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Romania
International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Romania.

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Romania: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The main body of law governing arbitration is included in the Romanian new Code of Civil Procedure which came into force on February 15 2013 (further herein referred to as "RCPC"). Book IV of the Code of Civil Procedure ("On Arbitration") regulates national arbitration and also represents the general set of provisions applicable to international arbitration whenever the parties have not agreed on certain aspects in the arbitration agreement and have not vested the arbitral tribunal with settling those aspects either, while Title IV of Book VII sets out specific legal provisions regarding international arbitration and the effects of foreign arbitral awards.

The arbitration law includes mostly non-mandatory provisions, as a reflection of the principle provided for in the Code of Civil Procedure that parties are free to organise arbitral proceedings as they deem fit. However, parties' freedom is subject to observing public policy, a couple of mandatory provisions and ethics. For instance, in ad hoc arbitration organised by the parties themselves, they are free to agree rules regarding the constitution of the arbitral tribunal, removal of arbitrators, the timing and seat of the arbitration, the procedural rules to be applied by the arbitral tribunal (including potential preliminary proceedings), the allocation of costs and any other rules that may govern the arbitration, subject to public policy, mandatory provisions of law and ethics. There are a few mandatory rules, for instance certain validity requirements of the arbitration agreement, regarding the written form of the arbitration agreement or the authenticated form of the arbitration agreement in arbitrations regarding the transfer of the ownership right over an immovable asset. The law also imposes certain fundamental principles related to a fair trial from which no derogation is permitted (e.g., the parties shall be ensured equal treatment, the right to defence and a reasonable opportunity to present their case).

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Romania ratified the New York Convention in 1961 by means of Decree no. 186/1961 which came into force on July 24 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.
- disputes arising from legal relationships – whether contractual or not – that are considered commercial under the national law.

3. What other arbitration-related treaties and conventions is your country a party to?

Since 1963, Romania is a party to the European Convention on International Commercial Arbitration (Geneva, 1961) and since 1975, Romania became a party to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

As well, Romania has signed multiple bilateral conventions with countries including Albania, Algeria, China, Cuba, Moldova, Mongolia, Montenegro, Morocco, North Korea, Poland, Russia, Serbia, Syria and Tunisia.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

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, but a specific analysis of each provision would have to be performed in order to determine the exact influence of the Model Law.

5. Are there any impending plans to reform the arbitration laws in your country?

No reforms or significant changes are expected in the near future, as the applicable legislation is relatively recent – the new Code of Civil Procedure was enacted on February 15 2013.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The main arbitration body in Romania is the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, 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 Court of International Commercial Arbitration (further herein referred to as "CICA") has its own set of rules of arbitration. However, these rules are to be supplemented with the ordinary provisions of the Code of Civil Procedure insofar as the latter are compatible with the arbitration and the nature of the disputes.

CICA adopted a new set of rules starting with 1st January 2018 which align to the rules of ICC and other similar institutions like the London Court of International Arbitration ("LCIA") and which make the arbitral proceedings more flexible for the parties.

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

7. Is there a specialist arbitration court in your country?

Romania does not have a specialist arbitration court.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Under Romanian law, an arbitration agreement in order to be valid must be concluded in writing. However, the RCPC sets a broadly construed 'written form' requirement for arbitration agreements, to the effect that an agreement to arbitrate may be reached following an exchange of correspondence (irrespective of its form – such as exchange of letters, emails, faxes, electronic means of communication etc.) or an exchange of procedural acts (after the commencement of arbitral proceedings – e.g., in a situation where the claimant files a request for arbitration and the respondent does not contest jurisdiction in its answer).

As an exception, Art. 548 RCPC provides that an arbitration agreement should be authenticated by a notary public if it refers to disputes regarding the transfer of ownership rights or other rights in rem over an immovable asset. Non-compliance with this formal requirement leads to the absolute nullity of the arbitration agreement.

