GAR KNOW HOW COMMERCIAL ARBITRATION

Romania

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Infrastructure

1 Is your state a party to the New York Convention? Are there any noteworthy declarations or reservations?

Romania ratified the New York Convention in 1961 by means of Decree No. 186/1961, which came into force on 24 July 1961.

Romania reserved the right to apply the Convention only to:

- the recognition and enforcement of awards made in the territory of another contracting state or, for the awards made in non-contracting states, only subject to reciprocity, namely to the extent to which those states grant reciprocal treatment; or
- disputes arising from legal relationships – whether contractual or not – that are considered commercial under the national law.

2 Is your state a party to any other bilateral or multilateral treaties regarding the recognition and enforcement of arbitral awards?

Romania is party to several treaties facilitating recognition and enforcement of arbitral awards, apart from the New York Convention. These treaties are: the European Convention on International Commercial Arbitration of 21 April 1961 (the Geneva Convention), and, since 1975, the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (the ICSID Convention).

Additionally, Romania has signed multiple bilateral conventions with countries including Albania, Algeria, Belgium, Bulgaria, China, Cuba, Czech Republic, France, Greece, Hungary, Italy, Moldova, Mongolia, Montenegro, Morocco, North Korea, Poland, Russia, Serbia, Slovenia, Slovakia, Syria and Tunisia.

3 Is there an arbitration act or equivalent and, if so, is it based on the UNCITRAL Model Law? Does it apply to all arbitral proceedings with their seat in your jurisdiction?

Romania does not have a separate arbitration act. The relevant provisions may be found within the arbitration-related chapters within the Romanian Code of Civil Procedure (as approved by Law No. 134/2010 – RCPC), namely Book IV (national arbitration proceedings) and Book VII, Title IV, international arbitration proceedings.

Romania does not have a UNCITRAL Model Law-based legislation; however, the institutions within the newly enacted legislation follow the lines and spirit of UNCITRAL Model Law. A specific analysis of each provision would have to be performed to determine the exact influence of the Model Law.

The provisions of the Romanian Code of Civil Procedure apply to arbitral proceedings with a seat in Romania.

4 What arbitration bodies relevant to international arbitration are based within your jurisdiction? Do such bodies also act as appointing authorities?

The main arbitration body in Romania is the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CICA), which also coordinates the activity of the courts of arbitration attached to the regional chambers of commerce and industry, each county in Romania having such a chamber of commerce and industry.

The CICA has its own set of rules of arbitration. However, these rules are to be supplemented with the ordinary provisions of the RCPC insofar as the latter are compatible with the arbitration and the nature of the disputes.

The CICA acts as appointing authority for the arbitration cases under its auspices.

The Bucharest International Arbitration Court (BIAC) is a new Romania-based arbitration centre under the auspices of the American Chamber of Commerce in Romania, which focuses on business and commercial disputes in the Romanian and English languages, especially involving foreign investors and multinationals active in Romania.

Another arbitral institution established in 2010 is the Permanent Court of Arbitration of the Romanian-German Chamber of Commerce and Industry (AHK).

5 Can foreign arbitral providers operate in your jurisdiction?

Arbitral institutions may operate within Romania under the requirement that they are organised and registered under the auspices of a specific regional chamber of commerce, or under the auspices of a bilateral chamber of commerce (as in the case of BIAC).

6 Is there a specialist arbitration court? Is the judiciary in your jurisdiction generally familiar with, and supportive of, the law and practice of international arbitration?

There are no specialist arbitration panels within the local courts of law. However, the Romanian system of local courts of law is familiar and supportive with the field of international arbitration. The arbitration-related provisions are part of the RCPC and the judges are well acquainted with such provisions.

Agreement to arbitrate

7 What, if any, requirements must be met if an arbitration agreement is to be valid and enforceable under the law of your jurisdiction? Can an arbitration agreement cover future disputes?

Under Romanian law, a valid arbitration agreement must be concluded in writing. However, the RCPC broadly defines this requirement to include electronic communications or any means of communication allowing to establish the text of the agreement.

As far as other requirements than the form of the contract (such as capacity to conclude agreements, consent, etc), the arbitration clause is valid, provided that it fulfils the validity requirements stipulated under one of the following laws: the law agreed by the parties, the law governing the object matter of the dispute, or the law applicable to the contract comprising the arbitration clause.

The arbitration agreement may cover an already existing dispute (ie, the submission agreement), or a future dispute.

8 Are any types of dispute non-arbitrable? If so, which?

A dispute can be referred to international arbitration provided that:

- it has a monetary nature;
- it deals with rights the parties may freely dispose of (this excludes, among others, disputes over personal civil status and legal capacity, inheritance and family matters and labour law disputes); and
- it falls outside the exclusive jurisdiction of the courts pursuant to the law of the seat of arbitration.

While the procedural rules regulating domestic proceedings may still occasionally raise questions regarding the capacity of public and state-owned bodies to conclude arbitration agreements, no such limitations are imposed in respect of international arbitration. Thus, international arbitration parties may not seek to evade arbitration to which they have previously agreed by invoking internal law provisions that purport to prohibit entering into arbitration agreements.

