past decade, various bilateral private chambers of commerce were created in Romania by the business community that have established their own courts of arbitration, but their activity is still very limited as to registered cases.

Law stated - 9 January 2024

ARBITRATION AGREEMENT

Arbitrability

Are there any types of disputes that are not arbitrable?

Regarding international arbitration, the Civil Procedure Code (CPC) states that any dispute of an economic nature can be submitted to arbitration if it concerns rights in relation to which the parties can freely dispose and provided that the law of the state where the arbitral tribunal has its seat does not reserve exclusive jurisdiction for the national courts. In principle, only monetary claims can be referred to either domestic or international arbitration. However, there are some monetary claims that are excluded from arbitration. For instance:

- intellectual property disputes concerning the annulment of a trademark, a patent or industrial design, or those related to the author of a creation subject to copyright, where such disputes are given in the exclusive competence of the courts of law;
-

regarding antitrust and competition laws matters, the disputes on the lawfulness of the Competition Council's decisions are reserved to the court of law. However, the parties may refer to an arbitration dispute with claims on damages arising from a breach of competition law, or, in the case of a contractual dispute, one party may raise competition issues in connection with the validity of some clauses, and the arbitral tribunal will retain jurisdiction to assess such matter;

- intra-company (corporate law) disputes are reserved to the courts of law under the provisions of Law No. 31/1990; and
- family matters, inheritance disputes and any matters related to the civil status are also given to the jurisdiction of courts of law.

Law stated - 9 January 2024

Requirements

What formal and other requirements exist for an arbitration agreement?

As a rule, the arbitration agreement must be concluded in writing. The criteria for determining whether the arbitration agreement was executed in writing are very generous, being considered to be fulfilled if the parties agreed to arbitration by means of an exchange of correspondence, irrespective of its form, or by an exchange of procedural acts, as well as if the defendant expressly accepts the jurisdiction of the arbitral tribunal, either by written statement or by express statement recorded by the arbitral tribunal. As an exception, article 548(2) of the CPC compels the parties to conclude the arbitration agreement in an authentic form, under the sanction of absolute nullity, if it refers to disputes related to the transfer of an ownership right or to the creation of another property right over an immovable property.

Under article 550(1) of the CPC, the arbitration agreement must include a reference regarding the procedure to appoint the arbitrators, under the express sanction of nullity as to ad hoc arbitrations. In the case of institutional arbitration, such references are not mandatory, considering that the law allows a reference to the procedural norms of the institution that administers the arbitration. Arbitration agreements must be concluded with the observance of the conditions provided for the validity of agreements in general, namely the existence of the capacity of the parties to conclude the agreement, the parties' consent and a valid object and a valid cause of the main contract. Local or state entities can conclude an arbitration agreement to the extent that a special provision, either domestic or international, allows them to do so.

The Court of International Commercial Arbitration (the Court of Arbitration) recommended a model clause for the arbitration agreement to be used by any concerned parties. This model clause only refers to disputes that arise from the agreement containing an arbitration clause or by a separate agreement (in the form of a compromise). The Rules of the Court of Arbitration provide for the principle of separability of an arbitration agreement from the main contract and its full effects regarding the competence given to the arbitral tribunal to arbitrate (except the cases when the matter in dispute is not arbitrable).

Law stated - 9 January 2024

Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

According to article 554 of the CPC and article 6 of the European Convention on Human Rights, an arbitration agreement is no longer enforceable if:

- the institution organising the arbitration fails to comply with the minimum requirements of article 6 of the European Convention on Human Rights;
- the arbitral tribunal cannot be constituted because of the defendant's obvious default; or
- the proceedings before courts of law were initiated and the defendant raised no objection on jurisdiction.

Law stated - 9 January 2024

Separability

Are there any provisions on the separability of arbitration agreements from the main agreement?

Provisions on the separability of arbitration agreements from the main agreement are found in article 550(2) of the CPC in the case of domestic arbitration ('the validity of the arbitration clause is independent of the validity of the contract that was entered') and article 1113(3) of the CPC in the case of international arbitration ('the validity of the arbitration agreement cannot be challenged on the grounds of the invalidity of the main contract or because it would concern a dispute that does not yet exist').

Law stated - 9 January 2024

Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

A third party can be bound by an arbitration agreement only to the extent that it becomes a party to that arbitration agreement. In several exceptional cases, non-signatories may be bound by an arbitration agreement if:

- the underlying contract was assigned to a third party under the CPC;
- the assignee of a claim is bound by the arbitration agreement under the ***accessorium sequitur principale*** rule; or
- in the case of inheritance, the heirs and legatees of a party contracting to an arbitration agreement are bound by such a clause.

Law stated - 9 January 2024

Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

According to the CPC, if third parties are to participate in arbitration, this must be based both on the consent of the third parties and of all the parties to arbitration, with the observance of the general rules governing third-party participation in disputes. Under those general rules, any person who has a substantive interest can intervene in a dispute pending between other parties. Intervention by a third party who intends to do so for the benefit of one of the original parties is allowed without the need for the consent of the original parties.

The Rules of the Court of Arbitration have a different perspective on third-party participation in arbitration, which is regulated in article 16:

- first, if the third party intends to intervene solely for the benefit of one of the original parties, it must prove the existence of an arbitration agreement with all the original parties or obtain their consent; and
- second, where a third party that may have the same claims as the original claimant intends to intervene in an ongoing proceeding or one of the original parties' requests for the joinder of the third party, this implies the authorisation of the arbitral tribunal or, where such tribunal is yet to be appointed, of the board of the Court of Arbitration.

When deciding on whether to authorise such intervention, the arbitral tribunal or the Court of Arbitration board shall also consider, among other things, the fulfilment of the following conditions:

- all parties, including the intervenor, agree, even before the arbitral tribunal, that the disputes between them are subject to arbitration conducted under the Rules of the Court of Arbitration and also on the method of choosing the arbitral tribunal;
- the intervention from the third party or the request for joinder have been filed in a timely fashion, at the latest at the first hearing date; and
- the intervening third party or the request for joinder party pays the arbitration fee in the amount established by the Schedules of Arbitral Fees and Expenses in the Rules of the Court of Arbitration, as well as any additional arbitration costs.