9. Are arbitration clauses considered separable from the main contract?

Article 550 RCPC expressly provides for the separability of arbitration clause, to the effect that the validity of the arbitration clause is independent from the validity of the contract comprising it.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

The courts in Romania do not apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it, but the validity of the arbitration agreement is established under the law applicable to the dispute.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

With respect to multi-party arbitration, article 556 RCPC provides that in case there are more claimants or respondents, the parties which have common interests will appoint one arbitrator.

As for the consolidation of the proceedings, the Romanian Civil Procedure Code neither makes any specific provision for it similar to the provision currently existing under ICC rules, nor does it exclude such possibility. Therefore, theoretically, the consolidation of arbitral proceedings is possible. 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.

On the other hand, the CICA Rules expressly stipulate that consolidation of proceedings is possible. Thus, article 17

of the CICA Rules provides that:

"Either party may apply, within the request for arbitration or the answer, for the consolidation of the new arbitration with an already pending arbitration. In this case, the first arbitral tribunal may accept the consolidation request, if:

(i) all parties agree to the consolidation; or

(ii) all claims are made under the same arbitration agreement; or

(iii) where 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."

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

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

However, since the entering into force of the Code of Civil Procedure in 2013, a new provision was introduced stating that third parties may take part in arbitral proceedings following the general civil procedure rules on this aspect, but only if such third party and all the parties agree. 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 CACI new rules of 2018, even the accessory joinder claim is admissible only in case all the parties agree.

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

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

As a matter of principle, all disputes are arbitrable, unless there is a legal provision which states otherwise.

As far as national arbitration is concerned, the following matters are exempt from arbitration, according to the RCPC: civil status litigation, litigation with respect to legal capacity of persons, inheritance litigation, matters arising out of or in connection with family relations, as well as litigation regarding rights that the parties cannot dispose of (e.g. in labour and employment law matters where the law expressly provides that a party cannot waive the legal rights established in their favour, criminal matters – except for civil aspects arising in connection thereto).

Regarding international arbitration, a dispute can be referred to arbitration provided that:

• it is of a patrimonial 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.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

The national courts usually come across determining the law governing the arbitration agreement in case they are vested with a dispute in respect of which an arbitral agreement has been concluded and at least one of the parties invokes the existence of the arbitration clause. In this case, the national courts decline their jurisdiction to a national arbitration institution or reject the claim as not being of the Romanian state courts' competence in case the competence belongs to an international institution in case the arbitration clause is valid. If the arbitration clause is null or inoperable, the national courts will retain jurisdiction. To determine the validity of the arbitration clause, the courts need to determine the law governing the arbitration agreement which is the law chosen by the parties. In the absence of the parties' agreement in this respect, the courts will apply the provisions of international private law depending for example on the object of the agreement in order to determine the applicable law (e.g. Roma I, Roma II Regulations).

This issue is quite recurrent, and the case law is consistent in applying the mechanism mentioned above. We are not aware of court decisions which have changed the solution detailed above.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The arbitral tribunal applies the substantive law designated by the parties. If no law has been designated, the arbitral tribunal applies the law that it deems appropriate in light of the elements of the dispute. In all cases, the arbitral tribunal shall take into account the trade usages and professional rules.

An arbitrator can decide *ex aequo et bono* only if the parties have expressly authorised him or her to do so.

16. In your country, are there any restrictions in the appointment of arbitrators?

The RCPC does not provide for certain qualifications required to be an arbitrator but stipulates that parties may determine in the arbitration agreement such qualifications to be met by the arbitrator.

According to both the Romanian Civil Procedure Code and the CICA Rules, any natural person with full capacity to exercise his/her rights may act as an arbitrator, without any other criteria like citizenship or residence needing to be met. Foreigners and former judges may be appointed as arbitrators. Judges cannot be arbitrators due to the restrictions imposed by the law governing their activity.