9 Can a third party be bound by an arbitration clause and, if so, in what circumstances? Can third parties participate in the arbitration process through joinder or a third-party notice?

As a rule, Romanian law does not allow for an arbitral tribunal to assume jurisdiction over individuals or entities that are not party to an arbitration agreement.

However, since the entering into force of the new RCPC in 2013, a new provision was introduced stating that third parties may take part to arbitration proceedings following the general civil procedure rules on this matter, but subject to the consent of such third party and of the disputing parties. Only an accessory joinder claim – meaning a third party bearing an interest voluntarily joins an ongoing procedure to support one of the parties' positions – is admissible, even in the absence of the consent of all the other parties. However, according to the new CICA rules of 2018, even the accessory joinder claim is admissible only if all the parties agree.

The arbitration law does not distinguish between foreign or domestic third parties, thus, the provisions are applicable to both categories.

10 Would an arbitral tribunal with its seat in your jurisdiction be able to consolidate separate arbitral proceedings under one or more contracts and, if so, in what circumstances?

Although the arbitration-related provisions of the RCPC do not exclude the consolidation of arbitral proceedings, it provides no specific regulation for it.

The traditional view is that the parties' consent is required for the consolidation of separate arbitral proceedings where the arbitral tribunals are constituted of different arbitration panels. Otherwise, constitution of the arbitral tribunal may be considered to breach the arbitration agreement.

The 2018 CICA Rules provide that any party may request the consolidation of the new proceeding with another existent matter during the request for arbitration or the answer to the statement of defence. The arbitral tribunal might admit the consolidation if:

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

In deciding whether to consolidate, 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, as well as the efficiency and expeditiousness of the proceedings.

11 Is the "group of companies doctrine" recognised in your jurisdiction?

Matters such as the extension of the arbitration clause to non-signatories, either following the direct involvement in the negotiation or performance and/or termination of a contract comprising an arbitration clause, which become the doctrine of the "group of companies", or other similar issues regarding the ambit of the arbitration agreement, are subject to debate according to case law. They are not addressed in any way by Romanian law.

However, the doctrine of piercing the corporate veilis recognised by Romanian case law and may very well be applied to arbitration proceedings.

12 Are arbitration clauses considered separable from the main contract?

The RCPC expressly provides for the separability of arbitration agreements, to the effect that the validity of the arbitration clause is independent from the validity of the contract comprising it.

13 Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunals jurisdiction and competence?

The principle of competence-competence is fully recognised under Romanian arbitration law. Once a dispute has been referred to arbitration, the arbitral tribunal is competent to decide on its own jurisdiction – and will do so even if identical disputes are pending before the courts or other arbitral tribunals, except if the arbitral tribunal finds it appropriate to suspend the proceedings. The arbitral tribunal's ruling on jurisdiction may not be challenged before the courts during the arbitral proceedings, but only by means of a claim to set aside the arbitral award.

14 Are there particular issues to note when drafting an arbitration clause where your jurisdiction will be the seat of arbitration or the place where enforcement of an award will be sought?

According to Romanian law, the place of arbitration shall be decided by the parties by means of the arbitration agreement, included in their contractual agreement, or concluded subsequently by means of a submission agreement. Absent such an agreement of the parties, article 569 of the RCPC entrusts the arbitral tribunal with the mission of determining the seat of arbitration.

From a legal perspective, the place of arbitration shall entail a series of consequences that relate both to the conduct of the arbitral proceedings, as well as to possible court intervention in arbitration.

Thus, the law of the seat of arbitration shall regulate the following aspects:

- the courts of law based on which the validity of the arbitration clause may be challenged/annulled.
- the powers of the national courts in connection to a possible action for setting aside the arbitral award, particularly in connection with the notions of "public policy" or "imperative norms" as a ground for annulment;
- the powers available to national courts in order to assist the arbitral proceedings or to order certain provisional measures; and
- the incidence of insolvency regulations, namely the effects such a proceeding will have on an ongoing arbitration procedure.

According to the law applicable at the seat of arbitration, the parties will also be able to assess the degree of court intervention that may occur, namely if the jurisdiction in question is favourable or not to arbitration.

Romanian law does not expressly recognise the difference between the place of arbitration as a legal notion and that of the seat of arbitration as a physical notion. However, in practice, it has been accepted that the law of the designated seat shall be applicable irrespective of where the arbitration, or any aspect of it, may be physically conducted.

Therefore, the parties are free to agree to a different location for carrying out the hearings, without this being construed as a modification of the place of arbitration, understood as a legal concept entailing certain legal consequences.

15 Is institutional international arbitration more or less common than ad hoc international arbitration? Are the UNCITRAL Rules commonly used in ad hoc international arbitrations in your jurisdiction?

Institutional international arbitration is more common than ad hoc international arbitration. In this respect the Romanian parties will often defer their dispute to CICA, ICC, VIAC or LCIA, establishing the place of arbitration in Romania. Institutional arbitration is preferred since it offers more predictability, and the procedure is more foreseeable.

Ad hoc arbitration based on the UNCITRAL Rules is also used in international arbitration, but not as often as institutional arbitration.

