Arbitration procedures and practice in Romania: overview

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A Q&A guide to arbitration law and practice in Romania.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning arbitration in this jurisdiction, including any mandatory provisions and default rules applicable under local law, confidentiality, local courts' willingness to assist arbitration, enforcement of awards and the available remedies, both final and interim.

To compare answers across multiple jurisdictions visit the *Arbitration procedures and practice Country Q&A Tool*.

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1. How is commercial arbitration used and what are the recent trends?

Use of commercial arbitration and current trends

Much progress has been made throughout the years in Romania to facilitate parties' access to dispute resolution mechanisms as an alternative to the national courts. The enactment of the new Civil Procedure Code, which entered into force on 15 February 2013, brought significant improvements to domestic and international arbitration regulation. The core changes aim to ensure the expedition of arbitral proceedings, enhancing party autonomy and safeguarding the integrity of the process.

Commercial disputes in Romania are increasingly being submitted to arbitration, particularly in sectors such as construction, concessions, public-private arrangements and corporate joint-venture type investment schemes.

The use of international commercial arbitration is common to resolve disputes with a foreign element. Cross-border commercial disputes are generally submitted before tribunals composed of experienced international arbitrators, better placed and equipped to tackle the complexities of international business transactions.

Advantages/disadvantages

The right of the parties to freely appoint the arbitrators, with the only limitation being that they must be natural persons with full legal capacity, is the underlying advantage of selecting arbitration over court litigation. Further, compared to Romanian courts, arbitrations seated in Romania provide the parties with more flexibility in organising the proceedings. The stringent procedural requirements of national

courts, primarily related to rules of evidence and tight deadlines for submissions, are considered less suitable for complex disputes, which may be more appropriate for arbitration.

On the other hand, with greater flexibility comes the tendency of the parties to prolong the arbitral proceedings, and therefore increase the overall cost of resolving their dispute.

Legislative framework

Applicable legislation

2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

The Civil Procedure Code regulates both domestic and international arbitration, in separate sections. Domestic arbitration falls under Book IV of the Civil Procedure Code (Articles 541 to 621), while the international arbitration provisions are in Articles 1111 to 1133. Under Article 1123, the domestic arbitration provisions related to the constitution of the arbitral tribunal, the arbitral procedure and the award can also apply to international arbitration proceedings, provided the parties do not derogate from them.

The Civil Procedure Code follows the general principles of the UNCITRAL Model Law to a great extent. However, some areas of Romanian arbitration law, such as applications for preliminary orders and interim relief, receive significantly less regulation than as provided in the UNCITRAL Model Law. Conversely, in some other areas, the Romanian arbitration law provides for more detailed regulation than the UNCITRAL Model Law (for example, the Civil Procedure Code lists the cases where the arbitrator is considered to have breached the standard of impartiality and independence).

Recent significant departures from the UNCITRAL Model Law include:

- In domestic arbitration, the arbitration clause covering a dispute relating to the transfer of ownership rights or the constitution of a real right over a real estate asset must be concluded in notarised form, under the sanction of absolute nullity (Article 548(2), Civil Procedure Code). Therefore, an award rendered in such a dispute must be presented to the court or the notary public for the observance of local formalities (Article 603(3), Civil Procedure Code).

- One additional ground for setting aside an award provided by Article 608 of the Civil Procedure Code refers to the case in which the Romanian Constitutional Court declared the legal subject matter of an invoked plea unconstitutional, after the award had been rendered.

Mandatory legislative provisions

3. Are there any mandatory legislative provisions? What is their effect?

Romanian arbitration law is generally arbitration-friendly, mainly containing provisions that only apply in the absence of the parties' agreement. However, the parties must follow certain provisions which the legislator has reserved as mandatory. These include:

- Prohibiting certain types of disputes from being resolved by arbitration (*see Question 4*).

- The requirement that the arbitration agreement be in writing (*Article 548 and Article 1113, Civil Procedure Code*).

- The limited grounds for setting aside the award, listed under Article 608 of the Civil Procedure Code.

- Observing the fundamental principles of civil trial throughout the proceedings (*Article 575, Civil Procedure Code*).

4. Does the law prohibit any types of disputes from being resolved via arbitration?

Both domestic and international arbitration provisions of the Civil Procedure Code impose limitations on the types of disputes which are arbitrable (*Article 542 and 1112, Civil Procedure Code*).

The general approach in determining the objective arbitrability of a dispute is based on:

- Its patrimonial nature, with explicit types of pure non-patrimonial disputes being excluded from domestic arbitration, which are limited to marital status, the persons' capacity, inheritance rights and family relations.
- The nature of the rights involved, that is, whether the parties can dispose of the rights (Romanian case law and doctrine have established that disputes regarding individual labour conflicts or social insurance fall within this description).