If the parties agree to arbitrate under the purview of CICA, this institution's Regulation on its organization provides that any individual having the full capacity to exercise its rights may be an arbitrator provided that it benefits of an outstanding reputation and enjoys a high level of qualification and professional expertise in the field of law, domestic and international economic relations and domestic and/or international arbitration. Amongst others, in order to register on CICA's list of arbitrators, an individual should bring evidence of actual experience in law and juridical activities of at least 8 years.

17. Are there any default requirements as to the selection of a tribunal?

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 fail to agree, there will be three arbitrators: each party can appoint one arbitrator, and those two arbitrators shall appoint a presiding arbitrator. Where there are multiple claimants or respondents and the dispute is referred to three arbitrators, the claimants jointly and the respondents jointly shall each appoint one arbitrator.

The RCPC provides for the nullity of the arbitration clause which allows one of the parties privileged participation in the nomination of the arbitrator or which provides a party's right over the other party to nominate the arbitrator or to have more arbitrators than the other party.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

The Code of Civil Procedure provides that local courts, namely the tribunal whose jurisdiction covers the seat of the arbitration, may intervene in the selection of arbitrators by appointing an arbitrator or the presiding arbitrator in cases where the parties do not agree on the appointment of the sole arbitrator or a party fails to nominate an arbitrator or in the case of a three-panel arbitral tribunal, when the two arbitrators do not agree on whom should they appoint as presiding arbitrator. The local courts render a decision regarding the appointment of the arbitrators after hearing the parties.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

The parties may agree on a procedure for challenging the appointment of an arbitrator and replacing the arbitrator. In the absence of an agreement, the arbitral tribunal might establish such procedure as it deems most appropriate. For example, if the arbitration agreement provides for institutional arbitration, the rules of the arbitral institution will govern the whole procedure and – in the majority of cases – will cover any issues related to the challenge or replacement of arbitrators.

In the absence of the above, the rules detailed below comprised in the Code of Civil Procedure will apply. According to article 562 RCPC, an arbitrator may be challenged in cases of incompatibility, namely in case he finds himself in one of the situations of incompatibility provided for judges in the Romanian Civil Procedure Code (for example, the arbitrator previously expressed his

opinion in relation to the solution in the dispute he was appointed to settle, there are circumstances which justify the doubt that he, his spouse, his ancestors or descendants have a benefit related to the dispute, his 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 does not meet the qualifications or other requirements regarding arbitrators provided in the arbitration agreement;
- a legal person 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;
- the arbitrator has provided consultancy 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 Rules provides very similar challenge grounds.

According to article 563 RCPC, the challenge against the appointment of an arbitrator is to be adjudicated within 10 days by the local courts, namely the tribunal whose jurisdiction covers the seat of the arbitration, after hearing the parties and the concerning arbitrator. The decision of the local courts is in writing, does contain reasons and is not subject to appeal.

The CICA Rules provide in article 23 that if all parties agree with the challenge, the arbitrator's mission shall terminate. As well, the person with respect to whom a challenge was filed may resign, its mission being thus terminated. If none of these situations apply, the challenging petition shall be solved 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 it. Such decision must be in writing, contain reasons and is not subject to appeal to the national courts.

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

Both under the RCPC and CICA rules, the arbitrator is required to be independent, impartial and to disclose any conflicts of interest. In common with other jurisdictions, Romanian law does not explicitly define these concepts, but merely provides for the general principle, the case law being left to consider these matters on a case-by-case basis, depending on the circumstances of the case.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

The Code of Civil Procedure provides that in any case in which an arbitrator is impeded to fulfil its obligations, another arbitrator must be appointed in accordance with the provisions set forth in this respect. A similar provision can be found in CICA Rules. Therefore, in all cases the number of arbitrators should be restored, the truncated tribunal not being able to continue the proceedings.