16 What, if any, are the particular points to note when drafting a multi-party arbitration agreement with your jurisdiction in mind? In relation to, for example, the appointment of arbitrators.

With respect to multi-party arbitration, article 556 of the RCPC provides that where there is more than one claimant or more than one respondent, the parties that have common interests will appoint one arbitrator. The CICA Arbitration Rules provide for a similar regulation in this respect.

As for the drafting of a multiparty arbitration clause, usually such clause should provide that all claimants are entitled to nominate an arbitrator and all respondents may nominate a second arbitrator. The two arbitrators will appoint the chairman.

Commencing the arbitration

17 How are arbitral proceedings commenced in your jurisdiction? Are there any key provisions under the arbitration laws of your jurisdiction relating to limitation periods of which the parties should be aware?

In view of commencing arbitration, a party must submit to the arbitral tribunal its written request for arbitration.

If the parties have agreed for ad hoc arbitration, the first step is to establish the composition of the arbitral tribunal. If the composition is not stipulated in the arbitration agreement, the party requesting arbitration shall invite the other party in writing to proceed with the procedure to appoint the arbitrators.

Where the arbitration is organised under the auspices of an arbitral institution, the parties shall follow the procedural rules of that institution.

In most cases filed before arbitral institutions (including before CICA), the party wishing to commence arbitration must first file the request for arbitration with the secretariat of the arbitral institution. A fixed registration fee is generally required.

There are no time limitation provisions for filing the request for arbitration. The only time limitation provision that must be considered is the time limitation for the submission of the main claim.

The parties arbitrating under FIDIC rules of contract are undergoing a multi-tier dispute resolution procedure, which implies certain time frames for the amicable settlement procedure and the Dispute Adjudication Board procedure.

Choice of law

18 How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?

In a **domestic arbitration**, arbitrators may render their award by applying the law or as amiables compositeurs (ie, ex aequo et bono), depending on the provisions of the arbitration agreement. If arbitrators are given the power by the express terms of the

arbitration agreement to decide ex aequo et bono, then they are entitled to set aside the rules of the law as well as the provisions of the RCPC, as long as they observe public policy requirements.

If no agreement exists between the parties allowing the arbitral tribunal to judge as amiable compositeurs, then the case shall be tried in accordance with the legal provisions applicable.

If the parties have not specified the applicable law in their arbitration agreement, nor stated that the dispute shall be decided ex aequo et bono, then the arbitral tribunal shall apply the rules of law substantiated by the parties during the proceedings or determined by the arbitrators in application of the local rules on private international law provided by the Romanian Civil Code. Thus, as the case may be, the substantive law applicable to the dispute may be the law of the place where the specific performance of the contract is provided, the law of the place of delivery of the goods, the law of the parties' headquarters etc.

In an **international arbitration**, arbitrators may render their award by applying the law or as amiables compositeurs (ie, ex aequo et bono), depending on the provisions of the arbitration agreement. The possibility to try the case ex aequo et bono arises only where specifically agreed by the parties.

If the parties have failed to determine the applicable law, the arbitrators are entitled to determine the applicable law they consider appropriate, also taking into consideration customs and business practices.

Appointing the tribunal

19 Does the law of your jurisdiction place any limitations in respect of a partys choice of arbitrator?

According to articles 556, 558 and 561 of the RCPC, where the parties have not provided for the manner in which the arbitrators shall be appointed, the dispute shall be adjudicated by three arbitrators and the party who intends to refer the dispute to arbitration shall appoint one arbitrator and ask the other party to proceed to appointing in its turn an arbitrator.

If the other party fails to cooperate in appointing the arbitrator, the party who intends to refer the dispute to arbitration may request the local courts, namely the court whose jurisdiction covers the seat of the arbitration, to appoint an arbitrator. The same local court may also intervene in the selection of arbitrators by appointing an arbitrator or the presiding arbitrator (chairperson) if the parties do not agree on the appointment of the sole arbitrator or in the case of a three-member arbitral tribunal, when the two arbitrators do not agree on whom they should appoint as presiding arbitrator. The local courts render a decision regarding the appointment of the arbitrators after hearing the parties.

Article 19 of the CICA Arbitration Rules provides that where the parties have not agreed on the procedure for the nomination of the arbitrators or if the procedure has failed, the nomination or the appointment of the arbitrators, as the case may be, shall be made as follows:

- where the arbitral tribunal is to consist of a sole arbitrator, the parties shall be given thirty days to jointly nominate the arbitrator. If the parties fail to nominate the arbitrator within this time, the President of the Court shall make the appointment within five days;
- where the arbitral tribunal is to consist of three arbitrators (also the default option where the parties have not agreed on the number of arbitrators), the claimant and the respondent shall each nominate an arbitrator and the third – the chairperson – shall be elected by these two arbitrators.

Where a party fails to nominate the arbitrator within 10 days, the President of the Court shall make the appointment within five days. Where the appointed arbitrators do not agree within five days on the person who shall act as chairperson, the President of the Court, shall make the appointment within the same time limit.

The parties are free to agree whether disputes should be submitted to a sole arbitrator or an arbitral tribunal.