Law stated - 9 January 2024

Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the ‘group of companies’ doctrine?

Arbitral tribunals are not often confronted with the group of companies doctrine in view of extending an arbitration agreement to non-signatory companies; therefore, to the best of our knowledge, the group of companies doctrine is not recognised in the Romanian jurisdiction with respect to arbitration.

Article 5(35) of Law No. 85/2014 regarding insolvency proceedings refers to the group of companies involving two or more companies interconnected by control or holding of qualified participations, and article 5(37) refers to the 'parent company' (ie, the company that exercises control or dominant influence over the other companies in the group). At the same time, articles 183 et seq of Law No. 85/2014 govern the special provisions on insolvency proceedings of a group of companies.

Article 43(1) of Law No. 31/1990 stipulates that the branches do not enjoy legal personality as a company. No particular provision contained in the CPC refers to groups of companies, but this does not mean that no interpretations can be made under the existing provisions, which support the concept of economic and legal reality at the conclusion of contracts.

Law stated - 9 January 2024

Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

Romanian arbitration law is silent as far as this specific matter is concerned. Some scholars are of the opinion that the requirements for executing an arbitration agreement remain applicable for such cases as well.

The Rules of the Court of Arbitration have provisions on this matter in connection with the nomination of arbitrators: if there are more claimants or defendants, parties with mutual interests will designate one arbitrator. If the parties fail to agree on this appointment, the arbitrator will be designated by the president of the Court of Arbitration.

Law stated - 9 January 2024

Consolidation

Can an arbitral tribunal in your jurisdiction consolidate separate arbitral proceedings? In which circumstances?

The CPC is silent in connection with the consolidation of separate arbitral proceedings. The Rules of the Court of Arbitration attached to the Chamber of Commerce and Industry of Romania deal with this matter under article 17, which provides for three circumstances in which the arbitral tribunal may decide to consolidate separate arbitral proceedings:

- all the parties agree to consolidation;
- all the claims are made under the same arbitration agreement; or
- where the claims are made under more than one arbitration agreement, the relief sought arises from the same transaction or series of transactions and the arbitral tribunal considers the arbitration agreement to be compatible.

In deciding on consolidation, the arbitral tribunal shall consult with the parties and may consider among other things, the stage of the pending arbitration, whether the arbitrations raise common legal or factual issues, and the efficiency and expeditiousness of the proceedings.

Law stated - 9 January 2024

CONSTITUTION OF ARBITRAL TRIBUNAL

Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

The general rules set out in article 555 of the Civil Procedure Code (CPC) provide that any natural person who has an unrestricted exercise of its rights can be an arbitrator. The Rules on the Organisation and Operation of the Court of International Commercial Arbitration provide that any person – whether a Romanian or a foreign national – can be an arbitrator if he or she has unrestricted exercise of his or her rights, has an excellent reputation and is highly qualified in the field of international private law, internal and international economic relations and commercial arbitration. The Court of International Commercial Arbitration (the Court of Arbitration) provides a non-mandatory list of selected arbitrators considered to have such qualifications.

To be included in the list of arbitrators, a person must, among other things, have a solid legal background and at least eight years' experience in the legal field. In case of arbitrations organised by the Court of Arbitration, persons who are not included on the list of arbitrators can act as arbitrators if the parties in dispute nominate these persons by their arbitration agreement, regarding a specific dispute, under the condition that these persons meet the requirements set forth by the arbitration Rules of the Court of Arbitration. A restriction to act as arbitrator exists for acting judges.

The CPC and the Rules of the Court of Arbitration provide that an arbitrator cannot solve a specified arbitral dispute if he or she does not observe the qualification requirements or other conditions regarding arbitrators, which are set forth in the arbitration agreement. The law is silent on what concerns the possibility of accepting contractual requirements for arbitrators based on nationality, religion or gender.

Article 4(2) of the Constitution prohibits discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin. Article 11 of the Civil Code stipulates that the laws that concern public policy or good morals cannot be derogated from through conventions or unilateral legal acts. In other words, Romanian legislation prohibits the conclusion of agreements that have as their object the appointment of arbitrators exclusively on the basis of criteria related to nationality, religion or gender.

Law stated - 9 January 2024

Background of arbitrators

Who regularly sit as arbitrators in your jurisdiction?

Any person enjoying the full capacity of his or her rights may act as an arbitrator. Article 4(4) of the Rules on the Organisation and Operation of the Court of Arbitration provide that any Romanian or foreign citizen may act as an arbitrator where he or she enjoys the full capacity of rights, does not have a bad reputation and has considerable skills and experience in the field of private law, domestic and international economic relations, and commercial arbitration.

Persons holding certain official positions in Romania are prevented from sitting as arbitrators. For example, acting judges or prosecutors cannot act as arbitrators.

Practising lawyers and law professors are regularly appointed as arbitrators in the Romanian jurisdiction. Retired judges may also be found on the panels of arbitral tribunals.

As far as gender diversity in institutional appointments is concerned, we do not know of any initiatives to promote gender diversity. In practice, most arbitrators are male.

Law stated - 9 January 2024

Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

Under the rules of the CPC, the names, number and appointment mechanism of arbitrators must be indicated in the arbitration agreement. The parties are free to agree on these aspects after the execution of the arbitration agreement. The powers of the domestic court or of the president of the Court of Arbitration to make the nomination are subsidiary to the freedom of the parties to make an agreement.

The domestic courts may intervene in the mechanism for the appointment of arbitrators if a party fails to propose the arbitrators, the parties disagree on the appointments of the sole arbitrator, or the arbitrators disagree on the nomination of the chair.

In the case of arbitration under the Rules of the Court of Arbitration, the default mechanism is different as the president of the Court is empowered in case of default to appoint the arbitrators, the sole arbitrator or the chair. The president of the Court, when making the appointment in case of default, shall consider the nature and the circumstances of the dispute, the substantial applicable law, and the seat and language of the arbitration, as well as the nationality of the parties.

The filing of an ancillary claim or incidental request shall not result in the modification of the composition of an already constituted arbitral tribunal.