22. Are arbitrators immune from liability?

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

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

- withdrawal from serving (abandoning their duty as arbitrators) in the case with no justified reason;
- failure to participate in the adjudication 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 their other duties, intentionally or by reckless negligence.

Article 53 of the CICA 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, to our knowledge, no claims for holding liable an arbitrator were ever filed.

23. Is the principle of competence-competence

recognised in your country?

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. Further, 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.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

A state court vested with a dispute in respect of which an arbitral agreement has been concluded will check its own competence and will declare it lacks competence if at least one of the parties invokes the existence of the arbitration clause. In case of a domestic arbitration, the court will decline its jurisdiction to the arbitral institution mentioned in the arbitration agreement or will reject the claim as not being of the Romanian state courts' competence in case of ad hoc arbitration. In case of an international arbitration, the court will admit the lack of competence plea and will reject the claim as not being of the Romanian state courts' competence.

The court will retain its jurisdiction in settling the dispute only in three exceptional situations, namely:

- if the respondent has submitted its defence without invoking the existence of the arbitration agreement;
- if the arbitration clause is null or inoperable;
- if the arbitral tribunal cannot be constituted from causes clearly attributable to the defendant in the arbitration.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Neither the arbitral tribunal nor the local courts can compel the parties to arbitrate or third parties to participate in arbitration proceedings. Once a dispute has been referred to arbitration, it can examine the case and render an award irrespective of whether one or both parties participate in the proceedings. In order to ensure a fair trial, the parties must only be duly notified of the arbitral proceedings, their actual participation in the proceedings being entirely their choice.

Failure of one party, although duly notified, to attend the hearing shall not prevent the progress of the proceedings, unless the absent party submits a request to the arbitral tribunal for adjournment of the hearing on solid grounds.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

According to article 581 RCPC, third parties may take part in arbitral proceedings following the general civil procedure rules on this aspect comprised under articles 61-77 RCPC, but only if such third party and all the parties agree. 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 in case all the parties agree.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

During the arbitration proceedings the arbitral tribunal may grant, at the parties' request, protective measures, and interim relief, as well as acknowledge matters of fact. This provision is similar both in the Civil Procedure Code and in the rules of the main arbitration institution, however, neither defines, except for protective measures, what types of relief can be awarded on a provisional basis. However, taking into account the general civil procedure rules, as an interim remedy, the interested party may apply for freezing measures on goods, provisional measures or conservatory measures regarding evidence (acknowledgement of matters of fact, that is).

The local tribunal whose jurisdiction covers the seat of the arbitration may grant protective measures and interim relief, at the parties' request, before or during the arbitral proceedings. Since a similar order for protective measures or interim relief issued by the arbitral tribunal is not enforceable under Romanian law, the courts play a significant role in obtaining such measures and are preferred by the parties for the reason that the courts

issue enforceable decisions.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Romanian law does not provide for the institutions of anti-suit or anti-arbitration injunctions.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

As a 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 (at the start of the procedure).

The most common means of proof are written records, expert reports, witness statements and cross-examination. All pieces of evidence are of equal value and subject to the court's evaluation and conviction. According to the traditional rules of evidence within the RCPC, evidence such as a witness statement or cross-examination is taken directly before the arbitral tribunal at the hearing and the expert report should be of a judicial nature, i.e. it is carried out under the legality control of the arbitral tribunal. However, under the CICA rules of 2018, parties may opt for each of them to present an expert report and each expert to be heard by the arbitral tribunal and cross-examined by the other party as well.

A particular rule in arbitration is that witnesses are not heard under oath, as it would happen before a local court. 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. As well, the arbitral tribunal might request written information to public authorities regarding their documents and actions, but in case 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 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.

As a matter of principle, the rules on evidence are flexible when it comes to international and domestic arbitration, which makes it possible in procedures such as ad-hoc arbitration or under ICC Rules to submit written witness statements and expert reports drafted by party-appointed experts. Also, the IBA Rules on the Taking of Evidence tend to become a generally accepted standard in practice.