However, an arbitral tribunal must comprise an odd number of arbitrators. If the parties have provided for an even number of arbitrators, such provision shall be disregarded by virtue of article 544 of the Romanian Civil Procedure Code as it breaches the imperative provision in article 556 RCPC with respect to the odd number of arbitrators and therefore the dispute will be tried by three arbitrators.

20 Can non-nationals act as arbitrators where the seat is in your jurisdiction or hearings are held there? Is this subject to any immigration or other requirements?

Non-nationals may act as arbitrators for arbitration cases having Romania as a seat of arbitration. There are no immigration requirements deriving from this quality. However, such foreign nationals should comply with the international travel restrictions and visa requirements, as applicable.

21 How are arbitrators appointed where no nomination is made by a party or parties or the selection mechanism fails for any reason? Do the courts have any role to play?

If one party fails to cooperate in appointing the arbitrator, the party who intends to refer the dispute to arbitration may request the local courts, namely the court whose jurisdiction covers the seat of the arbitration, to appoint an arbitrator. The same local court may also intervene in the selection of arbitrators by appointing an arbitrator or the presiding arbitrator (chairperson) if the parties do not agree on the appointment of the sole arbitrator or in the case of a three-member arbitral tribunal, when the two arbitrators do not agree on whom they should appoint as presiding arbitrator. The local courts render a decision regarding the appointment of the arbitrators after hearing the parties.

22 Are arbitrators afforded immunity from suit under the law of your jurisdiction and, if so, in what terms?

Arbitrators are generally immune from liability in respect of decision making, in recognition of their power to assess the case according to their "intimate conviction".

Article 565 of the RCPC provides that arbitrators are to be held liable for the damage incurred as a result of the following actions:

- withdrawal from serving (abandoning their duty as arbitrators) in the case with no justified reason;
- failure to participate in the trying of the case without a justified reason;
- failure to render the award within the established time limit;
- failure to comply with the duty of confidentiality;
- breach of his or her other duties, intentionally or by reckless negligence.

Article 53 of the CICA Arbitration Rules provides that 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 due to their wilful misconduct or gross negligence.

However, according to our information, no claims for incurring the arbitrator's liability have ever been filed in Romania.

23 Can arbitrators secure payment of their fees in your jurisdiction? Are there fundholding services provided by relevant institutions?

There is no rule of law requiring the payment of any deposit or security for the fees and expenses of the arbitration.

However, the arbitral tribunal may oblige the parties to pay in advance the fees and costs of arbitration. If the parties do not advance these costs, the arbitral tribunal may refuse to proceed with arbitration until these amounts are paid in full (article 597 RCPC).

If the respondent refuses to pay its share of the costs, the claimant is bound to advance these costs as well in order to continue with the arbitral proceedings (article 596(3) RCPC).

The fees of the arbitrators are traditionally fixed by the arbitrators themselves, and in most cases arbitrators will set their fees as fixed global fees. However, in the event of a dispute regarding those fees, only a court (ie, the competent court at the place of arbitration) can analyse said costs and order payment.

In the case of an arbitration conducted under the CICA Arbitration Rules, there is a scale regulating the arbitrator's fees, based on the value of the amount in dispute in the arbitration. For example, in a claim in the amount of €20,000, the value of the arbitrator's fee is approximately €550.

The relevant arbitral institutions in Romania do not provide fundholding services for arbitration cases.

Challenges to arbitrators

24 On what grounds may a party challenge an arbitrator? How are challenges dealt with in the courts or (as applicable) the main arbitration institutions in your jurisdiction? Will the IBA Guidelines on Conflicts of Interest in International Arbitration generally be taken into account?

According to article 562 of the RCPC an arbitrator may be challenged in cases of incompatibility, namely where he or she finds him or herself in one of the situations of incompatibility provided for judges in the RCPC (for example, the arbitrator has previously expressed his or her opinion in relation to the resolution of the dispute he or she has been appointed to settle the dispute; there are circumstances that justify the doubt that he or she, his or her spouse, his or her ancestors or descendants have a benefit related to the dispute; his or her spouse or previous spouse is a relative of maximum the fourth degree with one of the parties, etc) or, for the following reasons, which cast a doubt on the arbitrator's independence and impartiality:

- he or she does not meet the qualifications or other requirements regarding arbitrators provided in the arbitration agreement;
- a legal entity whose shareholder the arbitrator is or in whose governing bodies the arbitrator is bears an interest in the case;
- the arbitrator has employment relations or direct trade links with one of the parties, with a company controlled by one party or that is placed under common control with the latter; and
- the arbitrator has acted as counsel to one of the parties, assisted or represented one of the parties or testified in one of the earlier stages of the case.

Article 22 of the CICA Arbitration Rules provides very similar reasons of challenge.

According to article 563 RCPC, the challenge against the appointment of an arbitrator is to be tried within ten days by the local courts, namely the court whose jurisdiction covers the seat of the arbitration, after hearing the parties and the arbitrator concerned. The decision of the local courts is in writing, contains reasons and is not subject to appeal.