Law stated - 9 January 2024

Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to

apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

The CPC provides that arbitrators can be challenged both for the same grounds as judges and, additionally, for specific grounds such as:

- failure to meet the professional requirements or other requirements set out in the arbitration agreement;
- a legal person having an interest in the arbitration dispute, where the legal person has the arbitrator as shareholder or involved in its management;
- where the arbitrator is working for or in direct commercial relations with one of the parties, a company controlled by one of the parties or under joint control; and
- where they provided consultancy to one of the parties, assisted one of the parties or testified in the previous stages of the dispute.

Domestic courts have jurisdiction in hearing the merits of the challenge request with the attendance of the parties and of the challenged arbitrator.

In arbitrations organised under the Rules of the Court of Arbitration, an arbitrator can be challenged on grounds that question his or her independence and impartiality and that qualify the arbitrators as incompatible. The grounds for challenge are like those provided in the CPC. The challenge request is settled by an arbitral tribunal appointed by the president of the Court of Arbitration or, in the case of a sole arbitrator, by the president of Court of Arbitration or by another arbitrator appointed by the president of the Court of Arbitration.

In the case of bias or an appearance of bias, an arbitrator can be challenged by the concerned party. The standard of bias or appearance of bias that might give grounds for challenging an arbitrator is the same as in the case of judges as developed by the case law of the courts of law, which takes guidance from the judgments of the European Court of Human Rights. In some disputes, guidance is also sought from the IBA Guidelines on Conflicts of Interest in International Arbitration.

The replacement of an arbitrator may occur in the case of challenge, withdrawal, resignation (because of illness, for example), death or other impediments.

Law stated - 9 January 2024

Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

Arbitrators are, as a rule, appointed by the parties. Failing nomination by the parties, the arbitrators are appointed by the court of law or by the president of the Court of Arbitration.

Arbitrators are entitled to receive fees for their duties. Under the Rules of the Court of Arbitration, the fees of the arbitrators are included in the arbitration tax, calculated by the secretariat of the Court of Arbitration. Any arbitrators' expenses occurring during the pending dispute are borne by the parties.

In the case of ad hoc arbitration, the arbitral tribunal shall determine the due fees and may compel the parties to pay them in advance. Regarding the expenses incurred during the dispute, the arbitral tribunal shall assess whether all the parties will bear those expenses.

Law stated - 9 January 2024

Duties of arbitrators

What are arbitrators' duties of disclosure regarding impartiality and independence throughout the arbitral proceedings?

The person nominated or appointed as arbitrator is compelled under the provisions of article 562(3) of the CPC to disclose to the parties and to the other arbitrators, before any acceptance of the mission or, if after, as soon as he or she becomes aware of, any grounds substantiating a potential challenge against his or her impartiality or independence.

Under article 21 of the Rules of the Court of Arbitration, the person nominated as arbitrator is under a duty to provide, within five days of the date of being nominated, a statement on their independence, impartiality and availability, simultaneously disclosing any circumstances that may cast any reasonable doubts on his or her independence or impartiality. Where such circumstances occur after the acceptance of his or her nomination, the arbitrator is under a duty to immediately disclose them to the parties and to the other arbitrators.

Law stated - 9 January 2024

Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

The CPC provides for cases where the arbitrators are to be held liable to the parties, including the following:

- after acceptance, the arbitrator waives the appointment in an unjustified manner;
- for groundless reasons, the arbitrator fails to attend the arbitral dispute proceedings, performs other actions that are of such a nature as to unjustifiably delay the proceedings or fails to deliver the award by the deadline as set out in the arbitration agreement or by the law; and
- the arbitrators fail to observe the confidentiality of the arbitration by publishing or disclosing information known in their capacity as arbitrators, without the parties' prior authorisation.

Under the Rules of the Court of Arbitration, the arbitrators shall not be liable to any of the parties for any action or omission in connection with the arbitration, unless the action or omission is owing to wilful misconduct or gross negligence.

Law stated - 9 January 2024

JURISDICTION AND COMPETENCE OF ARBITRAL TRIBUNAL

Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

There might be situations where, despite an existing arbitration agreement, a party initiates court proceedings. In those cases, only the parties may challenge the court's jurisdiction on grounds of the existing arbitration agreement. If the jurisdiction is challenged on the ground of there being an existing arbitration agreement, the court shall retain jurisdiction if the defendant's arguments on the merits of the dispute have no reservation on the grounds of the arbitration agreement, the arbitration agreement is affected by nullity or is not inoperative, and the arbitral tribunal cannot be constituted for reasons utterly determined by the defendant.

In international proceedings, any challenge of jurisdiction based on the existing arbitration agreement needs to be raised by the defendant before the first hearing, provided that the subpoena was duly served.

Law stated - 9 January 2024

Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated, and what time limits exist for jurisdictional objections?

Under the Civil Procedure Code (CPC) (Book IV), the arbitral tribunal verifies its jurisdiction either ***ex officio*** or at a party's request and delivers a decision in this respect (based on the *Kompetenz-Kompetenz* principle). In domestic arbitration, at the first hearing, provided that the subpoena was duly served, the arbitral tribunal verifies its jurisdiction. If jurisdiction is retained, the concerned party may challenge the decision only by means of a motion to set aside the award itself. If the arbitral tribunal declares that it does not have jurisdiction, its competence is declined in favour of the court of law, and the decision of the tribunal cannot be challenged with a motion for setting aside the award.

In international arbitration (CPC, Book VII), any objection of jurisdiction must be raised prior to any defence on the merits of the dispute. The arbitral tribunal decides on its own jurisdiction without considering other pending claims before another arbitral tribunal or court, between the same parties and having the same object, except when grounded reasons require the stay of the proceedings.

Under the Rules of the Court of International Commercial Arbitration, at the first hearing, the parties are called to answer to the arbitral tribunal the extent to which they have objections to its jurisdiction.

Law stated - 9 January 2024

Distinction between admissibility and jurisdiction of tribunal

Is there a distinction between challenges as to the admissibility of a claim and as to the jurisdiction of the tribunal?