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Counsels are subject to the strict ethical obligations under Romanian law regulating lawyers' practice, the statute of legal profession and by the Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers adopted by The Council of Bars and Law Societies of Europe.

Regarding arbitrators, there is no specific body of law or rules regarding their ethical standard. However, both the Code of Civil Procedure and CICA rules of arbitration provide several obligations of the arbitrators during their office such as confidentiality, impartiality, observance of the applicable deadlines etc. Failure to observe some of these obligations might trigger the arbitrators' liability, as detailed above. As well, in practice, the parties may agree that the IBA Rules of Ethics for International Arbitrators might apply.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Arbitration is presumed to be confidential – however, the procedural rules established by the Code of Civil Procedure left the matter of confidentiality to the parties' agreement or choice of institution.

The 2018 CICA Rules of Arbitration name '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).

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 prejudicial data. Also, the case file may be studied for academic purposes, after the award is communicated to the parties, in compliance with the confidentiality obligation.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

Firstly, when filing a request for arbitration a fixed registration fee is generally required. With respect to the arbitrators' fee, a computation of such fee is made under the CICA rules according to an algorithm stipulated in the schedules of arbitral fees and expenses depending on the value of the claim, there being rules on how to determine the value of the claim when such a claim is not financial.

The arbitral tribunal may provisionally estimate the costs of arbitration at the outset of the proceedings and request both the parties to advance or deposit the amounts in question in an amount split equally between the parties. If the defendant fails to fulfil their obligation, the plaintiff will pay the entire amount, in which case the arbitral award will establish the final amount of the arbitrators' fees and its division between the parties.

Regarding the final allocation of costs, they are covered by the parties according to their agreement. In the absence of such an agreement, in case of a national arbitration proceeding, costs are incumbent on the party who lost the case, proportionally to the admission/rejection of the claim/defence whereas in case of an international arbitration proceeding each party shall bear the fees and expenses of its appointed arbitrator or, if the dispute is referred to a single arbitrator, they shall split the cost equally. Of course, if the parties agree to arbitrate under the purview of an arbitral institution, it will apply its own set of rules regarding the estimation and allocation of costs.

The parties are entitled to recover interest (pre and post-award interest) on the principal claim upon such request, but not also interest to the costs incurred.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Domestic arbitral awards are treated and enforced in the same way as court decisions whereas foreign arbitral awards are subject to recognition and enforcement proceedings before the Romanian courts. In order to be granted the recognition and enforcement of an arbitral award, the parties must comply with certain formal requirements – they must file a request to this effect before a competent court and attach legalised or apostille certified copies of the translated award and arbitration agreement. The court vested with hearing a request for the recognition and enforcement of a foreign arbitral award is prohibited from reviewing the merits of the dispute, its examination being limited to the grounds for refusal of recognition and enforcement, as set out in the RCPC. The grounds for refusal of recognition and enforcement of the foreign award provided in the code follow those established in the New York Convention.

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

With respect to the duration of the procedure for the recognition and enforcement of an award, generally, this procedure takes 1-1 and a half years.

The request filed in order to obtain the recognition and enforcement of an arbitral award is settled by the court following the subpoena of the parties that participated in the arbitral proceedings. Therefore, usually, third parties cannot challenge the recognition of an award.

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Domestic arbitral awards are treated and enforced in the same way as court decisions whereas foreign arbitral awards are subject to recognition and enforcement proceedings before the Romanian courts.

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by

the local courts?

There is no specific provision in the arbitration law as to the type of remedies available to the parties. Therefore, there is no limitation on the type of remedies that an arbitral tribunal may award, other than the limitation imposed by the parties' claims in the sense that the arbitral tribunal can only grant what was requested, regardless of the nature of the claim.