As concerns the arbitration conducted according to the CICA Arbitration Rules, article 23 provides that if all parties agree with the challenge, the arbitrator's mission shall terminate. Furthermore, the person with respect to whom a challenge was filed may resign, his or her mission being thus terminated. If none of these situations has occurred, the challenge shall be decided by an arbitral tribunal constituted by three members appointed by the President of the Court. If the challenge concerns the sole arbitrator, it shall be resolved by the President of the Court or an arbitrator appointed by the President. Such a decision must be in writing and include the reasoning and it is not subject to appeal to the national courts.

The IBA Guidelines on Conflicts of Interest in International Arbitration may be taken into account as a general line of arguments, however, these are not mandatory.

Interim relief

25 What main types of interim relief are available in respect of international arbitration and from whom (the tribunal or the courts)? Are anti-suit injunctions available where proceedings are brought elsewhere in breach of an arbitration agreement?

The type of interim measures that may be rendered by the arbitral tribunal is not expressly enumerated by the law.

The law expressly provides that the arbitral tribunal may order interim measures but does not specify the type of measures that it may take.

However, it is accepted, by reference to the measures that the courts of law are able to issue, that the following interim measures may be taken by the arbitral tribunal: emergency injunctions for the preservation of a right, ascertaining of a factual situation, attachment orders, garnishments, distraint orders and other similar measures.

The arbitral tribunal may not take interim measures against third parties and, if the parties to the arbitration do not understand to voluntarily respect the interim measures imposed, the interested party may appeal to the courts of law (the tribunal at the place of arbitration) in order to enforce such measures.

Thus, interim measures are only forcefully enforceable subject to their validation by the courts of law.

The possibility for the arbitral tribunal to order interim measures is also contemplated in the CICA Arbitration Rules, where it is stated that the arbitrators may take any provisional or conservatory measures that they see appropriate. They may also require the party requesting said measures to make a deposit or offer adequate guarantees.

Recently, the CICA Arbitration Rules included the concept of "emergency arbitrator" who may order interim measures before the constitution of the arbitral tribunal.

There is no express provision stating under which form interim measures should be rendered by the arbitral tribunal. However, the CICA Arbitration Rules provide that such measures are to be rendered in the form of an order.

Such an order is not directly enforceable; if the party against which it was rendered refuses to comply, the interested party may have recourse to the courts of law (ie, the court at the place of arbitration) and request that the court enforce said interim measure.

As per the RCPC, the courts are able to issue any interim measure required to support the arbitral proceedings, such as attachment orders, orders prohibiting the sale or purchase of the good that forms the object of the dispute and suchlike.

The law provides no limitations as to the provisional measures that may be taken in the arbitration proceedings.

In respect of the anti-suit injunction, there are no provisions in the RCPC allowing for the court intervention in this respect.

26 Does the law of your jurisdiction allow a court or tribunal to order a party to provide security for costs?

The Romanian Civil Procedure Code does not include the concept of security for costs.

Security for costs is an interim measure, although it has never been defined as such, which in practice has been granted only by arbitral tribunals. As far as we are aware of, no Romanian court of law has ever been requested to render a solution on such a measure.

Procedure

27 Are there any mandatory rules in your jurisdiction that govern the conduct of the arbitration (eg, general duties of the tribunal and/or the parties)?

Counsel are subject to strict requirements under Romanian legislation and codes of conduct regarding lawyers' practice.

Regarding arbitrators, there is no specific body of law or rules regarding their ethical obligations. Both under the RCPC and the CICA Arbitration Rules, the arbitrator is required to be independent, impartial and to disclose any conflicts of interest. As is the case in many other jurisdictions, neither the RCPC nor the CICA Arbitration Rules explicitly defines these concepts, but they merely provide for the general principle, the case law being left to elaborate on these matters depending on the circumstances of the case.

The CICA rules provide that the arbitral tribunal shall conduct the arbitration in an impartial, efficient and expeditious manner, giving each party reasonable opportunity to present its case and argue its defences.

The same rules stipulate that the arbitral tribunal and the parties shall act in good faith, in an effective and expedited manner, with the observance of equal treatment, of the right of defence and of the adversarial principle. As well, during the arbitration, each party has the right to the fair adjudication of its case, within an optimal and predictable time limit, by an independent and impartial arbitral tribunal.

28 What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration?

As per the provisions of article 582 of the RCPC, the refusal of a party to participate the proceedings does not prevent the arbitral tribunal to continue the proceedings, if such party is duly summoned.

29 What types of evidence are usually admitted, and how is evidence usually taken? Will the IBA Rules on the Taking of Evidence in International Arbitration generally be taken into account?

As a general rule, the party who files a claim has the obligation to prove it. In general, the parties submit the evidence on which they intend to rely on in limine litis.

The most common means of evidence are: written evidence, expert reports, witness statements. All pieces of evidence have equal value and are subject to the tribunal's evaluation and appreciation.

According to the traditional rules of evidence within the RCPC, evidence such as a witness statements are administrated directly before the arbitral tribunal at the hearing and the expert report should be of a judicial nature (ie, it is carried out under the legality control of the arbitral tribunal).

