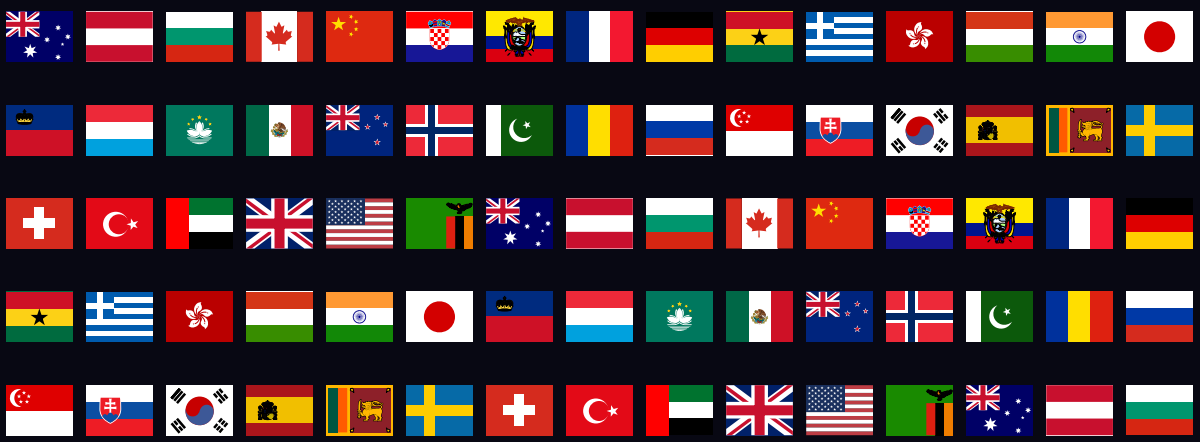
ARBITRATION

Romania



LEXOLOGY
Getting The Deal Through

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Arbitration

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Quick reference guide enabling side-by-side comparison of local insights, including into applicable laws, conventions and treaties, and prominent local arbitral institutions; arbitration agreements; constitution, jurisdiction and competence of arbitral tribunals; arbitral proceedings; interim measures and sanctioning powers; awards; proceedings subsequent to issuance of award; influence of local legal traditions on arbitrators; professional or ethical rules; third-party funding; regulation of activities.

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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, and to this end it is a signatory party to the most important international instruments dealing with arbitration. In 1961, by Decree No. 186, Romania became a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. As of the date of that adherence (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 adopted by the United Nations in Geneva, on 21 April 1961, subsequently ratified by Decree No. 281 of 25 June 1963; also, Romania is party to the Washington 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.

In conformity with article 11(2) of the Romanian Constitution, the treaties ratified by the Romanian parliament are part of domestic law.

Law stated - 19 November 2021

Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

As at 2021, Romania is party to 98 bilateral investment treaties (BITs), of which 74 are still in force (https://investmentpolicy.unctad.org/international-investment-agreements/countries/174/romania?type=bits). 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 such cease or termination through Law No. 18/2017, entered into force on 24 March 2017. The date when these BITs are to be ceased or terminated will be published in the Official Gazette by the Ministry of Foreign Affairs of Romania. On 5 May 2020, Romania and 22 other EU member states executed the Agreement on the Termination of Bilateral Investment Treaties 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. As a consequence, bilateral investment treaties listed under Annex A of the Agreement are terminated according to the terms set out in the Agreement. For greater certainty, Sunset Clauses of Bilateral Investment Treaties listed under Annex A are terminated and shall not produce legal effects (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 Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union, 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.

Law stated - 19 November 2021

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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 related to domestic and foreign arbitral proceedings are contained in the New Civil Procedure Code (NCPC), in force since 15 February 2013, in Book IV entitled 'About Arbitration' (articles 541 to 621), dealing with domestic arbitration, and in Book VII about 'The International Civil Proceedings', Title IV, regarding 'The International Arbitration and the Effects of Foreign Awards' (articles 1111 to 1133). The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Romania is a state party signatory, is also part of Romanian law applying to 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.

Law stated - 19 November 2021

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?

