



2014

THE ANNUAL CONFERENCE **INTERNATIONAL COMMERCIAL ARBITRATION**

November 13, 2014

Faculty of Law, University of Bucharest
Constantin Stoicescu Hall

ORGANIZERS

**POPOVICI NIȚU
& ASOCIAȚII**
Attorneys at Law



UNIVERSITATEA DIN BUCUREȘTI
FACULTATEA DE DREPT



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Popovici Nițu & Asociații and the **Bucharest Faculty of Law** are pleased to announce the holding of the **Annual Conference in International Commercial Arbitration**, event dedicated to the professional community, academia and users at all levels of interest and involvement in commercial dispute resolution by way of international arbitration.

The conference will take place on **November 13, 2014** at the **Faculty of Law, University of Bucharest, Constantin Stoicescu Hall**, and will group counsels, advocates and arbitrators with consistent experience in the local market, as well as within internationally renowned arbitration centres, such as London, Paris, Stockholm, Geneva, Vienna or Frankfurt.

The conference will debate the 2014 hot topics in the area of international arbitration, including those regarding the nomination and appointment procedure of arbitrators, the excessive judicialization of the arbitral process, the expansion of the arbitration timeframe as well as the related cost multiplication, the escalation of award annulment claims and recognition and enforcement challenges etc.

STRUCTURE

The structure of the conference consists of:

- Presentations
- Live debates and Q&A sessions
- Follow-up meetings with the speakers after the conference

SCHEDULE *BRIEF*

9:30 – 10:00 Registration of participants

10:00 – 10:30 Opening speeches

WORKING SESSION 1

10:30 – 11:30 Presentations

11:30 – 12:00 Live debates, Q&A sessions

12:00 – 12:30 Coffee/Tea Break

WORKING SESSION 2

12:30 – 13:30 Presentations

13:30 – 14:15 Live debates, Q&A sessions

14:15 – 14:30 Closing remarks

14:30 – 15:30 Brunch and post-conference networking

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SCHEDULE

9:30 – 10:00 Registration of participants & coffee and tea upon arrival

10:00 – 10:30 Opening speeches

Flavius-Antoniou Baïas, Ph.D., Dean of the Faculty of Law, University of Bucharest – *Introduction & welcome*

Florian Nițu, Popovici Nițu & Asociații – *Keynote speech*

WORKING SESSION 1

Moderator Florian Nițu, Popovici Nițu & Asociații

10:30 – 11:30 Presentations

Cornel Marian, Stockholm Arbitration & Litigation Center (SALC), Stockholm – *Appointing arbitrators in commercial arbitration*

- The party-appointed arbitrator vs. the institution-appointed arbitrator vs. Roster.
- Independence, neutrality, impartiality - the current paradigm of the conflict of interests.

Smaranda Miron, Freshfields Bruckhaus Deringer LLP, Frankfurt – *The abuse of objections to the arbitral tribunal's jurisdiction*

- The jurisdiction-admissibility distinction and the complex problems it raises in commercial and investment arbitration.

Ileana Smeureanu, Ph.D., Jones Day, Paris – *The arbitration hearing: role, management and finality*

- Hearing witnesses and experts (direct and cross-examination, hot tubbing). Key elements of this phase of the arbitral process.

Alina Leoveanu, ICC Paris – *Practical examination of the changes brought to the ICC Rules in 2012*

- The main changes and their immediate effects in the ICC arbitration practice.
- The option for ICC in general – tendencies.

11:30 – 12:00 Live debates, Q&A sessions

12:00 – 12:30 Coffee/Tea break

WORKING SESSION 2

Moderator Crina Baltag, Ph.D

12:30 – 13:30 Presentations

Irina Adriana Pongracz, Leboulanger & Associés, Paris – *The increasing duration of the arbitration proceedings and the techniques of controlling it*

- The increasing duration of the arbitration. Choosing between speed and efficiency on the one hand, and fair process on the other.
- Techniques for controlling the duration.

Crenguța Leaua, Ph.D., Master program in International Arbitration, Faculty of Law, University of Bucharest – *The issue of arbitral costs*

- The inclusion of arbitral costs within the arbitral expenses.
- Arbitral costs financing and recovery methods.



Florian Nițu, Popovici Nițu & Asociații, Bucharest – *The finality of arbitration*

- The escalation of award annulment claims and recognition and enforcement challenges.
- Wider concepts of public policy, mandatory provisions, and due process.

Crina Baltag, Ph.D. – *The role of the courts in the arbitration procedure*

- The role and limits of court jurisdiction in the arbitration procedure – Romanian law vs. Common law perspective.