However, the rules of evidence are more flexible in international arbitration, which makes it possible in arbitration procedures conducted under ICC Rules or under the new rules of CICA as of 2018 to submit written witness statements and expert reports drafted by party-appointed experts, followed by a cross-examination of witnesses and experts by the arbitral tribunal.

A particular rule in arbitration is that witnesses are not heard under oath, as would be the case of their hearing before a local court. The arbitral tribunal can also order a party to produce certain evidence.

In arbitral proceedings seated in Romania the applicable rules of evidence are those provided by Romanian law as lex loci, namely the RCPC.

The new rules of CICA as of 2018 expressly provide that the arbitral tribunal, following the parties' agreement, may apply the Rules on the Taking of Evidence in International Arbitration adopted by the International Bar Association. As for other rules on taking of evidence, these may be followed, subject to the parties' agreement in this respect.

30 Will the courts in your jurisdiction play any role in the obtaining of evidence?

The arbitral tribunal does not have any powers to compel the witnesses or experts who refuse to appear before the arbitral tribunal or to apply any sanctions. For any such measures, the parties have to file a claim to this effect before the local tribunal whose jurisdiction covers the seat of the arbitration.

The arbitral tribunal can also order a party to produce certain evidence. The arbitral tribunal cannot order third parties to produce documents. For example, the arbitral tribunal might request written information from public authorities regarding their documents and actions, but if the public authority refuses to comply with such a request and submit the information, the parties or the arbitrators have recourse to local courts to request the enforceable court's order for production of documents.

The local courts might also play a role in acknowledging certain matters of fact prior to or during the arbitration proceedings, such as the state of certain assets, the statement of a certain witness where there is urgency due to the risk the evidence might get lost.

31 What is the relevant law and prevailing practice relating to document production in international arbitration in your jurisdiction?

In respect of document production, the arbitral tribunal has both the power to order the parties to produce certain documents that are in their possession as well as request that written documents and other information be produced by public authorities that hold such documents or information that are relevant for the resolution of the case.

32 Is it mandatory to have a final hearing on the merits?

In principle, Romanian law provides for oral hearings to take place in all arbitral proceedings. Thus, the principle of orality is a fundamental principle attached to Romanian civil procedure and cannot be overlooked by the arbitral tribunal.

However, if the parties agree, the arbitral tribunal may try the case solely based on the written submissions and evidence submitted before it.

33 If your jurisdiction is selected as the seat of arbitration, may hearings and procedural meetings be conducted elsewhere?

Romanian law does not expressly recognise the difference between the place of arbitration as a legal notion and that of the seat of arbitration as a physical notion. However, in practice, it has been accepted that the law of the designated seat shall be applicable irrespective of where the arbitration, or any aspect of it, may be physically conducted.

Therefore, the parties are free to agree to a different location for carrying out the hearings, without this being construed as a modification of the place of arbitration, understood as a legal concept entailing certain legal consequences.

Award

34 Can the tribunal decide by majority?

According to Romanian law, deliberations shall take place in secret, according to the procedure set down by the parties in their arbitration agreement, or absent such agreement, shall be decided by the arbitrators.

To reach a decision, the law provides that the members of the arbitral tribunal must reach a majority, the dissenting arbitrator being obliged to provide his or her dissenting opinion in writing in the arbitral award.

There is no legal provision covering the situation where no majority can be reached by the members of the arbitral tribunal.

However, according to the CICA Arbitration Rules, in this case, the arbitrators whose opinions are most similar must unite and form a sole opinion. If no majority can be reached, the case shall be decided by the presiding arbitrator (chairperson).

35 Are there any particular types of remedies or relief that an arbitral tribunal may not grant?

As a general rule, the arbitral tribunal should render the award based on the claims it has been vested with.

The remedies that may not be granted by an arbitral tribunal refer to aspects of the claims which are non-arbitrable, or which are in the exclusive jurisdiction of national courts (ie, such as the trade registry claims, administrative contentious claims).

36 Are dissenting opinions permitted under the law of your jurisdiction? If so, are they common in practice?

Dissenting opinions are permitted by Romanian law. The arbitrator who reaches a different decision from that reached by the majority is bound to include his or her dissenting opinion in the arbitral award. The dissenting opinion should also include the factual and legal elements it is based on.

The dissenting opinions not common in practice.

37 What, if any, are the legal and formal requirements for a valid and enforceable award?

The award must be made in writing and contain the reasoning of the tribunal. There is also a specific requirement that any dissenting opinion be included and reasoned in the arbitral award as well. If this reasoning requirement is not fulfilled, any party may seek the annulment of the award.

Furthermore, the law provides that the arbitral award must be signed by all arbitrators (except for those having a dissenting opinion, who shall sign only that opinion) and by the arbitral assistant. If this condition is not met, the parties may seek the annulment of the arbitral award. The law makes no express provision for the situation where one arbitrator refuses to sign, or is unable to sign the arbitral award.

Additionally, the arbitral award must also contain the time and place the award was rendered. Absent such express mention the award is subject to annulment.

38 What time limits, if any, should parties be aware of in respect of an award? In particular, do any time limits govern the interpretation and correction of an award?