Domestic law on arbitration is contained in Book IV of the NCPC, articles 541 to 621, whereas international arbitration is regulated under articles 1111 to 1133 of the same NCPC (Book VII, Title IV). These are modern and flexible provisions, reflecting attractive arbitration rules for both domestic and international arbitration. To a quite large extent, the provisions of the NCPC bear some resemblance to the UNCITRAL Model Law (eg, in the case of international arbitration, the arbitral tribunal can 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, namely that Romanian provisions do not contest the existence of the right to apply for such measures and orders. However, a detailed regime in this respect is not provided by the NCPC. At the institutional level, the current version in force of the Rules of the Court of Arbitration have more emphasis on this issue. Thus, they regulate the requests for the application of interim measures prior to the commencement of the arbitration procedure or before the case file is referred to the arbitral tribunal, where such requests are settled by an emergency arbitrator, as per article 40 of the mentioned institutional rules.

However, there is nothing that prevents the parties from referring in their arbitration agreement to any of the provisions contained in the UNCITRAL Model Law applying to their arbitration.

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Mandatory provisions

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

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

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

Law stated - 19 November 2021

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, and as such the EU sources of law in connection with conflict of laws are to be scrutinised 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 is 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 Romanian 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. Where the parties fail to agree on the law governing the merits of a dispute, both EU law and the Romanian Civil Code provide the rules for determining the applicable substantive law.

Law stated - 19 November 2021

Arbitral institutions

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

As per Law No. 335 of 3 December 2007, the most prominent permanent non-corporate arbitration institution is the Court of International Commercial Arbitration attached to 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

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As the court of arbitration system is organised on a cameral basis, it follows that in each of the 41 administrative counties of Romania 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 NCPC (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 - 19 November 2021

ARBITRATION AGREEMENT

Arbitrability

Are there any types of disputes that are not arbitrable?

As regards international arbitration, the New Civil Procedure Code (NCPC) 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;
- intracompany (corporate law) disputes are reserved to the courts of law as per the provisions of Law No. 31/1990 on Companies; 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 - 19 November 2021

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, the NCPC (article 548(2)) 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

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the transfer of an ownership right or to the creation of another property right over an immovable property.

Under the NCPC (article 550(1)), 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 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 for the cases when the matter in dispute is not arbitrable).

Law stated - 19 November 2021

Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

According to Romanian law – NCPC (article 554) – and to article 6 of the European Convention on Human Rights, an arbitration agreement is no longer enforceable for one or another of the following reasons:

- 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.
- The proceedings before courts of law were initiated and the defendant raised no objection on jurisdiction.

Law stated - 19 November 2021

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 the Romanian arbitration law in the case of domestic arbitration – article 550 (2) NCPC ('The validity of the arbitration clause is independent of the validity of the contract that was entered') and in the case of international arbitration – article 1113 (3) NCPC ('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').

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Third parties – bound by arbitration agreement

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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, parties different from the signatories may be bound by an arbitration agreement if:

- the underlying contract was assigned to a third party in accordance with the rules set out in the NCPC;
- the assignee of a claim is bound by the arbitration agreement by virtue of 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 - 19 November 2021

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 NCPC, 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. According to these general rules, any person who has a substantive interest can intervene in a dispute pending between other parties. Where a third party intends to intervene for the benefit of one of the original parties, such intervention is allowed without the existence of the consent of the original parties.

The Rules of the Court of Arbitration have a different perspective on third-party participation in arbitration, 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. 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, by 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, inter alia, 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 in accordance with 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 part of the Rules of the Court of Arbitration, as well as any additional arbitration costs.

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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', and therefore, to the best of our knowledge, the group of companies doctrine is not recognised yet in the Romanian jurisdiction with respect to arbitration. Law No. 85/2014 regarding insolvency proceedings refers under article 5(35) to the group of companies involving two or more companies interconnected by control or holding of qualified participations, and under article 5(6) refers to the ‘parent company’, that is, the company that exercises control or dominant influence over the other companies in the group. At the same time, articles 183 et seq. of the same law govern the special provisions on insolvency proceedings of a group of companies. Also, article 43(1) of the Company Law No. 31/1990 stipulates that the branches do not enjoy legal personality as a company. No particular provision contained in the national law (NCPC) refers to the group of companies, but this does not mean that no interpretations can be made under the other existing provisions, which support the concept of economic and legal reality at the conclusion of contracts.