13:30 – 14:15 Live debates, Q&A sessions

14:15 – 14:30 Closing remarks

14:30 – 15:30 Brunch and post-conference networking

ABSTRACT SESSION 1

Cornel Marian – Appointing arbitrators in international arbitration

The authority to rule over various claims in arbitration vests with the arbitrators, who are expected to act neutrally, impartially and independently. Three models determine the appointment procedure of arbitrators: (1) party-appointed arbitrators; (2) institutional appointment; and (3) a third (hybrid) model based on the lists exchanged by the parties. The presentation will focus on the advantages and disadvantages with each model by focusing on the need for balancing of interests. The presentation will discuss the arguments presented by Paulsson & Hanotiau, while also drawing upon the amendments to the arbitration rules of ICDR and CCIR.

Smaranda Miron – The abuse of objections to the arbitral tribunal's jurisdiction

The presentation discusses the distinction between jurisdiction and admissibility and the complex issues it raises both in commercial and investment arbitration. The dividing line between jurisdiction and admissibility – is there a grey area? Incorrect classification may artificially extend the scope of challenging awards on jurisdiction. The intervention will approach the lack of a consistent view on the distinction between jurisdiction and admissibility in investment arbitration (i.e., with regard to mass claims).

Ileana Smeureanu, Ph.D. – The arbitration hearing: role, management and finality

The hearing plays an important role in the arbitral process. Following the exchange of submissions, which may take months, and possibly years in investor-State proceedings, the parties finally have the opportunity to confront each other through argument

and witness examination before the arbitral tribunal. For its part, during the hearing, the tribunal has the opportunity to fully understand and assess the nature of the dispute and the position of each party. The discussion will concentrate on a few key elements that the arbitration user must plan for this phase of the arbitral process: fixing the optimal duration of the hearing, determining the order of witnesses, the examination methods (direct and cross-examination, hot tubbing) and the limits of their testimony, as well as the use of interpreters and court reporters.

Alina Leoveanu - Practical examination of the changes brought to the ICC Rules in 2012

The year 2012 was one of the most important years in the ICC Court's recent history. It saw the entering into force of the newest version of the ICC Rules for Arbitration, which is probably the most ambitious reform these Rules have ever seen. While the 1998 Rules were working very well in practice, it was felt that after so many years it would be useful to update them in order to ensure that they will continue to be useful to our users worldwide for many years to come. The presentation will focus on the main areas of change of the 2012 ICC Rules: (1) appointment of arbitrators, (2) *prima facie* jurisdictional assessment, (3) complex arbitrations, (4) case management, (5) emergency arbitrator and (6) arbitrations involving states or state entities.

ABSTRACT SESSION 2

Irina Adriana Pongracz – The increasing duration of the arbitration proceedings and the techniques of controlling it

The topic approaches the average length of arbitration procedures, as well as its rising tendency. An advantage of arbitration is constituted by the opportunity to solve the disputes efficiently and hastily, according to the parties' wishes. At the same time, however, the fairness and quality of the process must not be sacrificed, although there are cases where one must prioritize one to the detriment of the other. For this purpose, we will succinctly analyse the various techniques of controlling the length of an arbitration proceeding.

Crenguța Leaua, Ph.D. – The issue of arbitral costs

The presentation addresses the arbitral costs, their financing sources and the parties' further possibilities to recover such costs. A number of legal issues are to be analysed: which of these costs may be further included in the arbitral expenses awarded by the arbitral tribunals? Which are the criteria of the arbitral tribunals when awarding such expenses? Do the arbitral tribunals have any right to diminish the amount of such costs? Which are the criteria of such assessments? Which are the implications of various financing sources on the arbitral proceedings?

Florian Nițu – The finality of arbitration

Testing international arbitration against public policy and due process consideration is ever more present and complex. Award annulment claims are mushrooming on grounds of an inflated public policy concept and an extended due process paradigm. This intervention will discuss public policy national law and international treaty-based values, principles and rights, EU economic freedom and the freedom of competition, other policy values and considerations, framed as mandatory or overriding mandatory provisions, the horizontal effects of fundamental human rights and the development within the international arbitration of transnational public policy values and fundamental principles of constitutional nature.

Crina Baltag, Ph.D. - The role of the courts in the arbitration procedure

Knowing the effects of the arbitration agreement on the competence of national courts reveals to be very important. The discussions will address the conflict of competence between the arbitral tribunal and the national courts according to the provisions of the Romanian Civil Procedure Code, with reference also to the common law system (e.g., *anti-suit injunctions*). Relevant jurisprudence will be presented. This intervention will also debate the competence of national courts in issuing conservatory and interim measures, as well as their role in other situations which may occur during the arbitration proceedings.