The time frame during which the arbitral tribunal should issue the award is usually provided by the arbitration agreement. If the arbitration agreement does not stipulate such a time limit, then the arbitral tribunal has six months to reach a decision, starting from the day the arbitral tribunal was lawfully constituted (article 567 RCPC). In this respect, at the first hearing, the parties must state whether they wish to raise the nullity of the award due to the exceeding of such time limit.

If the time limit cannot be observed, the arbitral tribunal may extend it with another three months. Such extension may only be performed once.

If the arbitral tribunal fails to render its decision within such time limit and at least one party has stated that it wishes to challenge the validity of the arbitral proceedings based on the exceeding of the time limit, the arbitral tribunal shall render a decision ascertaining the invalidity of the arbitration.

If no such statement is made by the parties, or they expressly waived the right to challenge the validity of the arbitration based on the exceeding of the time limit, the proceedings shall continue.

Similar provisions are also provided by the CICA Arbitration Rules, with the distinction the arbitral tribunal may extend the time frame of the arbitration, with the parties' approval, for an unlimited number of times.

As for the interpretation and correction of the award, the RCPC provides for a time frame of 10 days from the date of communication of such award.

Costs and interest

39 Are parties able to recover fees paid and costs incurred? Does the "loser pays" rule generally apply in your jurisdiction?

In principle, the arbitration costs are allocated according to the parties' agreement in this respect.

Absent such an agreement, the arbitral tribunal shall decide upon the allocation of costs. The governing principle is that the losing party pays the costs (article 595 RCPC). This principle also allows for an apportionment of costs in instances where one party won some claims and lost others, based on their value or importance in the party's overall claim.

40 Can interest be included on the principal claim and costs? Is there any mandatory or customary rate?

Interest to the requested amounts may be generally awarded by the arbitral tribunal either from their due date, from the date of the request for arbitration or from the date of the award.

As for the interest on costs, such interest may be only applied from the date of the award. The interest rate shall be the one provided by the contract, and, in absence of such a provision the interest rate provided by Government Emergency

Ordinance No. 13/2011 concerning the legal interest may be applicable. These aspects shall be governed by the substantive law of the contract.

Challenging awards

41 Are there any grounds on which an award may be appealed before the courts of your jurisdiction?

As per the provisions of article 608 of the RCPC, arbitral awards may be set aside based on the following grounds:

- the dispute was not arbitrable;
- the arbitral tribunal was constituted in the absence of an arbitration agreement or under a null and void or ineffective arbitration agreement;
- the arbitral tribunal was not constituted in accordance with the arbitration agreement;
- the party was not present at the hearing and the summoning proceedings were not legally fulfilled;
- the award was rendered outside the six months time frame of the arbitration, although one of the parties raised the time limitation objection and the parties refused to continue the proceedings;
- the arbitral tribunal ruled on aspects that had not been requested or granted more than it was requested (extra petita);
- the award does not include the relief granted and the reasoning, does not indicate the date of the award and place of the arbitration seat, or is not signed by the arbitrators;
- the award is contrary to the public order, good moral conduct or other mandatory provisions of Romanian law; and
- if, following the date the award was rendered, the Romanian Constitutional Court declared as unconstitutional the law, the ordinance or any legal provisions part of a law or ordinance related to the arbitration.

42 Are there any other bases on which an award may be challenged, and if so what?

The grounds for annulment of an arbitral award are limited to those listed under article 608 of the RCPC.

43 Is it open to the parties to exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

The parties may agree to exclude the possibility of filing a claim for setting aside (on any and all annulment grounds) only after the award is granted.

Enforcement in your jurisdiction

44 Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?

If an arbitral award has been set aside by the courts in the seat of arbitration, such award may not be enforced in Romania. Romania is a party to the New York Convention on the recognition and enforcement of arbitral awards and pursuant to article 5 of the Convention an annulled arbitral award may not be enforced in Romania.

45 What trends, if any, are suggested by recent enforcement decisions? What is the prevailing approach of the courts in this regard?

State courts have a positive approach towards allowing the enforcement of arbitral awards. As per the provisions of the RCPC, the enforcement of an award may be refused for a limited number of reasons and such grounds are not looked at extensively by the local courts.

The prevailing approach of national courts is that arbitral awards are generally enforceable unless such enforcement is affected by serious flaws.

46 To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

There are no specific regulations issued by the Romanian state on foreign sovereign immunity.

Therefore, the provisions of international treaties and conventions shall be applicable, such as the United Nations Convention on Jurisdictional Immunities of the States and their Property of 2 December 2004 (signed by Romania in 2005 and ratified in 2006).

Further considerations

47 To what extent are arbitral proceedings in your jurisdiction confidential?

According to Romanian law, the arbitral tribunal shall be bound by an obligation of confidentiality in connection with the arbitral proceedings.

Furthermore, in the case of arbitrators, the law expressly provides for the fact that arbitrators are liable according to the law if they do not respect the confidential nature of arbitration, by publishing or disclosing information they become aware of in their capacity as arbitrators (article 565 RCPC).