Further, as a general rule, disputes for which the law of the seat has reserved exclusive competence to the state courts are precluded from arbitration. The Romanian courts retain exclusive jurisdiction in cases related to, among other things:

- Insolvency procedures, for example the opening and conduct of the insolvency procedure.
- Competition, for example challenging decisions by the Competition Council.
- Administrative disputes.
- Intellectual property, for example annulment of trade marks, patents and designs.
- Corporate disputes, for example annulment of resolutions of the general meeting of shareholders.

Limitation

5. Does the law of limitation apply to arbitration proceedings?

Under Romanian law, limitation periods are the same for both litigation and arbitration, and are governed by substantive provisions (*Article 2663, Civil Code*).

The limitation period is three years (*Article 2517, Civil Code*).

The Romanian legislator has also prescribed special limitation periods, depending on the subject matter of the case (*for example, Article 2518 to 2521, Civil Code*). For example, the limitation period for disputes concerning insurance contracts or a payment due to an intermediary for services performed under the intermediation contract expires after two years. Similarly, unless provided otherwise, a legal action brought against a transporter arising from transport contracts by land, air or sea has a one-year limitation period.

The limitation period generally runs from the moment the right holder knew or should have known of the right's existence (*Article 2523, Civil Code*). Romanian law also provides for particular rules, depending on the subject matter of the case. For example:

- The right to demand specific performance of an obligation to give (*a da*) or to do (*a face*), which runs from the date the obligation becomes exigible.
- The right to demand restitution of performance executed on the basis of an agreement which is voidable or rescinded, running from the date when the court decision voiding the agreement has become final, or when the rescission declaration has become irrevocable.

Article 2537 of the Civil Code provides a non-exhaustive list of factors which interrupt the limitation period. Most relevant in the context of commercial arbitration are:

- A voluntary act of performance or acknowledgement of the right subject to limitation, made by the party in favour of which the period runs.
- Filing a request for arbitration.
- Any action putting in default the party in favour of which the limitation period runs.

Arbitration organisations

6. Which arbitration organisations are commonly used to resolve large commercial disputes?

The following arbitration institutions are commonly used to resolve large commercial disputes:

- The Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry (CICA-CCIR), which administers mainly local arbitral disputes.
- The International Court of Arbitration (ICC), Paris, mostly administering international arbitrations seated in Romania or disputes with an international component.
- The Vienna International Arbitration Centre (VIAC), also administering international arbitrations seated in Romania.

See box, *Main arbitration organisations*.

Jurisdictional issues

7. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

A party denying the tribunal's jurisdiction to determine the dispute(s) can raise a lack of jurisdiction plea, either through its statement of defence or, in any case, no later than the first hearing date (*Article 573, Civil Procedure Code*). As a matter of principle, parties are barred from bringing up any objections related to the existence and validity of the arbitration agreement, the constitution of the tribunal, the limits of its mission and the procedure to date, after the first hearing date (*Article 592, Civil Procedure Code*).

In international arbitration, an objection to jurisdiction must be raised before any defence on the merits of the case (*Article 1119, Civil Procedure Code*).

In light of full regulatory recognition of the kompetenz-kompetenz principle under the Civil Procedure Code, the tribunal will determine the issue of its own jurisdiction. The local court will only intervene in the setting aside phase, if and to the extent it is initiated against the award by which the tribunal retained jurisdiction (*Article 579 and Article 1119, Civil Procedure Code*).

Arbitration agreements

Validity requirements

8. What are the requirements for an arbitration agreement to be enforceable?

Substantive/formal requirements

With regard to formal requirements, in both domestic and international arbitration it is compulsory and generally sufficient that the arbitration agreement be in writing, under the penalty of nullity. Domestic arbitration provisions impose an additional formal requirement for disputes related to the transfer of a property right or the constitution of a property right over a real estate asset. The arbitration agreement covering such disputes must be notarised, to ensure its valid conclusion (*Article 548(2) , Civil Procedure Code*).

The arbitration agreement can be incorporated into a contract but can also be contained in an exchange of correspondence (e-mail, facsimile and telex).

Further, the written form requirement is deemed to have been met if the parties' consent to submit their dispute to arbitration is contained in an exchange of procedural acts.

The Civil Procedure Code distinguishes between a compromissory clause regarding future disputes and an arbitration submission agreement regarding actual, arisen disputes. In the second case, the subject matter of the dispute must be defined in it under the sanction of nullity. In *ad hoc* arbitration, a compromissory clause must state the method of nominating the arbitrators, while an arbitration submission agreement must specify the arbitrators' name or the method of their appointment, under the sanction of nullity.