However, to a large extent the admissibility of the remedies depends on the substantive and procedural law applicable to the dispute. For example, if the arbitral tribunal applies Romanian procedural law, it may consider a request for a declaratory judgment to be inadmissible to the extent that the claimant has the option to bring a claim to enforce its rights.

As for the enforceability of the remedies, again the arbitration law does not impose any limitations, the only remedies not enforceable being therefore the ones not enforceable by their nature (for example declaratory judgements).

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitral awards cannot be appealed. The only available remedy to challenge an award is a set aside claim which may be filed on the following grounds (the list is complete):

- the dispute was non-arbitrable;
- the arbitration agreement did not exist or was invalid or ineffective;
- the constitution of the arbitral tribunal was not in accordance with the arbitration agreement;
- the party requesting the setting aside of the award was not duly notified of the hearing when the main arguments were heard and was absent when the hearing took place;
- the arbitral award was rendered after expiry of the time limit, even though at least one party submitted its intention to object to the late issuance of the award and the parties opposed the continuation of the proceedings after expiry of the time limit;
- the award granted something which was not requested (ultra petita) or more than was requested (plus petita);
- the award failed to mention the tribunal's decision on the relief sought and did not include the reasoning behind the decision, the date and place of the decision or the signatures of the arbitrators;
- the award violated public policy, mandatory legal provisions or morality;
- subsequent to issuance of the final award, the Constitutional Court has declared unconstitutional the legal provisions challenged by a party during the arbitral proceedings or other legal provisions included in the challenged piece of legislation that are closely related to and inseparable from those challenged.

Certain reasons for setting aside an arbitral award may be deemed waived if they are not raised before the arbitral tribunal at the start of the process (particularly those relating to the jurisdiction and constitution of the arbitral tribunal).

It should be noted that the set aside claim against an award does not allow the court to analyse again the merits of the dispute. Violation of rules of public policy represents a ground for setting aside, as noted above, but the merits of the case cannot be reviewed by the court judging the action for annulment as the proceedings are limited to verifying whether the award respects fundamental principles of law.

The request to set aside the arbitral award may be filed within one month of service of the award on the parties, unless the request is grounded on the subsequent issuance of the Constitutional Court, where the time limit is three months after publication of that court's decision. Certain reasons for setting aside an arbitral award may be deemed waived if they are not raised before the arbitral tribunal at the start of the process (particularly those relating to the jurisdiction and constitution of the arbitral tribunal).

The jurisdiction to settle the set-aside claim belongs to the court of appeal of the county where the arbitration took place.

In case the set aside claim is admitted, the ruling is subject to a higher appeal which shall be adjudicated by the High Court of Cassation and Justice. In case the set aside claim is dismissed in the first tier of jurisdiction, the majority of the case-law deems the higher appeal inadmissible.

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

The parties cannot waive the right to challenge an award by agreement before the dispute arises. The RCPC provides that any agreement to the contrary is null and void. The parties may waive the right to set aside only after the award is rendered.

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

On the one hand, the situations mentioned above with respect to non-signatories being bound by the arbitration agreement should be borne in mind.

On the other hand, in case a third parties/ non-signatory did not even take part to the arbitration proceedings, they cannot be bound by the award unless they are successors of the parties of the arbitral proceedings bound by the award.

The request filed in order to obtain the recognition and enforcement of an arbitral award is settled by the court following the subpoena of the parties that participated in the arbitral proceedings. Therefore, usually, third parties cannot challenge the recognition of an award.

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

Litigation funding by a third party is not officially provided for within the RCPC. Therefore, third-party funding of the proceedings is permitted, being no provision interdicting such procedure. The third-party funding will be governed by the agreement concluded between the funder and the beneficiary.

Third-party funding is rather an emerging topic in the Romanian jurisdiction, with the main actors still learning from other systems.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Annex II of the CICA Rules recently adopted in 2018 provide that a party may apply for the appointment of an emergency arbitrator for interim or conservatory measures. The powers of the emergency arbitrator terminate on the date when the arbitral tribunal is constituted.