The 2018 CICA Rules of Arbitration provide "confidentiality" as one of the core principles of the arbitration procedure (article 3(3), 2018 CICA Rules of Arbitration). Unless the parties agree otherwise (in writing), the confidentiality of the arbitral proceedings is protected by the court, its president, management board, and secretariat, by the arbitral tribunal and arbitral assistants, and by all those directly involved in organising the proceedings (article 4(1), 2018 CICA Rules of Arbitration).

48 What is the position relating to evidence produced and pleadings filed in the arbitration? Are these confidential? Is there any way that they might be relied on in other proceedings (whether arbitral or court proceedings)?

There is no express provision imposing an obligation of confidentiality onto the parties and their representatives with regard to the proceedings. However, it is generally accepted that arbitral proceedings are to be treated as confidential, similarly to a court case, in the sense that the existence of the actual arbitration is not confidential in itself, but the evidence and pleadings on file shall be treated as such.

The 2018 CICA Rules of Arbitration provide that the award may, for scientific or academic purposes, be published in part without revealing the name of the parties or other damaging information. Also, the case file may be reviewed for academic purposes, after the award is communicated to the parties, in compliance with the confidentiality obligation.

49 What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your jurisdiction?

Counsel are subject to strict requirements under Romanian legislation and codes of conduct regarding lawyers' practice. As for arbitrators, there is no specific body of law or rules regarding their ethical obligations. Under both the RCPC and the CICA Arbitration Rules, the arbitrator is required to be independent, impartial and to disclose any conflicts of interest. As is the case in many other jurisdictions, neither the RCPC nor the CICA Arbitration Rules explicitly defines these concepts, but they merely provide for the general principle, the case law being left to elaborate on these matters depending on the circumstances of the case.

50 Are there any particular procedural expectations or assumptions of which counsel or arbitrators participating in an international arbitration with its seat in your jurisdiction should be aware?

The arbitration proceedings conducted in Romania are generally aligned with international standards. What is important to know is that the RCPC applies together with the CICA rules, where such rules do not provide for certain aspects. For example, the rules for taking of evidence may be supplemented with the general provisions of the RCPC.

51 Is third-party funding permitted in your jurisdiction? If so, are there any rules governing its use?

Third-party funding is not expressly regulated under Romanian law. Therefore, in the absence of any provision to prohibit such an agreement, third-party funding of the proceedings is permitted. There are currently no rules in respect of disclosing the existence and identity of the funders to the tribunal.

Cosmin Vasile

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Dr Cosmin Vasile is managing partner of Zamfirescu Racoţi Vasile & Partners and head of the firm's arbitration practice group. He has gained extensive experience during more than 15 years of handling cross-border disputes and already boasts an outstanding track record of around 100 international arbitration proceedings as counsel and arbitrator conducted under various laws and sets of arbitration rules.

Cosmin has successfully coordinated an impressive number of significant and mission critical disputes for his clients, often in the glare of media attention. As one of the leading experts in construction, capital markets, privatisation and energy arbitrations in Romania, Cosmin is called upon to provide legal counsel to both government institutions and private companies. In court, Cosmin has an equally impressive record, being popular among major domestic and international corporations for advice in high-profile commercial, administrative-contentious and public procurement disputes.

He holds a doctorate degree from the University of Bucharest and defended his doctoral thesis on the topic 'The Applicable Law in the Ad Hoc Commercial Arbitration' (2011). Cosmin is a Fellow of the Chartered Institute of Arbitrators in London since 2012, and holds a diploma in international arbitration from this institute. He has been awarded the Certificate of the ICC Advanced Arbitration Academy for Central and Eastern Europe and the Certificate of the International Academy for Arbitration Law (Paris).

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Alina Tugearu, partner at Zamfirescu Racoţi Vasile & Partners, specialises in civil and commercial litigation and focuses her practice on international arbitration, administrative/contentious disputes and intellectual property disputes.

She presently represents corporate clients in various national disputes and has solid experience in trying arbitration cases before national and international arbitral panels in arbitration proceedings held under the auspices of the International Chamber of Commerce, the London Court of International Arbitration, the Vienna International Arbitration Center, the Court of International Commercial Arbitration (Bucharest) and under the UNCITRAL arbitration rules in ad hoc arbitration, in complex projects involving construction disputes, including matters regarding FIDIC contracts, post-privatisation related disputes arisen following the exercise of a put and call options and energy-related disputes.

Alina has been a member of the Bucharest Bar since 2005 and holds a law master's (LLM) degree from Sorbonne University.

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Zamfirescu Racoti Vasile & Partners (ZRVP) is a leading law firm in Romania, assuring both business and dispute resolution support and representation. ZRVP manages the biggest national and international arbitration portfolio in Romania, handling arbitrations conducted under the auspices of numerous arbitral bodies or rules including the ICC International Court of Arbitration Paris (ICC), the London Court of International Arbitration (LCIA), the Camera Arbitrale Nazionale et Internazionale di Milano (CAM), United Nations Commission on International Trade Law (UNCITRAL), and the International Centre for Settlement of Investment Disputes (ICSID). ZRVP also offers legal assistance and representation services in multimillion-value disputes held under the auspices of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania. The practice includes a wide array of disputes in the following areas: construction and infrastructure projects energy engineering insolvency maritime law media banking and finance distribution and transport production real estate and others.

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