Where the clause provides for submitting the dispute to institutional arbitration, it is sufficient to name the specific institution or refer to its rules of arbitration.

Also, the arbitration agreement must observe the substantive validity requirements of any binding agreement under the Civil Code, namely to feature a valid object, a valid cause and the parties' capacity and consent. The Civil Procedure Code provides that only parties with full legal capacity can conclude an arbitration agreement, while with regard to the object of the arbitration agreement, the dispute must be arbitrable.

Separate arbitration agreement

An arbitration agreement separate from the main contract is not required under the law. Article 549 of the Civil Procedure Code expressly allows for the parties to conclude an arbitration agreement in the main contract or through a separate agreement, or confirm their agreement to submit the matter to arbitration directly to the established arbitral tribunal.

In the case of an arbitration clause incorporated in a contract only by reference, it is generally sufficient that the main contract expressly refers to the document containing the arbitration agreement, in order for the disputes arising from the contract to be subject to arbitration. However, it is advisable that the document containing the arbitration agreement is attached to the main contract, or at least circulated among the parties with the expressed intention that the agreement in is to apply to the main contract.

A standard arbitration clause is considered an "unusual clause" within the meaning of Article1203 of the Civil Code, and must be expressly accepted in writing by the party in the detriment of whom it is made. Otherwise, it is rendered ineffective. Under Article 1202 of the Civil Code, standard clauses are clauses prepared in advance for general and repeated use by one party, and which are incorporated into the contract without having been negotiated with the other party. The authors are of the opinion that this rule should not apply to international arbitration.

Unilateral or optional clauses

9. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

The Civil Procedure Code is silent on the enforceability of unilateral or optional arbitration clauses. The practice of the Romanian courts leans towards confirming the validity of clauses whereby the claimant can submit the dispute to arbitration or to local courts. However, there have also been court decisions of a different opinion, holding that the parties' intention to arbitrate is equivocal, and so ineffective, if the agreement establishes an alternative competence between arbitration and local courts.

10. In what circumstances can a party that is not a party to an arbitration agreement be joined to the arbitration proceedings?

In domestic arbitration, parties foreign to the arbitration agreement can be joined to the proceedings subject to the conditions applicable to local court procedure, but only if they and all parties to the agreement do not object. Parties not making any claims, but simply wishing to join to support one of the parties to the dispute, can do so without requiring the parties' approval (*Article 581, Civil Procedure Code*). Since this is a procedural matter, this provision also applies to international arbitration, in the absence of the parties' agreement to the contrary.

The particulars of a third party joining the arbitration proceedings can be found under Article 61 to 77 of the Civil Procedure Code:

- The party must submit a request for joinder, before the conclusion of the debate on the merits before the arbitral tribunal.
- The tribunal will assess the admissibility of the request after hearing all the parties' positions.

- If admitted, the intervening party joins the proceedings as they are at that time, but it can ask to submit additional evidence.
- If applicable, the tribunal will establish when the other parties are to submit their defences.

It is generally accepted that non-signatories are bound by the arbitration agreement in cases such as assignment of contract, oblique (indirect) actions, or the parties' singular or universal successors. Reputed scholars have also debated extension of an arbitration agreement to third parties in the case of group companies and group contracts, and agency or proxy agreements. In certain exceptional cases of the Court of International Commercial Arbitration, tribunals have assumed jurisdiction over non-signatories.

11. In what circumstances can a party that is not a party to an arbitration agreement compel a party to the arbitration agreement to arbitrate disputes under the arbitration agreement?

Romanian arbitral procedural law (*lex arbitri*) remains silent on this matter. It is generally accepted in arbitral practice with Romanian law as the law applicable to the merits that in certain circumstances a party outside the arbitration agreement can compel a party to the agreement to arbitrate. Such cases mainly involve the assignment of the contract to a third party, a succession in rights or oblique (indirect) actions.

Separability

12. Does the applicable law recognise the separability of arbitration agreements?

Both in international (*Article 1113(3) , Civil Procedure Code*) and domestic arbitration (*Article 550(2) , Civil Procedure Code*), the principle of separability of the arbitration agreement is fully recognised.

Breach of an arbitration agreement

13. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

Court proceedings in breach of an arbitration agreement

If there is an arbitration agreement, local courts take a proactive role and defer the dispute to the relevant arbitral institution or, in *ad hoc* arbitration, dismiss the claim for lack of courts' jurisdiction, on condition that one of the parties relies on the arbitration agreement. As opposed to the tribunal, the court's standard of review is a *prima facie* one.