Law stated - 19 November 2021

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 provide on this matter in connection with the nomination of arbitrators by ruling that if there are more claimants or defendants, the parties having 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 - 19 November 2021

Consolidation

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

The NCPC 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.

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In deciding on consolidation, the arbitral tribunal shall consult with the parties and may have regard to, inter alia, the stage of the pending arbitration, whether the arbitrations raise common legal or factual issues, and the efficiency and expeditiousness of the proceedings.

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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 New Civil Procedure Code (NCPC) provide that any natural person who has an unrestricted exercise of its rights can be an arbitrator. The Rules on the Organization and Operation of the Court of Arbitration provide that any person – whether a Romanian or a foreign national – can be an arbitrator if he or she has an unrestricted exercise of his or her rights, enjoys 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 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 NCPC, as well as 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 Romanian Constitution prohibits discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin. Further, article 11 of the Romanian Civil Code stipulates that it cannot be derogated by conventions or by unilateral legal acts from the laws that concern public policy or from good morals. In other words, Romanian legislation prohibits the conclusion of agreements having as object the appointment of arbitrators exclusively on the basis of criteria related to nationality, religion or gender.

Law stated - 19 November 2021

Background of arbitrators

Who regularly sit as arbitrators in your jurisdiction?

As a rule, any person enjoying the full capacity of his or her rights may act as an arbitrator. The Rules on the Organization and Operation of the Court of Arbitration provide under article 4(4) 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

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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 - 19 November 2021

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 NCPC, 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.

Not least, 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 - 19 November 2021

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 NCPC 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

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- 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 NCPC. The challenge request is settled by an arbitral tribunal appointed by the president of the Court of Arbitration or, in 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.

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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 the nomination by the parties, the arbitrators are to be 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 and, with regard to the expenses occurred during the dispute, the arbitral tribunal shall assess whether all parties will bear those expenses.

Law stated - 19 November 2021

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) NCPC 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 the Rules of the Court of Arbitration (article 21) the person nominated as arbitrator is under a duty to provide,

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within five days as of the date of receiving the nomination, 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 - 19 November 2021

Immunity of arbitrators from liability

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

The NCPC provides for cases where the arbitrators are to be held liable to the parties, such as:

- 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 the 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 such action or omission is owing to their wilful misconduct or gross negligence.

Law stated - 19 November 2021

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 the court proceedings. In such a case, only the parties may challenge the court's jurisdiction on grounds of the existing arbitration agreement. Where the jurisdiction is challenged on grounds of an existing arbitration agreement, the court shall retain jurisdiction if the defendant's arguments on the merits of the dispute have no reservation on 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 until at the first hearing, provided that the subpoena was duly served.

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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?

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As per the national arbitration law, represented by the New Civil Procedure Code (NCPC) (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 competence-competence principle). In domestic arbitration, at the first hearing, provided that the subpoena was duly served, the arbitral tribunal verifies its jurisdiction. Where jurisdiction is retained, the concerned party may challenge such a 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 such decision of the tribunal cannot be challenged with a motion for setting aside the award.

In international arbitration (NCPC, 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 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 - 19 November 2021

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 New Civil Procedure Code (NCPC) 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 Arbitration, the place of arbitration is at the Court's headquarters, 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 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 NCPC 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 - 19 November 2021

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, the signature and the stamp of the parties, as the case may be.

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The request must be submitted in several copies sufficient 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 - 19 November 2021

Hearing

Is a hearing required and what rules apply?

According to the rules of the NCPC, 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 enjoys of a proper representation proof. 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 such a hearing personally or be represented by their attorneys, counsel or by any other person and be assisted by interpreters. Where the Special Rules for Expedited Procedure are applicable, according to article 3(4) thereof, the hearings may be conducted by video conference, telephone or by any similar means of communication.

Law stated - 19 November 2021

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?

First, 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 general law, namely the NCPC (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 upon the evidence and upon their administration before the arbitral tribunal.

In institutional arbitration under the Rules of the Court of Arbitration, there are some peculiarities. First, according to 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, aimed to organise, schedule and establish the applicable procedural rules, including with respect 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, in what concerns the experts, prior to or at the latest during the case management conference, the parties have the obligation to inform the arbitral tribunal whether they

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choose the appointment of 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 such a situation, each party has the right to appoint a side expert to attend the work of the appointed experts.