Under the provisions of articles 542 and 1.112 of the CPC, the subject matter of the arbitral disputes must be considered. Under article 542(1) of the CPC, the persons who have full legal capacity may agree to settle the disputes between them by arbitration, except for those concerning marital status, the parties' capacity, inheritance and family relations, as well as rights that the parties cannot dispose of. Article 1.112(1) of the CPC provides that any case of a patrimonial nature may be subject to arbitration if it concerns rights that the parties may freely dispose of, and the law of the state of the headquarters of the arbitral tribunal does not reserve exclusive jurisdiction to the courts.

Articles 542(1) and 1.112(1) of the CPC impose limitations on the types of disputes that are arbitrable. The general approach in determining the objective arbitrability of a dispute is based on (1) its patrimonial (economic) nature, where specific types of pure non-patrimonial disputes are excluded from domestic arbitration; and, cumulatively, (2) the nature of the rights involved (ie, rights that the parties can dispose of). Under article 542 of the CPC, some categories of disputes are excluded from the scope of arbitration as there are legal provisions stipulating that the jurisdiction is conferred exclusively to the domestic courts.

In this regard, the recourse to arbitration in a non-arbitrable field obliges the arbitral tribunal to invoke, ***ex officio***, its lack of jurisdiction. If an arbitral award is granted in a field that is inaccessible to arbitration, it is subject to annulment pursuant to article 608(1)a) of the CPC. The nullity determined by the recourse to arbitration in a field closed to it is deemed to be absolute. In view of the above, it follows that, under the applicable CPC legal provisions, if the dispute is not arbitrable, then the arbitral tribunal is not able to settle the dispute.

On the other hand, there may be situations where the dispute is arbitrable and the arbitral tribunal may find that it has jurisdiction to resolve the dispute, but ultimately finds that the dispute is inadmissible for a variety of reasons, such as loss of rights owing to forfeiture or failure to comply with the subsidiary nature of the ***actio de in rem verso***; therefore, the dismissal of the case as inadmissible implies a judgment confirming that the merits of the dispute between the parties cannot be resolved, even though, at least in theory, the tribunal has jurisdiction to resolve the dispute and it is arbitrable.

In other words, jurisdiction comprises the ability or power of an arbitral tribunal to hear a claim, whereas admissibility relates to the characteristics of a particular claim. Accordingly, a tribunal would have to decide, as a primary issue, whether it has jurisdiction before determining whether a particular claim is admissible. It follows that, once a tribunal has upheld a jurisdictional objection, it would dismiss the case and consequently not decide on objections to admissibility; therefore, admissibility concerns whether the arbitral tribunal may exercise its power to judge the merits in relation to the claims submitted to it.

Law stated - 9 January 2024

ARBITRAL PROCEEDINGS

Place and language of arbitration, and choice of law

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings? How is the substantive law of the dispute determined?

In domestic and international arbitration, the Civil Procedure Code (CPC) standard provides that, if the parties fail to reach an agreement, the arbitral tribunal has residual jurisdiction in determining the place of arbitration. In the case of institutional arbitration, under the Rules of the Court of International Commercial Arbitration (the Court of Arbitration), the place of arbitration is at the headquarters of the Court of Arbitration, unless the parties have agreed otherwise.

As far as the language of arbitration proceedings is concerned, where no agreement is reached, the language of the substantive contract is considered to apply or any international language as to be determined by the arbitral tribunal. In an institutional arbitration under the Rules of the Court of Arbitration, unless the parties have agreed on the contrary, the language of arbitration is Romanian. Upon request by a party, the arbitral tribunal, taking into consideration the circumstances of the case, may decide to conduct the proceedings in another language.

In international arbitration, article 1120 of the CPC provides that the arbitral tribunal applies the substantive law chosen by the parties and, failing such choice, the law the arbitral tribunal deems to be adequate, taking always into account customs and any professional rules.

Law stated - 9 January 2024

Commencement of arbitration

How are arbitral proceedings initiated?

Arbitral proceedings are initiated by the claimant by submitting a request for arbitration. The request must be made in writing and must contain the identification data of the parties and of their representatives, the reliefs sought and the monetary value of the claim, the factual and legal merits of the case, the supporting evidence, the arbitration agreement with a copy of the corresponding contract, and the signature and the stamp of the parties, as the case may be. The request must be submitted along with a sufficient number of copies to be communicated to each party and for each of the members of the arbitral tribunal.

Under the Rules of the Court of Arbitration, the request for arbitration must be submitted in paper and electronic format, in as many counterparts as the number of defendants, for each of the arbitrators and an additional one for the arbitration file. The request for arbitration should also contain the claimant's proposal concerning the number of arbitrators, the name of the proposed arbitrator, the place of arbitration and its option with respect to the incidence of the expedited arbitration procedure. The term of arbitration starts from the date when the arbitrator accepted his or her appointment (or as of the date when the chair accepted his or her appointment) by giving a written statement of acceptance.

Law stated - 9 January 2024

Hearing

Is a hearing required and what rules apply?

According to the rules of the CPC, the arbitral tribunal at least organises a hearing for the parties' debates, based on the general principle of procedural law, which states that disputes shall be debated orally. The parties can attend hearings personally, represented by their attorneys or assisted by any person who has proof of proper representation. Nonetheless, any of the parties can require in writing that the settlement of the dispute be made in its absence, based on the evidence in the file.

The Rules of the Court of Arbitration contain provisions about hearings, article 35 regulating that hearings shall be organised if requested by a party or if the arbitral tribunal finds it appropriate. The parties can attend the hearing personally or be represented by their attorneys, counsel or any other person, and be assisted by interpreters. Where the Special Rules for Expedited Procedure are applicable (Annex V of the CPC), article 3(4) thereof provides that the hearings may be conducted by video conference, telephone or any similar means of communication.

Law stated - 9 January 2024

Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Each party must prove the facts in connection with its claims or defences. The evidence the parties may provide in connection with their claims or defences is prescribed by the CPC (witnesses, experts, documents, inspection by the arbitral tribunal and cross-examination). In addition, the parties and their representatives may be subject to examination. Before the arbitral tribunal, the experts and the witnesses are not cross-examined under oath.

Domestic law does not prevent the parties from agreeing on the evidence and on their administration before the arbitral tribunal.