The court will retain jurisdiction in exceptional and limited circumstances, such as (*Article 554 and Article 1069, Civil Procedure Code*):

- A null or invalid arbitration agreement.
- The respondent has pleaded on the merits of the dispute without invoking the arbitration agreement.
- The respondent has not raised the arbitration agreement until the first hearing date to which it has been duly summoned.

Arbitration in breach of a valid jurisdiction clause

Where arbitration proceedings have been initiated in breach of a valid jurisdiction clause or in the absence of any arbitration agreement, the opposing party can raise a lack of jurisdiction plea, no later than the first hearing date (*Article 573, Civil Procedure Code*). If the law assigns exclusive jurisdiction to state courts for the dispute, even the claimant can raise the lack of jurisdiction plea. In any case, the tribunal must analyse and decide on its own jurisdiction on its own initiative (*ex officio*) (*Article 579, Civil Procedure Code*).

If the tribunal retains jurisdiction, its decision can only be contested within the setting aside procedure initiated against the final award. The Romanian legislator has therefore departed from the UNCITRAL Model Law, under which such a ruling can be challenged separately, within 30 days after having received notice of it. Conversely, the award by which the tribunal declines jurisdiction cannot be subject to the setting aside procedure.

14. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

The Civil Procedure Code does not regulate the court's right to grant injunctions to restrain proceedings started overseas in breach of an arbitration agreement.

Romania, as an EU member state, fully applies Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, recast as Regulation (EU)1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial. Further, the Romanian courts fully observe Court of Justice of the European Union case law in relation to anti-suit injunction proceedings in international commercial arbitration, as reflected in the *West Tankers* case (*Allianz SpA and Others v West Tankers Inc (Case C-185/07)*), which forbids anti-suit injunctions among courts of different member states.

To the authors' knowledge, Romanian courts have never granted an injunction to restrain proceedings started in breach of an arbitration agreement, within or outside the EU.

Arbitrators

Number and qualifications/characteristics

15. Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction in order to serve as an arbitrator there?

The Civil Procedure Code allows for any natural person with full legal capacity to be an arbitrator (*Article 555*). However, certain regulated professions cannot engage in arbitration-related activities, including being appointed as arbitrators. For example, judges and prosecutors (*Article 8, Law no. 303/2004*), or members of the Competition Council (*Article 15(6) , Law no. 21/1996*).

The Civil Procedure Code entered into force in 2013 and departed from the requirement that domestic arbitrators must be Romanian citizens. Under the current regime there are no restrictions based on nationality, and a person need not have a special licence to act as an arbitrator. The list of arbitrators of the Court of International Commercial Arbitration is composed of both Romanian and foreign arbitrators of various nationalities.

Article 556 of the Civil Procedure Code provides that the number of arbitrators to a dispute must always be odd, and that absent the parties' agreement the default number is three.

Independence/impartiality

16. Are there any requirements relating to arbitrators' independence and/or impartiality?

There are a number of requirements under the Civil Procedure Code to ensure that arbitrators are independent and impartial. They include incompatibility cases which Romanian judges are subject to (*Article 42, Civil Procedure Code*), and additional ones for arbitrators under Article 562 of the Civil Procedure Code. None of the requirements are mandatory, as the proceedings can continue if the parties have no objections and the arbitrator does not opt to step down. However, the law requires the arbitrator to disclose any such matters to the parties as soon as they are aware of them. The requirements cover the following scenarios where the arbitrator:

- Does not meet the qualifications required by the arbitration agreement.
- Is associated with a legal entity having an interest in the outcome of the dispute.
- Has employment or direct commercial relations with one of the parties or its subsidiaries.

- Assisted, represented or consulted one of the parties in the dispute resolution prior to the arbitration proceedings.
- Has already expressed his position towards one of the heads of claims of the dispute.
- Has a relative with an interest in the outcome of the dispute.
- Has been involved in criminal proceedings against one of the parties within five years before the dispute (or one of his relatives has).
- Has received gifts or other advantages from one of the parties (or one of his close relatives has), or is enemies with one of the parties (or one of his close relatives is).
- Is a relative of one of the other arbitrators of the dispute.

In international arbitration, the arbitrator can be challenged for any legitimate doubt as to his independence and impartiality (*Article 1114, Civil Procedure Code*).

Appointment/removal

17. Does the law contain default provisions relating to the appointment and/or removal of arbitrators?

Appointment of arbitrators

The Romanian arbitration law respects the parties' autonomy in appointing arbitrators. However, if the parties provide that one of them will have advantages over the other in appointing the arbitrators, or that one has the right to appoint more arbitrators than the other, such provision of the arbitration agreement is null and void (*Article 557, Civil Procedure Code*).