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

Law stated - 19 November 2021

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 in the following situations:

- 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; and
- 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 - 19 November 2021

Confidentiality

Is confidentiality ensured?

The NPCP does not contain express references to confidentiality, since the Rules of the Court provide that as an obligation towards all the participants 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 publicly.

Law stated - 19 November 2021

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 New Civil Procedure Code (NCPC) 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

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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, the enforcement of these measures is ordered by the court.

As to international arbitration, the NCPC 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.

Regarding the Rules of the Court of Arbitration, article 40 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 - 19 November 2021

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 of the these rules. Nothing similar is contained in the NCPC about arbitration proceedings.

Law stated - 19 November 2021

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, as per the NCPC, it is stated that the arbitral tribunal may order interim measures, unless the

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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 - 19 November 2021

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 NCPC 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 into 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 NCPC, to eliminate the procedural difficulties created in such circumstances with the court support. As far as the second question is concerned, under no circumstances may the arbitral tribunal or domestic arbitral institution sanction the counsel. If the procedural rules or the professional ethics were violated, the party concerned may resort to the provision of article 547 and ask the ordinary courts to eliminate the difficulties created in such 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 - 19 November 2021

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

Law stated - 19 November 2021

Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The arbitrator that has a dissenting opinion must prepare and sign a separate opinion, attached to the arbitration award (as per article 603(2) of the NCPC and per article 45(5) of the Rules of the Court of Arbitration). Concurrent opinions are also provided by the same rules.

Law stated - 19 November 2021

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Form and content requirements

What form and content requirements exist for an award?

The award is issued in writing and, pursuant to article 603 of NCPC, 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 name of the representatives, as well as 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 NCPC regarding the majority rule, and, if applicable, the signature of the arbitral assistant.

Law stated - 19 November 2021

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?

As far as the NCPC is concerned, article 605 provides that the arbitral award, setting out its reasoning, shall be served to the parties within one month from when it was delivered.

Under the Rules of the Arbitration Court, unless the parties have agreed otherwise, the award shall be issued no later than six months from the date on which the arbitral tribunal has been constituted. Also, the award shall be made in writing within a term of maximum one month as of the date of closing of the proceedings or, as the case may be, as of the date of filing of the post-hearing submissions or, as the case may be, within the time limit agreed upon 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 obstructs the conduct of the arbitration or for other justified reasons. The term shall be automatically extended by three months where 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 a term of a maximum of one month from the date of closing of the proceedings or, upon circumstances of the case, from the date of the filing of the post-hearing submissions or, where applicable, within the time limit agreed upon 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 - 19 November 2021

Date of award

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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, and such date is decisive for the following:

- the time limit under which the arbitral tribunal must render the award; and
- whether the award was delivered with the observance of the deadline set out by the NCPC or of the Rules of the Court of Arbitration.

The date of the service of the award stating the reasons is decisive for the following:

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

Law stated - 19 November 2021

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 upon 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 NCPC 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 the interim measures.

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

Law stated - 19 November 2021

Termination of proceedings

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

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

- the settlement of the parties, formalised in writing;
- the caducity of the arbitration (time-bared) 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

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case of lapse of proceedings or in the case of claimants' default to comply with the duties indicated by the arbitral tribunal.

Law stated - 19 November 2021

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 or, 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 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. In turn, 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 due to the arbitral institution and, on the other hand, costs incurred by the parties with 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 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 NCPC, 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 - 19 November 2021

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 for costs. The interest rate shall be that established by the parties or, failing that, pursuant to the government's 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 10 November 2021, the monetary policy interest rate was 1.75 per cent.

Law stated - 19 November 2021

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

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only based on parties' request. In the case of arbitration under the New Civil Procedure Code (NCPC), article 604 provides that the concerned party may submit a claim for the correction of clerical errors, for interpretation or for completion within 10 days of the service date.

In the case of arbitration under the Rules of 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 in the procedural orders can be corrected by the motion of the tribunal or following a request by a party, to be filed within 15 days from the date of communication of the award. Within 15 days from the service date, the parties may submit a motion for interpretation or for the completion of an arbitral award.