In institutional arbitration under the Rules of the Court of Arbitration, there are some peculiarities:

- First, under article 31 of the Rules of the Court of Arbitration, which regulates the case management conference, after the referral of the case to the arbitral tribunal, it shall make an order giving notice to the parties for the case management conference. This is intended to organise, schedule and establish the applicable procedural rules, including with regard to evidence, and the stages for filing the written submissions, subject to the application of article 26(5).
- Second, the parties may submit written statements from the witnesses, and, regarding the experts, before or at the latest during the case management conference, the parties must inform the arbitral tribunal of whether they want to appoint an independent expert or intend to file expert reports prepared by party-appointed experts. After consulting the parties, the arbitral tribunal may appoint one or several experts who shall submit their reports in the case file, accompanied by proof of communication to the parties. In those situations, each party has the right to appoint a side expert to observe the work of the appointed experts.

Upon the parties' agreement, the arbitral tribunal, on the grounds of article 34(5) of the Rules of the Court of Arbitration, may apply IBA Rules on the Taking of Evidence.

Law stated - 9 January 2024

Court involvement

In what instances can the arbitral tribunal request assistance from a court, and in what instances may courts intervene?

Domestic courts may intervene, upon the request of a party, to remove obstacles to commencing or deploying arbitration proceedings, or to perform other powers that fall under the court's competence. For instance, the court can intervene if:

- the arbitral tribunal cannot be constituted, in the case of ad hoc arbitration;
- before or during arbitration proceedings, the court, by request, is asked to take interim or provisional measures;
- a party opposes the interim measures taken by the arbitral tribunal during arbitration proceedings; or
- it wants to apply sanctions to the expert or to the witnesses, or if a public authority fails to respond to an information request received from the arbitral tribunal.

The referral to the court shall be settled in an emergency procedure, and the judgment is not subject to any appeal.

Law stated - 9 January 2024

Confidentiality

Is confidentiality ensured?

The CPC does not contain express references to confidentiality since the Rules of the Court of Arbitration provide confidentiality as an obligation towards all the parties to the arbitration proceedings. The arbitral file and the proceedings are considered confidential, and the arbitrators and all the staff of the Court of Arbitration are bound by the obligation of confidentiality. The complete award can only be published with the parties' approval. The enforcement file is also confidential, but certain proceedings must be made public.

Law stated - 9 January 2024

INTERIM MEASURES AND SANCTIONING POWERS

Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Article 585 of the Civil Procedure Code (CPC) provides that, before or during the arbitration, either party may request the tribunal to take interim measures and provisional measures on the subject matter of the dispute or to ascertain certain factual circumstances. The approval of these measures will be brought to the knowledge of the arbitral tribunal by the party requesting them. During the arbitration, interim or provisional measures, as well as the observance of certain factual circumstances, may also be approved by the arbitral tribunal. In the case of opposition, enforcement of these measures is ordered by the court.

Regarding international arbitration, the CPC provides that the arbitral tribunal may order provisional or interim measures at the request of one of the parties, unless stated otherwise in the arbitration agreement. In addition, if the party concerned does not voluntarily execute the ordered measures, the arbitral tribunal may request the intervention of the competent court, which applies its own law. The judge or arbitrator may request the payment of an appropriate bail for the provision of interim or conservative measures.

Article 40 of the Rules of the Court of International Commercial Arbitration (the Court of Arbitration) provides that before the initiation of the arbitration proceedings, the arbitral tribunal may, upon request by a party and by means of a procedural order rendered under an expedited regime, grant any interim or conservatory measures that it deems appropriate. The arbitral tribunal may order the party requesting an interim or conservatory measure to provide the necessary security (deposit) in connection with the measure requested. Any requests for interim or conservatory measures filed before the initiation of the arbitration or before the case file was referred to the arbitral tribunal shall be decided by an emergency arbitrator.

During the arbitral proceedings, such measures can be ordered by either the arbitral tribunal or by the court of law. If a party opposes the measures taken by the arbitral tribunal, the enforcement shall be conducted by the court of law.

Law stated - 9 January 2024

Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

As at the time of writing, the Rules of the Court of Arbitration provide that requests for interim or conservatory measures filed before the initiation of the arbitration or before the case file was referred to the arbitral tribunal shall be decided by an emergency arbitrator in accordance with the procedure set forth in Annex II. Nothing similar is contained in the CPC about arbitration proceedings.

Law stated - 9 January 2024

Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

A constituted arbitral tribunal may order conservatory and interim measures related to the dispute matter, or measures regarding the finding of the facts. The enforcement of such measures can be assured with the assistance of the courts of law.

The arbitral tribunal may decide on measures regarding the conservation of evidence, seizure over opposing parties' assets or over the assets in dispute. In domestic arbitration and in certain situations, such measures are conditioned upon presenting a bail by the requesting party.

In international arbitration, under the CPC, the arbitral tribunal may order interim measures unless the contrary is stated in the arbitration agreement. If not, the arbitrator may condition the measure upon presenting a bail by the requesting party. The purpose of the bail is to secure the possible damages the party might incur from ordering the interim measures.

Law stated - 9 January 2024

Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

Under both the CPC and the Rules of the Court of Arbitration, there are no particular provisions on an arbitral tribunal enjoying power to order sanctions against the parties or their counsel where it deems that guerrilla tactics were used. Nevertheless, nothing prevents the arbitral tribunal from recording in the minutes the guerrilla tactics used by the parties or their counsel and for the concerned party to follow and rely on the provisions set forth by article 547 of the CPC, to eliminate the procedural difficulties created in such circumstances with the court support.

Under no circumstances may the arbitral tribunal or domestic arbitral institution sanction the counsel. If the procedural rules or professional ethics were violated, the party concerned may resort to the provision of article 547 of the CPC and ask the ordinary courts to eliminate the difficulties created in those circumstances, or they may refer the situation to the professional organisation to which the counsel belongs, which may trigger the disciplinary liability of the counsel.

Law stated - 9 January 2024

AWARDS

Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Under both the rules of the Civil Procedure Code (CPC) – primarily article 602(3) – and article 45(4) of the Rules of the Court of International Commercial Arbitration (the Court of Arbitration), awards can be issued by the majority of the arbitral tribunal members. Unanimity is not required. Dissenting opinions are accepted.