Romanian arbitral procedural law provides default provisions if there is no parties' agreement on the specifics. Applying to both domestic and international arbitration proceedings seated in Romania, the default provisions are in Article 556 and 558 of the Civil Procedure Code.

The claimant must appoint an arbitrator or propose a sole arbitrator, as the case may be, and communicate its personal and professional details to the other party. In turn, the respondent must also appoint an arbitrator, or comment on the claimant's proposal of sole arbitrator, and communicate the details to the claimant. In the case of multiple parties acting as claimants or respondents, all parties with common interests must only name one arbitrator. The parties can also propose a replacement arbitrator, if their appointed arbitrator is prevented from fulfilling its mandate. Unless the parties agree otherwise, the chairman of the tribunal must be chosen by the appointed arbitrators.

If the parties opt for institutional arbitration, the chosen institution can only have non-compulsory lists of arbitrators which the parties are allowed to choose from (*Article 618, Civil Procedure Code*). The president of the institution will appoint the chairman, but only if the party-appointed arbitrators do not reach an agreement in relation to this, and if the parties or the institutional rules do not provide otherwise.

The arbitral tribunal is constituted on the date the sole arbitrator or, in case of multiple arbitrators, the last arbitrator or the chairman has accepted the mandate in writing, by communicating acceptance to the parties within five days of receiving the appointment proposal (*Article 559 and 566, Civil Procedure Code*).

Removal of arbitrators

In domestic arbitration, the parties can remove the arbitrators for any reasons of incompatibility, lack of independence or impartiality (*see Question 16*). However, a party cannot remove the arbitrator appointed by it for reasons it was aware of at the time of appointment (*Article 562, Civil Procedure Code*).

According to Article 563 of the Civil Procedure Code, a removal request must be submitted to the district court of the place of arbitration. Under the sanction of losing the right to ask for the removal, the request must be submitted within ten days of becoming aware of the appointment of the arbitrator, or the reason for removal.

In any case, the arbitrator can decide to step down voluntarily, even if the parties have expressly stated that they do not wish to remove the arbitrator for a particular reason.

Procedure

Commencement of arbitral proceedings

18. Does the law provide default rules governing the commencement of arbitral proceedings?

The default rules governing the commencement of arbitral proceedings are in Book IV On Arbitration, Title IV, Arbitral Proceedings of the Civil Procedure Code.

The Civil Procedure Code lays down a notable difference between *ad hoc* and institutional arbitration relating to the commencement of arbitral proceedings. As such, whereas in *ad hoc* arbitration the filing of the request for arbitration is preceded by the establishment of the arbitral tribunal, in institutional arbitration the arbitration commences with the submission of the request for arbitration by the claimant.

Both solutions depart from that offered by the UNCITRAL Model Law, under which arbitral proceedings commence on the date on which the request for arbitration is received by the respondent (*Article 21*).

The request for arbitration must include:

- The parties' name, residence or headquarters, and other basic identification data.
- The name and capacity of the person or entity representing the claimant in the arbitration and proof of its capacity, as the case may be.
- Reference to the arbitration agreement and a copy of it.
- The object and value of the claim, as well as the calculation of the value.
- Reasons in fact and in law and the evidence on which the claimant relies.
- The name and domicile of the members of the arbitral tribunal (where they have been indicated through the arbitration agreement or if the arbitral tribunal has already been established) and the party's signature (Article 571, Civil Procedure Code).

Another way in which arbitral proceedings can be commenced is through a minute concluded in front of the arbitral tribunal and signed by both parties, or just by the claimant and the arbitrators.

Within 30 days from receipt of a request for arbitration, the respondent must submit its defence which must include, notably, its objections and position in fact and in law regarding the claimant's request, and the evidence relied on (*Article 573, Civil Procedure Code*).

If the respondent has claims arising out of the same legal relationship, it can file a counterclaim within the same period as the defence or, at the latest, until the first hearing date (*Article 574, Civil Procedure Code*). The counterclaim must observe the same requirements as the request for arbitration.

Applicable rules and powers

19. What procedural rules are arbitrators bound by? Can the parties determine the procedural rules that apply? Does the law provide any default rules governing procedure?

Applicable procedural rules

The parties are free to establish in their arbitration agreement the procedural rules to be applied, or they can entrust this to the arbitral tribunal. In determining the applicable procedural rules, the parties can also refer to the set of rules under various arbitral institutions, such as the CICA-CCIR, ICC, or the VIAC.

Irrespective of the applicable rules, they cannot be contrary to public policy or mandatory rules of law. Article 575 of the Civil Procedure Code provides that fundamental principles of civil trials must be observed, including but not limited to:

- Ensuring the parties can exercise their procedural rights equally and without discrimination.
- Exercising procedural rights in good faith and according to their legally recognised purpose.
- Ensuring the parties a right to defence.
- The parties' right to decide the object and limits of the arbitration, while the arbitral tribunal cannot decide a matter if not asked.
- Ensuring the parties the right to be heard in adversarial proceedings.