REGISTRATION

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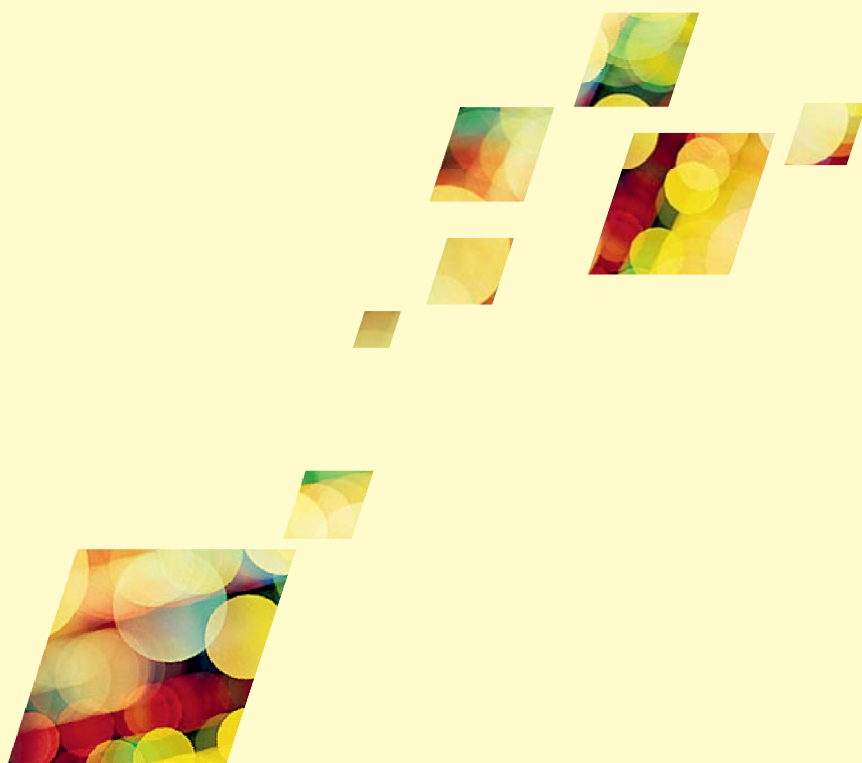
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SPEAKERS



Crina Baltag, Ph.D.

Crina Baltag, Ph.D., is an attorney-at-law specialized in investment and commercial arbitration, as well as in public international law. Crina is the Secretary General of the AMCHAM Brazil Arbitration and Mediation Center. Crina received her Ph.D. degree from Queen Mary University of London and she holds an LL.M. in International Commercial Arbitration from Stockholm University and a M.Sc. in International Business from the Academy of Economic Studies, Bucharest. She is a graduate of the Faculty of Law, University of Bucharest. Crina was associated with law firms from Romania, Austria and the U.K., and she lectured at Queen Mary University of London; FGV Law, Rio de Janeiro and Stockholm University. Crina's book on "The Energy Charter Treaty. The Notion of Investor" was released in 2012 by Kluwer Law International.



Florian Nițu

Florian Nițu is managing partner with Popovici Nițu & Asociații and head of the firm's Mergers & Acquisitions, Real Estate and International Arbitration practices. Florian is largely recognized as one of the most experienced transactional lawyers and claim managers in the Romanian legal services market. For more than a decade he is constantly ranked as a leading lawyer in Romania in the areas of Mergers & Acquisitions, Investments, Real Estate and International Arbitration with international legal directories such as Chambers and Partners, Legal 500, IFLR 1000 and many other professional or industry surveys. Florian has completed a double education in Romanian and transnational law, with the Bucharest Faculty of Law and King's College London.



Cornel Marian

Cornel Marian is an associate with SALC Advokatbyrå in Stockholm, Sweden. As counsel, Cornel has represented clients in commercial and investor-state arbitrations under the rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). He has previously been involved, in different capacities, in arbitrations under the AAA, ICAC, ICC, ICSID and in ad hoc arbitration proceedings under UNCITRAL and Swedish court rules. Cornel obtained his *juris doctor* (JD) from the University of Iowa while, during his final year, he completed his studies as a visiting student at the New York University (NYU) School of Law. He received his LL.M. in International Commercial Arbitration Law (ICAL) program from Stockholm University. Prior to law school, he studied economics at Boston University receiving a combined master's and bachelor's degree in economics. He also spent a year as a Fulbright Scholar in Romania researching the impact of nationalism on economic development in interwar Romania. Cornel has authored over a dozen articles on international arbitration in leading publications, including the Journal of International Arbitration, Arbitration International and Global Arbitration Review. He is admitted to the bar of the state courts of New York and Minnesota.