Law stated - 9 January 2024

Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

Under article 603(2) of the CPC and article 45(5) of the Rules of the Court of Arbitration, the arbitrator who has a dissenting opinion must prepare and sign a separate opinion, which is then attached to the arbitration award. Concurrent opinions are also provided by the same rules.

Law stated - 9 January 2024

Form and content requirements

What form and content requirements exist for an award?

The award is issued in writing. Under article 603 of the CPC, it must contain the:

- names of the arbitrators and of the arbitral assistant (if applicable), and the place and the delivery date of the award;
- names of the parties, their domicile or residence or, as the case may be, their denomination and headquarters, the names of the representatives and other parties attending the debates;
- arbitration agreement;
- dispute and the parties' arguments;
- de facto and de jure reasons of the award and, in the case of *ex aequo et bono* arbitration, the reasons that support the conclusion of the arbitral tribunal;
- court decision (disposition); and
- signatures of all arbitrators, with the observance of article 602(3) of the CPC regarding the majority rule, and, if applicable, the signature of the arbitral assistant.

Law stated - 9 January 2024

Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

Article 605 of the CPC provides that the arbitral award, setting out its reasoning, shall be served to the parties within one month of it being delivered.

Under the Rules of the Arbitration Court, unless the parties have agreed otherwise, the award shall be issued no later than six months of the date on which the arbitral tribunal was constituted. The award shall be made in writing within one month of the date of closing of the proceedings or, as the case may be, of the date of filing of the post-hearing submissions or, as the case may be, within the time limit agreed on with the parties. The parties may agree at any time during the arbitration to extend the term of the arbitration, by either written or oral statement, made before the arbitral tribunal and recorded in a procedural order. The arbitral tribunal may order, by way of a procedural order, the extension of the term of the arbitration if it finds that a party has obstructed the conduct of the arbitration or for other justified reasons. The term shall be automatically extended by three months if the legal personality of a party ceases to exist or in the case of the death of one of the parties.

The award shall be made in writing within one month of the date of closing of the proceedings or, as the case may be, of the date of the filing of the post-hearing submissions or, where applicable, within the time limit agreed on with the parties. The president of the Court of Arbitration may extend the time limit for making and drafting the award based on a reasoned request from the arbitral tribunal. Caducity (time-bar effect) can be claimed if requested in due time in conformity with the Rules of the Court of Arbitration.

Law stated - 9 January 2024

Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The date of the award is the date when the arbitral tribunal delivers the award. That date is important for determining the time limit under which the arbitral tribunal must render the award and whether the award was delivered in observance of the deadline under the CPC or the Rules of the Court of Arbitration.

The date of service of the award stating the reasons is important for:

- the motion to set aside the arbitral award, which may be one or three months;
- the referral for the correction of clerical errors or the interpretation or completion of the award. The time limit is 15 days under the CPC and 15 days under the Rules of the Court of Arbitration; and
- the award to be deemed final and binding as of the date of its service.

Law stated - 9 January 2024

Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The arbitral tribunal may issue final, interim or partial awards based solely on the relief sought by the parties in dispute. In domestic arbitration, partial awards may be delivered to the extent that a party acquiesces to the other party's claims. In international arbitration based on the

Romanian law of arbitration, article 1.121(4) of the CPC provides that the arbitral tribunal may issue partial awards unless the arbitration agreement states the contrary. If not, the arbitrator may condition the measure upon granting bail to the requesting party. The purpose of bail is to secure damages the party might incur by ordering interim measures.

The arbitral tribunal may only grant the reliefs sought by the parties in dispute, provided that the relief is lawful, possible and, at least, determinable.

Law stated - 9 January 2024

Termination of proceedings

By what other means than an award can proceedings be terminated?

Under the provisions of the CPC, arbitral proceedings can be terminated by:

- the settlement of the parties, formalised in writing;
- the caducity of the arbitration (time-barred), raised in due time by the concerned party; and
- waiver of the parties to the disputed claims, which must be formalised in a written statement or recorded by the arbitral tribunal.

In addition, for arbitration under the Rules of the Court of Arbitration, arbitration proceedings can be terminated in the case of lapse of proceedings or in the case of claimants' default to comply with the duties indicated by the arbitral tribunal.

Law stated - 9 January 2024

Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

The costs of arbitral proceedings are allocated according to the parties' agreement. Failing this, the losing party will bear its own costs and will be compelled to pay the costs of the winning party in as much as the latter's claims were admitted.

The costs of arbitral proceedings include the registration fee, the administrative fee, costs for the taking of evidence, translation costs, hearing costs and the fees of the arbitrators, attorneys, counsels, parties, arbitrators and witnesses, as well as experts' costs with travelling expenses and other expenses in connection with the arbitration proceedings. The latter costs are divided into two categories:on the one hand, the statement of claims registration costs, the arbitration fee, the arbitrators' fees and any other costs associated with the proceedings owing to the arbitral institution and, on the other hand, costs incurred by the parties for legal assistance, experts' fees, translations fees, etc.

Unless otherwise established by the parties, the arbitral tribunal, upon request by a party, shall order in the award the payment by one of the parties of any reasonable costs incurred by the other party, including the costs related to representation before the arbitral tribunal, taking into consideration the result of the arbitration, the manner in which each party contributed

to ensuring the efficiency and expeditiousness of the proceedings and any other relevant circumstances.

In international arbitration, pursuant to article 1122 of the CPC, unless stated to the contrary, the arbitrator's fees and his or her travelling costs are incurred by the parties who appointed him or her. In the case of a sole arbitrator or of the chair, the costs are allocated equally between the parties.

Law stated - 9 January 2024

Interest
May interest be awarded for principal claims and for costs, and at what rate?

The arbitral tribunal may award interest for principal claims and costs. The interest rate shall be that established by the parties or, failing that, under Ordinance No. 13/2011 on the return and default interest rate. The interest rate for monetary obligations payable in Romanian currency is established based on the monetary policy interest rate published by the National Bank of Romania. On 8 November 2023, the monetary policy interest rate was maintained at 7 per cent.