In international arbitration, if the parties have not determined the procedural rules, the arbitral tribunal will establish them directly, or by reference to institutional rules or various procedural laws. In any case, the arbitral tribunal must guarantee the equality of arms and the parties' right to be heard in adversarial proceedings (*Article 1115, Civil Procedure Code*).

Default rules

When the parties have not agreed on and if the arbitral tribunal has not established the applicable rules, the Civil Procedure Code applies (*Book IV, On Arbitration*). Similarly to when the parties or the tribunal determines the applicable rules, the fundamental principles of civil trials must be observed (*see above, Applicable procedural rules*).

In international arbitration, issues not determined by the procedural rules agreed by the parties or established by the tribunal (concerning the constitution of the arbitral tribunal, the proceedings, the award, its rectification, communication and effects) are also regulated by Book IV of the Civil Procedure Code (*Article 1123, Civil Procedure Code*).

Evidence and disclosure

20. If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

The arbitral tribunal can request either of the parties to disclose evidence and public authorities to submit written information concerning their activity which is relevant to the case. However, since the tribunal does not hold coercive power, it cannot enforce such measures. Neither can the arbitrator compel a non-party to the arbitration to appear at the hearing to give testimony (*Article 588, Article 589 and Article 590, Civil Procedure Code*).

The arbitral tribunal must refer to the competent local courts for any enforcement measures or sanctions in relation to them.

21. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation? Can the parties set the rules on disclosure by agreement?

Scope of disclosure

As a general rule, each party must submit the evidence on which its claims or defences rely (*Article 586, Civil Procedure Code*). However, the arbitral tribunal can request written explanations from the parties on the factual background and object of their claims, as well as administer any type of evidence considered necessary for the outcome of the case.

If one of the parties is in possession of a piece of evidence, the arbitral tribunal can order that party to produce it (*Article 588, Civil Procedure Code*).

In practice, the scope of disclosure is broader in arbitration, especially international, than in domestic court litigation. However, considering Romania's civil law system, arbitrations seated here do not, as a rule, include broad discovery procedures. Further, the Civil Procedure Code does not provide for pre-trial disclosure of documents.

Validity of parties' agreement as to rules of disclosure

The parties are free to decide on the rules applicable to disclosure. The Rules on the Taking of Evidence in International Arbitration developed by the International Bar Association (IBA Rules on the Taking of Evidence) have become a standard market practice in international arbitrations seated in Romania. The CICA-CCIR 2014 Rules of Arbitration expressly provide that in international arbitrations, the tribunal can apply the IBA Rules on the Taking of Evidence, with the parties' consent (*Article 81*).

Confidentiality

22. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Arbitration in Romania is presumed to be confidential, especially given that arbitrators are liable for damages resulting from breaching its confidential character (*Article 565, Civil Procedure Code*). However, there are no legal provisions imposing the confidentiality of arbitration, and the legislator chose to follow the UNCITRAL Model Law's guidance and leave the matter to the parties' agreement and rules of selected institutions.

For arbitrations submitted to the CICA-CCIR, the 2014 Rules of Arbitration name confidentiality as one of the core principles of the arbitration procedure, listed under Article 7. Without the parties' written consent, no one outside those directly involved in the proceedings is allowed access to the file, and members of the court and the arbitral tribunal have an express duty not to disclose any information they took knowledge of throughout the proceedings.

Courts and arbitration

23. Will the local courts intervene to assist arbitration proceedings seated in its jurisdiction?

Local courts can intervene, on the interested party's request, to assist in matters hindering the arbitral proceedings (*Article 547, Civil Procedure Code*). Apart from this general rule, the Civil Procedure Code also provides for specific areas in which courts can intervene, such as:

- Constitution of the arbitral tribunal (Article 561, Civil Procedure Code).
- Challenge of arbitrators (Article 563(2), Civil Procedure Code).
- Provisional or interim measures (Article 585, Civil Procedure Code).
- Taking of evidence: compelling witnesses or experts to provide testimony, or public authorities to submit information (Article 589(3) and Article 590(2), Civil Procedure Code).

The competent court to assist in issues arising during arbitral proceedings is the tribunal at the seat of the arbitration (*Article 547 and Article 1118, Civil Procedure Code*).

24. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

Risk of court intervention

The court's intervention in the arbitral proceedings is limited to specific areas (*see Question 23*) and only on request by one of the parties or of the arbitral tribunal. Therefore, the risk of courts intervening to frustrate an arbitration is low and solely dependent on the parties and the arbitral tribunal.