Law stated - 19 November 2021

Challenge of awards

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

Pursuant to article 608 of the NCPC, 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, the award was delivered after the expiry of the caducity term set out in article 567 of the NCPC and the parties did not agree on continuing the proceeding pursuant to article 568(1) and (2) of the NCPC;
- 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 delivering, 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 - 19 November 2021

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, pursuant to Government 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

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level.

Costs are generally represented by the judicial stamp tax, and by the fees of the attorney.

According to the NCPC, 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 - 19 November 2021

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 pursuant to article 1126 of the NCPC. The party may follow the provisions of either the New York Convention or the NCPC.

Second, the principle enshrined in article 1125 of the NCPC 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 as long as the award has no provision 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, the NCPC of Romania provides under article 1129 for the following cases 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 pursuant to the law of the state where the award was rendered;
- the arbitration agreement was void pursuant to the law elected by the parties or, failing such election, pursuant to the law of the state where the award was rendered;
- the party against which the award is enforced was not duly informed on the appointment of the arbitrators or on 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 by the arbitration convention or outside the limit set out by such convention or comprises 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 - 19 November 2021

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 the article 706 of the NCPC, the right to ask and obtain the enforcement of an award is subject to a statute of limitation. The statute of limitation is of three years in

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case of obligations and of 10 years in case of property rights.

Law stated - 19 November 2021

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 - 19 November 2021

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 NCPC in connection with the appointment of an emergency arbitrator.

In accordance with 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 such arbitrator terminate on the date when the arbitral tribunal is constituted. Within two days from its appointment, the emergency arbitrator shall establish an interim procedural timetable and decide with respect to the need to provide a security deposit, as well as with respect to 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 with respect to the interim or conservatory measures shall be issued no later than 10 days from the date when 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 upon 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, 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 - 19 November 2021

Cost of enforcement

What costs are incurred in enforcing awards?

In enforcing awards, the concerned party may incur, inter alia, the following costs:

- costs of the attorneys;
- fees of the bailiff;
- judicial stamp tax for enforcing the award provided by Government Emergency Ordinance No. 80/2013; and
- other costs that might occur in the case of challenging the enforcement procedure.

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Law stated - 19 November 2021

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, the 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 witness. As far as the arbitration under the Rules of the Court of Arbitration is concerned, the procedural rules are more flexible and allow the parties to bring written witness statements in their support.

Law stated - 19 November 2021

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. The rules for counsel are comprised in the statute on the lawyer profession issued by this union. The National Union of Lawyers 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 New Civil Procedure Code (NCPC) 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 of its Council No. 268 approving the Code of Ethics applying to Romanian lawyers that includes the fundamental principles of the legal profession: independence, dignity, integrity, loyalty, professional secrecy and freedom of defence.

Law stated - 19 November 2021

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 NCPC, 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 into the arbitration agreement clauses related to third-party funding). Also, as per article 620 of the NCPC, in institutional arbitration, the arbitration costs are awarded according to the rules of the arbitration institution. As at the time of writing, the Rules of the Court of Arbitration list some of the most usual arbitration costs incurred by the parties, such as arbitration and arbitrators' fees

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and counsels and experts' fees, but they also make reference 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 - 19 November 2021

Regulation of activities

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

Romania is a member state of the European Union 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 - 19 November 2021

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?

Disputes between a third-state operator and a third state. Article 1(6) of the Energy Charter treaty – concept of 'investment'

The Micula brothers

In March 2020, an arbitral tribunal established under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) rejected the claims of brothers Viorel and Ioan Micula, who demanded more than 9 billion Romanian lei in damages from the Romanian state. The applicants alleged that, especially after accession to the European Union in 2007:

- Romania has allowed and facilitated the existence and development of important black markets in the field of alcohol production;
- did not apply tax legislation allowing the collection of taxes in the field of alcohol production; and
- unilateral changes were imposed on the contracts for the exploitation of mineral water by the National Mineral Water Company that led to increased costs for its extraction.

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Following defences made by Romania's lawyers, the arbitral tribunal found that Romania had not breached its obligation to ensure fair and equitable treatment and the obligation to fully protect and secure the applicants' investment.