Law stated - 9 January 2024

PROCEEDINGS SUBSEQUENT TO ISSUANCE OF AWARD

Interpretation and correction of awards
Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The award can be corrected ***ex officio*** or upon the request of the parties, whereas the interpretation may be decided only based on the parties' request. In the case of arbitration under the Civil Procedure Code (CPC), article 604 provides that the concerned party may submit a claim for the correction of clerical errors, interpretation or completion within 10 days of the service date.

In the case of arbitration under the Rules of the Court of International Commercial Arbitration (the Court of Arbitration), errors or omissions with respect to the name, capacity and arguments of the parties or calculation errors or omissions, as well as any other clerical errors in the award or the procedural orders, can be corrected by the motion of the tribunal or following a request by a party, which to be filed within 15 days of the date of communication of the award. Within 15 days of the service date, the parties may submit a motion for interpretation or the completion of an arbitral award.

Law stated - 9 January 2024

Challenge of awards
How and on what grounds can awards be challenged and set aside?

Under article 608 of the CPC, an award can be challenged only by means of a motion for setting aside on the following grounds:

- the dispute was not subject to arbitration;
- the arbitral tribunal settled the dispute without any arbitration agreement, or the arbitration agreement was null and void or not enforceable;
- the arbitral tribunal was constituted with the non-observance of the arbitration agreement;
- the party was not present at the debate hearing, and the service was unlawfully made;
- at least one party announced its interest in raising the caducity argument, the award was delivered after the expiry of the caducity term set out in article 567 of the CPC, and the parties did not agree on continuing the proceedings under articles 568(1) and 568(2) of the CPC;
- the arbitral tribunal settled the dispute ***extra petita*** or ***ultra petita***;
- the award does not contain the operative part (the court decision) and its reasoning, indicate the date and the place of delivery or contain the signatures of the arbitrators;
- the award infringes public policy, morals and the mandatory provisions of the law; and
- if, after delivering the award, the Constitutional Court issued a judgment on the plea raised in the file, stating the non-constitutionality of the law, the ordinance or the provision from a law or an ordinance that forms the object of the plea or of other provisions from the contested enactment is not to be dissociated from the provisions indicated in the referral to send the plea to the Constitutional Court.

Law stated - 9 January 2024

Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

The decision on a motion to set aside an arbitral award can only be challenged by an appeal on points of law. For the motion to set aside the judgment, the judicial stamp tax is established based on the value of claims. The appeal on points of law is subject to judicial stamp tax evaluated depending on the indicated ground of appeal, under Emergency Ordinance No. 80/2013 on the judicial stamp tax.

The period for deciding on a motion to set aside the judgment may vary between six months and two years for each level.

Costs are generally represented by the judicial stamp tax and by the attorneys' fees.

Under the CPC, the costs are borne by the losing party, but the court retains the liberty to decide whether the costs are to be entirely reimbursed to the winning party.

Law stated - 9 January 2024

Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

First, to have the awards enforced, leave by the court must be provided based on an application by the concerned party under article 1126 of the CPC. The party may follow the provisions of either the New York Convention or the CPC.

Second, the principle enshrined in article 1125 of the CPC is that any foreign arbitral award may be recognised and enforced in Romania insofar as the dispute may be subject to arbitration in Romania, and if the award has no provision that is inconsistent with Romanian public policy. Failure to comply with the two requirements implies a refusal to enforce the award.

Third, as far as other impediments to enforcement are concerned, article 1129 of the CPC provides the following cases for when the enforcement of a foreign arbitral award may be hindered:

- the parties were unable to conclude the arbitration agreement, according to their own law, established under the law of the state where the award was rendered;
- the arbitration agreement was void under the law elected by the parties or, failing such election, under the law of the state where the award was rendered;
- the party against which the award is enforced was not duly informed of the appointment of the arbitrators or the arbitration proceedings, or it was unable to defend in arbitral dispute;
- the appointment of the arbitral tribunal or the arbitration proceedings violated the convention of the parties or, failing such convention, the law of the place of arbitration;
- the award deals with a dispute not provided for by the arbitration convention or outside the limit set out by the convention or contains provisions exceeding the terms of the arbitral convention; however, as the provisions from the award dealing with the aspects subject to arbitration may be separated from those regarding aspects not subject to arbitration, the former are to be recognised and enforced; or
- the award is not yet binding on the parties, or it was set aside or stayed by a competent authority from the state where or pursuant to which it was rendered.

Law stated - 9 January 2024

Time limits for enforcement of arbitral awards

Is there a limitation period for the enforcement of arbitral awards?

The first principle under Romanian law is that arbitral awards are voluntarily enforced by the parties. The second principle is that arbitral awards are to be enforced in the same manner as a court of law judgment where the party in default fails to comply with the award. The third principle is that under article 706 of the CPC, the right to ask and obtain enforcement

of an award is subject to a statute of limitations. The statute of limitations is three years in the case of obligations and 10 years in the case of property rights.

Law stated - 9 January 2024

Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

An award set aside by a court at the place of arbitration cannot be enforced on Romanian territory.

Law stated - 9 January 2024

Enforcement of orders by emergency arbitrators

Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?

There are no provisions contained in the CPC regarding the appointment of an emergency arbitrator.

Under Annex II of the Rules of the Court of Arbitration, a party may apply for the appointment of an emergency arbitrator for interim or conservatory measures requested, and the powers of the arbitrator terminate on the date when the arbitral tribunal is constituted. Within two days of his or her appointment, the emergency arbitrator shall establish an interim procedural timetable and decide on the need to provide a security deposit, as well as on the period in which the party against which the interim or conservatory measure is sought may submit its answer to the request. Any procedural order regarding the interim or conservatory measures shall be issued no later than 10 days of the date the appointment was communicated to the emergency arbitrator. The president of the Court of Arbitration may extend this period upon a reasoned request of the emergency arbitrator.

A procedural order shall be binding on the parties when rendered. Upon a reasoned request of a party, the emergency arbitrator may amend or revoke the procedural order. By agreeing to arbitration under the Rules of the Court of Arbitration, the parties undertake to immediately comply with any procedural orders regarding the interim or conservatory measures ordered by the emergency arbitrator. Where a party fails to comply with the procedural order regarding the interim or conservatory measures, the concerned party may resort to the domestic courts to obtain a judgment enforceable with the aid of a bailiff.