Delaying proceedings

It is highly unlikely for arbitral proceedings to be delayed by frequent court applications made by one of the parties. The procedure applied by the court in such instances is an expeditious one and the decision rendered is non-appealable. The arbitral tribunal has sole discretion in deciding whether to suspend the proceedings for the period an application is pending with local courts.

In international arbitration, the Civil Procedure Code provides that the arbitral tribunal will decide on its own jurisdiction without considering a request with an identical object pending between the same parties before a local court, unless compelling reasons call for a stay of the proceedings (*Article 1119(2) , Civil Procedure Code*).

Insolvency

25. What is the effect on the arbitration of pending insolvency of one of more of the parties to the arbitration?

As a rule, Romanian insolvency law regulates the stay of all judiciary, extrajudiciary and other enforcement procedures concerning receivables against an estate, on opening of insolvency proceedings against the debtor (*Article 75, Insolvency Law no. 85/2014*). After the decision on the opening of insolvency proceedings becomes final, all such procedures are discontinued. The stay of proceedings will therefore occur only with regard to those claims concerning receivables against the debtor, if and to the extent the debtor is a respondent in the proceedings (to a claim or counterclaim).

When addressing the effect of insolvency on ongoing proceedings, the Insolvency Law does not expressly refer to arbitration (domestic or international). However, in domestic arbitration cases, the High Court of Cassation and Justice has established that an arbitral tribunal's decision not to stay proceedings, despite insolvency being commenced against the debtor, breaches Romanian public policy.

Due to lack of relevant case law in international arbitration cases, the question whether such proceedings must also be automatically stayed remains open. It could be argued that, in international arbitration, the tribunal will only order the stay of proceedings if and to the extent that continuing the arbitration would breach the public policy of Romanian private international law.

Remedies

26. What interim remedies are available from the tribunal?

Interim remedies

An arbitral tribunal can grant preventive (precautionary) and provisional measures, such as preventive attachments or preventive garnishments, or to ascertain factual circumstances (*Article 585, Civil Procedure Code*). In international arbitration, preventive or provisional measures can be granted by the arbitral tribunal, in the absence of contrary provisions in the arbitration agreement (*Article 1117, Civil Procedure Code*).

Ex parte

The Civil Procedure Code does not allow an arbitral tribunal to grant interim measures without notice to the other party. An award rendered in such conditions would breach the fundamental principles of equality of arms and the right to be heard in adversarial proceedings, and would therefore be subject to setting aside.

Security

Although the Civil Procedure Code provides the arbitral tribunal's right to grant interim measures (*see above, Interim remedies*), there are no specific provisions regarding security for costs. The tribunal can, however, order the parties to consign, advance or pay any amounts necessary for the organisation and development of the arbitral proceedings. Until such an order is complied with by the parties, the arbitral tribunal can put the proceedings on hold (*Article 597, Civil Procedure Code*).

27. What final remedies are available from the tribunal?

All the remedies that are available in litigation are also available in arbitration, for example:

- Monetary compensation including money due under a contract or damages.
- Specific performance.
- Annulment or termination of a deed.
- Restitution.
- Declarative remedy.
- Interest.
- Liquidated damages.

Appeals

28. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitral clause itself)?

Rights of appeal/challenge

Arbitral awards are not subject to appeal, but only to the setting aside procedure (*Article 608, Civil Procedure Code*).

Grounds and procedure

The grounds for setting aside an arbitral award are limited and expressly provided in Article 608 of the Civil Procedure Code. They are mainly similar to those provided by the UNCITRAL Model Law:

- The subject matter of the dispute is not capable of settlement by arbitration.
- The award was rendered in lack of, or under a null or invalid arbitration agreement.
- The arbitral tribunal was not constituted according to the arbitration agreement.
- A party was not present and was not given proper notice of the hearing.
- The award was rendered after the arbitration term had lapsed.
- The award contains decisions on matters beyond the scope of the submission to arbitration (*extra* or *ultra petita*).
- The award contains no disposition or reasons, does not indicate the date and place of rendering, or is not signed by the arbitrators.
- The award is in conflict with public policy, good morals or imperative provisions of law.
- If, after the award was rendered, the Constitutional Court found that a law, ordinance or a provision of it is unconstitutional, in the context of a plea being made in this respect by one of the parties in the arbitral proceedings.

The parties are prevented from relying on any setting aside grounds which were not raised during the arbitral proceedings, or which can be settled through the procedure of clarifying, correcting or amending the arbitral award (*Article 608(2) , Civil Procedure Code*).

The interested party will lodge the setting aside application with the court of appeals at the seat of the arbitration. Only documents can be submitted as new evidence and the statement of defence is mandatory.