This was the Micula brothers' second arbitration with the Romanian state. On 11 December 2013, they won an arbitral litigation against Romania in ICSID Case ARB/05/20 Micula and Others v Romania, and were awarded more than US $300 million in compensation by the ICSID arbitral tribunal.

In both cases, the brothers had based their claims on a bilateral investment treaty (BIT) concluded on 29 May 2002 between the governments of Sweden and Romania. But the subject matter of the brothers' 2020 litigation was different from that of the 2013 dispute. The main complaint in the 2013 dispute concerned tax facilities granted by the Romanian state that were subsequently eliminated or reduced, while the 2020 dispute alleged that Romania had breached its international obligations under the BIT by failing to properly enforce laws on taxation of beverages and by adopting a new price regime for mineral water.

The Ministry of Public Finances announced that, following the Romanian state's victory against the Micula brothers in the 2020 case, they will have to pay about €4.5 million to the state – 75 per cent of the court costs. Penalties will be added to the amount in the case of delays. The Ministry of Public Finances said that the Micula brothers had demanded €2.36 billion in compensation, which was rejected.

The 2020 judgment ends a dispute initiated by the plaintiffs in 2014, based on the Sweden–Romania BIT. According to the arbitral tribunal, Romania has shown that it has a complex mechanism for the application of its laws, a strategy that ensures efficient application from a cost perspective, and an execution structure both at the level of individual household and at the level of industrial producers, involving the National Agency for Fiscal Administration, Customs and the General Anti-Fraud Directorate.

Local construction market

The local construction market contracted by 14.2 per cent in the first nine months of 2021 compared to the corresponding period in 2020 – the most pronounced of all the member states, according to the latest data published by Eurostat. On a monthly reporting basis, in September 2021 activity in the sector decreased by 4.9 per cent, registering the third consecutive month of decrease. The local construction market thus continues its downward trend and remains in recession. According to the latest data of the National Commission for Strategy and Forecast (CNSP), included in the Autumn 2021 Forecast, the construction sector will register, for 2021, a minimal evolution (+0.3 per cent), and will resume the most pronounced upward trend starting from 2022 and doubling its gross added value until 2025.

The category of infrastructure investments includes works on railways, parks, pedestrian areas, bridges, passages, road projects, shipyards, etc.

Regarding the construction industry, the Romanian government adopted Decision No. 1/2018 (HG No. 1/2018) approving the general and specific conditions for certain categories of procurement contracts related to investment objectives financed from public funds. The delegated legislator referred a model contractual agreement, for public or sectoral works contracts that have as their exclusive object the execution of works that are related to investment objectives financed from public funds, including non-reimbursable or reimbursable funds, whose total estimated value is equal to or higher than the value of 25 million lei.

For disputes arising from the contractual agreements forming its objective, HG No. 1/2018 has provided as an exclusive option the arbitration at the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania following the rules of this arbitral institution.

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The state and companies continue to be parties to several international arbitration cases, either in commercial or in other sectors (eg, energy or construction, before several international arbitration institutions).

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

Law stated - 19 November 2021

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Jurisdictions

Australia	DLA Piper
Austria	OBLIN Attorneys at Law
Bulgaria	Kambourov & Partners, Attorneys at Law
Canada	Singleton Urquhart Reynolds Vogel LLP
China	Jingtian & Gongcheng
Croatia	Gugić, Kovačić & Krivić
Ecuador	TADIR Dispute Resolution
France	Aramis Law Firm
Germany	rothorn legal
Ghana	Kimathi & Partners Corporate Attorneys
Greece	Lambadarios Law Firm
Hong Kong	RPC
Hungary	Bán, S.Szabó, Rausch & Partners
India	Aarna Law
Japan	Anderson Mōri & Tomotsune
Liechtenstein	Gasser Partner
Luxembourg	Baker McKenzie
Macau	JNV - Lawyers and Notaries
Mexico	Ruiz-Silva Abogados S.C
New Zealand	Arbitra International
Norway	Arntzen de Besche Advokatfirma AS
Pakistan	Axis Law Chambers
Romania	STOICA & Asociații
Russia	Morgan, Lewis & Bockius LLP
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South Korea	Kim & Chang
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Sri Lanka	FJ & G de Saram
Sweden	Advokatfirman Delphi
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