Article 9(5) of Annex II of the Rules of the Court of Arbitration provides that the arbitral tribunal is not bound by the procedural order or by the reasons held by an emergency arbitrator and may amend or cancel the interim or conservatory measures taken by such arbitrator.

Law stated - 9 January 2024

Cost of enforcement

What costs are incurred in enforcing awards?

In enforcing awards, the concerned party may incur, inter alia, the following costs: attorneys' fees, bailiff's fees, judicial stamp tax for enforcing the award provided by Emergency Ordinance No. 80/2013 and other costs that might be incurred in the case of challenging the enforcement procedure.

Law stated - 9 January 2024

OTHER

Influence of legal traditions on arbitrators

What dominant features of your judicial system might exert an influence on an arbitrator from your jurisdiction?

Generally, in the Romanian judicial system, proceedings are conducted either by a judge, in front of courts of law, or by an arbitrator in arbitration proceedings. In practice, judges strongly emphasise the procedural rules, with the result that written witness statements are not common practice in proceedings and that a party in dispute may be subject to examination, but without the possibility of testifying as a witness. Regarding arbitration under the Rules of the Court of International Commercial Arbitration (the Court of Arbitration), the procedural rules are more flexible and allow the parties to bring written witness statements in their support.

Law stated - 9 January 2024

Professional or ethical rules

Are specific professional or ethical rules applicable to counsel and arbitrators in international arbitration in your jurisdiction? Does best practice in your jurisdiction reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

A counsel is subject to the rules enacted by the bar to which it adheres. In Romania, counsels are members of one of the bars composing the National Union of Lawyers (UNBR). The rules for counsel are comprised in the Statute on the Lawyer Profession issued by this union. The UNBR is a full member of the Council of Bars and Law Societies of Europe and has adopted the Code of Conduct as its own code of professional conduct. Such rules are not specific professional or ethical rules applicable only in the case of international arbitration, but rather general rules on the relationship of the counsel to the client, to the magistrate and to other counsel. The rules on relations to the magistrates also apply in the relations to the arbitrators.

In the section of the Civil Procedure Code (CPC) dealing with international arbitration, there are no references to any professional or ethical rules applicable to the arbitrators.

On 17 June 2017, the Romanian Bar Association adopted Decision No. 268 of its Council, approving the Code of Ethics applying to Romanian lawyers, which includes the fundamental principles of the legal profession: independence, dignity, integrity, loyalty, professional secrecy and freedom of defence.

Law stated - 9 January 2024

Third-party funding

Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?

Arbitration costs are regulated under articles 595–600 of the CPC, where there is no reference related to third-party funding of arbitral or non-arbitral claims. Nevertheless, this should not be translated into ***a de plano*** prohibition of third-party funding of arbitral claims (eg, there is nothing preventing the parties from including in the arbitration agreement clauses related to third-party funding).

Further, under article 620 of the CPC, in institutional arbitration, the arbitration costs are awarded in accordance with the rules of the arbitration institution. As at the time of writing, the Rules of the Court of Arbitration list some of the most typical arbitration costs incurred by the parties, such as arbitration and arbitrators' fees and counsels and experts' fees, but they also refer to any legal costs incurred by the parties. In the authors' opinion, the extent to which third-party funding costs fall under the ambit of other legal costs is a matter to be decided by the arbitral tribunal on a case-by-case basis.

Law stated - 9 January 2024

Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Romania is an EU member state and, accordingly, the provisions related to visas and work permits are those indicated by the European legislation transposed into Romanian national law. Attorneys from EU member states are also subject to the special regulations enacted in this respect. Attorneys from EU member states may represent and assist the parties in arbitration.

Lawyers or consultants from third-party states may require residence permits and must adhere to visa requirements, following the formalities of the National Bar Association or other relevant professional bodies, and are subject to taxes imposed by the National Bar Association and by the tax authority for the performed activity. Activities of the lawyers and arbitrators undertaken on Romanian territory are subject to value-added tax rules.

Law stated - 9 January 2024

UPDATE AND TRENDS

Legislative reform and investment treaty arbitration

Are there any emerging trends or hot topics in arbitration in your country? Is the arbitration law of your jurisdiction currently the subject of legislative reform? Are the rules of the domestic arbitration institutions mentioned

> above currently being revised? Have any bilateral investment treaties recently been terminated? If so, which ones? Is there any intention to terminate any of these bilateral investment treaties? If so, which ones? What are the main recent decisions in the field of international investment arbitration to which your country was a party? Are there any pending investment arbitration cases in which the country you are reporting about is a party?

On 11 August 2023, an ad hoc panel appointed under the rules of the International Centre for Settlement of Investment Disputes (ICSID) in Washington issued a decision dismissing the request for an annulment action filed by Alpiq AG Switzerland (Alpiq) against the Romanian state, which is represented in the dispute by the Ministry of Energy. The decision upheld the judgment of 9 November 2018, which had rejected Alpiq's claims in their entirety. The ruling handed down by the ad hoc committee, made up of three arbitrators, obliges Alpiq to pay the costs and marks the final settlement of the arbitration dispute in favour of the Romanian state.

In the arbitration proceedings ***Alpiq v Romania*** (ICSID Case No. ARB/14/28) brought before the ICSID arbitral tribunal on 17 November 2014, the parent company of the energy traders Alpiq had requested that Romania be ordered to pay over US$450 million in damages, alleging violations of its rights in connection with the opening of insolvency proceedings against SPEEH Hidroelectrica SA and the denunciation of the energy sale-purchase agreements concluded by Alpiq with SPEEH Hidroelectrica SA. Alpiq claimed that Romania had violated its rights guaranteed by the 1993 bilateral investment treaty between Romania and Switzerland and the 1994 Energy Charter Treaty, citing, among other grounds, expropriation of the investment and violation of the state's obligation to grant fair and equitable treatment.

The above aside, there are registered and pending investment arbitration cases under the UNCITRAL Rules to which Romania is a party.

Law stated - 9 January 2024