CICA Rules provide that a procedural order issued by the emergency arbitrator shall be binding upon the parties when rendered. The CICA Rules further state that 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. There are two limits to the binding nature of the order, namely that:

- The emergency arbitrator might decide to amend or cancel the interim or conservatory measures adopted, before the arbitral tribunal is constituted, in case the circumstances giving rise to the initial order have changed significantly
- The arbitral tribunal makes an award as 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 the emergency arbitrator.

Similar to the interim measures granted by the arbitral tribunal, the measures granted by the emergency arbitrator are not enforceable under Romanian law. However, parties may resort to the local courts by virtue of the provisions allowing the courts' intervention in order to remove the obstacles arisen in the course of the arbitral proceedings corroborated with the provisions allowing local courts to order such protective and interim measures.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Annex V of the CICA Rules recently adopted in 2018 provide for special rules for expedited arbitration, applicable where the amount of the dispute is lower than RO 50,000 (approx. EUR 10,000) or when the parties agree to apply these rules. In determining the amount of the dispute, the interest, arbitration costs and other ancillary income shall not be taken into account. Since the CICA Rules providing for the emergency arbitrator relief are quite recent, it is quite early to assess the frequency of its use, but given the usefulness of such a remedy, it is expected that the remedy will be used frequently. According to these special rules for expedited arbitration, the arbitral tribunal shall consist of a sole arbitrator and the award shall be issued within no later than 3 months from the first hearing date.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Usually both the counsel and arbitrators are selected based on their professional expertise rather than on other criteria.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

As far as we are aware, there is no recent case in Romania regarding the setting aside of an award that has been enforced in another jurisdiction or vice versa. Moreover, it should be noted under the Romanian Code of Civil Procedure an award that has been set aside by the courts at the place of arbitration may not be enforced in Romania.

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Taking into account the published decisions, the articles and any other information publicly available, we are not aware of any recent decision considering the issue of corruption. However, according to the general rule applicable, the party alleging issues of corruption bears the burden of proof.

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

Given the COVID-19 pandemic, the arbitral institutions in Romania started organizing online hearings on various platforms so that the timeframe of issuing a decision in an arbitration matter is not affected. Such online hearings are not limited to party's pleadings but are organized for hearing witnesses or experts as well. On a different note, filing electronic copies of the submission is far more frequently used than before the COVID-19 pandemic.

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

While no provisions per se have been implemented with respect to the use of technology in the conduct of arbitration, the Romanian arbitral institutions de facto embraced the ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic with respect to various aspects such as the service of documents and various notifications, the organization of virtual hearings etc.

The past 12 months has proved than Romania's arbitral institutions and actors are perfectly capable of adapting rapidly to the new situation brought about by the COVID-19 pandemic, with all ongoing proceedings being shifted to online, virtual hearings and fully electronic submissions becoming the rule, and in-person encounters and hard copies turning into much-coveted exceptions.

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There are no recent developments in Romania with regard to disputes on climate change or human rights.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

Taking into account the published decisions, the articles and any other information publicly available, we are not aware of any decisions which analsze the regime of the international economic sanctions. However, in our experience, it is probable that such sanctions would be considered as part of international public policy.

Taking into account the published decisions, the articles and any other information publicly available, we are not aware of any recent decisions in Romania considering the impact of sanctions on international arbitration proceedings.

50. Has your country implemented any rules or

regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

Romanian legislation does not yet address the use of artificial intelligence, neither at a general level, nor in the specific case of arbitral proceedings. However, at EU level, there is a Regulation proposal regarding the enactment of an Artificial Intelligence Act, meant to regulate all aspects like development, placement on the market and use of AI systems.

This proposal is envisaged to be adopted and come into force in the course of 2024 and up to the present date there is no information whether it will address the specific issue of AI use in arbitral proceedings.

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