Smaranda Miron

Smaranda Miron received an LLB from Alexandru Ioan Cuza University of Iasi, Romania, and holds an LL.M in European Economic Law from Europa Institut, Saarland University, Germany. Currently, she is pursuing an external LL.M in International Dispute Settlement (focusing on human rights, WTO and investment law) with the University of London. She is an associate within Freshfields Bruckhaus Deringer LLP's International Arbitration Group, and she is based in Frankfurt. She is advising clients in both investment and commercial disputes, conducted under various arbitration rules, such as ICSID, UNCITRAL, ICC, LCIA and PCA.



Ileana Smeureanu, Ph.D.

Ileana Smeureanu, Ph.D., concentrates her practice in international dispute resolution, with a focus on commercial and investment arbitration under the ICC and ICSID Rules. As an associate attorney with Jones Day (Paris, France), Ileana has represented European, Middle Eastern, and African clients throughout the whole arbitral process, covering a wide range of disputes and a variety of jurisdictions. Ileana is author of the book "Confidentiality in International Commercial Arbitration" (Kluwer Law International, 2011) and co-authored the English translation of the Romanian arbitration law within the Romanian Civil Procedure Code (ICCA International Handbook on Commercial Arbitration, 74th Suppl., May 2013). After graduating from the Bucharest Law School, Ileana obtained LL.M. degrees from Central European University (Budapest/New York), Leiden University (The Netherlands) and George Washington University (USA). Ileana obtained an S.J.D. degree in international arbitration from the Central European University. Ileana is a member of the Bucharest and New York State Bar Associations, and is registered to practice as a foreign lawyer with the Paris Bar. She sits on the Board of Directors of Arbitral Women, and is a member of the young arbitration groups of the ICC, ICDR, LCIA, and the Austrian Arbitration Association.



Crenguța Leaua, Ph.D.

Crenguța Leaua, Ph.D., is an associate professor at the Bucharest University of Economics and teaches Comparative International Commercial Arbitration and Construction Arbitration in the International Arbitration LL.M. program of the Faculty of Law, University of Bucharest. She acts as arbitrator, being listed by the courts of arbitration attached to the chambers of commerce of Austria, Romania, Bulgaria, Slovenia, Poland and WIPO. She was a vice-president of the Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry (2008-2012) and is currently a member of the Court of the International Court of Arbitration ICC Paris. She is a managing partner with Leaua & Asociații. Crenguța is an experienced counsel, specialised in international commercial arbitration.



Irina Adriana Pongracz

Irina Adriana Pongracz is a registered attorney with the Paris Bar and partner with Leboulanger & Associés. Irina practices in the areas of international commercial arbitration under the Rules of the ICC, UNCITRAL, DIAC and CRCICA, as well as in the area of investment arbitration (ICSID and UNCITRAL) in Europe, the Middle East, Egypt and the Maghreb area. Mrs Pongracz has good experience of handling complex and high-value international arbitrations, in particular in the fields of project development, construction, power supply, oil and gas, hotel resorts and broadcasting and telecommunications. Mrs Pongracz holds a post graduate degree (ADR and Litigation) from the University of Paris 2 (Assas), a JD from the University of Columbia – Missouri (United States) and a MSc in Aeronautical Engineering from the Polytechnic Institute of Bucharest, Romania.



Alina Leoveanu

Alina Leoveanu joined the ICC International Court of Arbitration as Deputy Counsel in August 2007. In her office, Alina has administered hundreds of arbitration proceedings from Central and Eastern Europe. Alina is also the Head of the ICC YAF (Young Arbitrators Forum) Europe and Russia Chapter. Before joining the ICC International Court of Arbitration, Alina worked as a Case processing Lawyer at the European Court of Human Rights in Strasbourg, France. Alina holds a Master's degree in European Union Law from the University of Paris I Panthéon – Sorbonne and a Bachelor's degree in Romanian legal studies from the University of Craiova, Romania. Since 2010, Alina has been a member of the Organizing Committee of the Concours d'Arbitrage international de Paris organised by l'Ecole de Droit de Sciences Po, Clifford Chance, Editions Lamy, Total and the ICC.

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