If the application is admitted and the arbitral award is set aside, the court has the following options:

- If the grounds mentioned in the first three bullet points above are found to apply, the dispute will be forwarded to the competent state court.
- For all the other grounds listed above, the court will forward the dispute to the arbitral tribunal for retrial, if at least one of the parties expressly requests it. Conversely, if there is no parties' request, the court of appeals will hear the merits of the case, within the limits of the arbitration agreement.

The decisions rendered by the court of appeals in the setting aside procedure are subject to final appeal before the High Court of Cassation and Justice (*Article 613, Civil Procedure Code*).

Waiving rights of appeal

The Civil Procedure Code expressly prohibits the parties to waive their right to set aside the arbitral award through the arbitration agreement. The waiver can only be validly made after rendering of the arbitral award (*Article 609, Civil Procedure Code*).

29. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered?

As a rule, an application for setting aside must be filed within one month of communication of the award. However, when the ground related to the Constitutional Court's decision is raised (*see Question 28*), the application must be filed within three months of publication of the decision in the *Official Gazette* (*Article 611, Civil Procedure Code*).

30. What is the limitation period applicable to actions to enforce international arbitration awards rendered outside your jurisdiction?

Arbitration awards rendered outside Romania are considered foreign awards and are therefore subject to the *exequatur* procedure (*see Question 35*). There is no specific term for filing an *exequatur* application. However, the general rules on enforcement provide that arbitral awards can be enforced, as a rule, within a three-year period from the date when they are definitive. In the case of awards concerning ownership titles or other property rights, the limitation period for enforcement is ten years (*Article 706, Civil Procedure Code*).

The filing of an *exequatur* claim interrupts the limitation term (*Article 1127(3) and Article 1101, Civil Procedure Code*), after which a new limitation period will run.

Costs

31. What legal fee structures can be used? Are fees fixed by law?

Legal fees in arbitration are not fixed by Romanian law, and can be freely established between the lawyer and the client, subject to mandatory legal provisions. Full contingency based fees for lawyers are banned. Success fees are permitted, but only combined with another fee structure, such as hourly rates, lump sums, or a combination of them.

Third party funding is not expressly restricted by Romanian law. To the authors' knowledge, no such funding arrangements in relation to Romanian arbitrations or litigations have been publicly announced.

32. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost allocation

Costs in both domestic and international arbitration are not regulated under mandatory proceedings. The parties can agree allocation of costs involving arbitration proceedings, such as the arbitrators' fees and expenses, the parties' and witnesses' travel expenses and costs related to taking evidence (*Article 595, Civil Procedure Code*). The arbitral tribunal must give effect and decide on the allocation of costs in accordance with the parties' agreement.

In the case of the parties' silence on the matter of cost allocation, the arbitral tribunal is required under domestic arbitration law to allocate all the costs to the party which has lost the dispute on all accounts, or proportionally to the extent the partial award was in the other party's favour (*Article 595, Civil Procedure Code*). In international arbitration, each party must cover the costs for its appointed arbitrator, and share those for the sole arbitrator or the chairman (*Article 1122, Civil Procedure Code*).

Cost calculation

There is no express provision related to the calculation of arbitral costs in arbitration law. However, Romanian doctrine and case law have provided useful guidance on the matter.

The Romanian Constitutional Court (*Decision no. 401 of 14 July 2005*), in line with European Court of Human Rights' case law (*Award of 14 December 2006 and of 29 March 2011*) confirmed the judges' authority to censor legal fees proportionally with the complexity of the work performed in connection with the case. It has been argued by Romanian scholars that the same principles ought to apply to overall arbitral costs, so that they are awarded only if they are real, necessary and reasonable.

Factors considered

According to Article 595(1) of the Civil Procedure Code, arbitral costs include costs related to organising and holding the arbitral proceedings, arbitrators' fees, administration of evidence and travelling of the parties, arbitrators, experts and witnesses. While not expressly regulated by Article 595(1) of the Civil Procedure Code, case law and doctrine establish that arbitral costs also include lawyers' fees and expenses.

If the parties submit the dispute to an arbitral institution, the costs for administering the proceedings, arbitrators' fees and other arbitral expenses are established according to the institution's regulations (*Article 620, Civil Procedure Code*).

Enforcement of an award

Domestic awards

33. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

Arbitration awards rendered in Romania are considered national awards and can be enforced just like any court decision (*Article 615, Civil Procedure Code*), despite any setting aside proceedings which have been initiated (*Article 635, Civil Procedure Code*).

Enforcement proceedings commence with an application filed by the creditor to the judicial receiver. Shortly after (three days at the latest), the receiver will request the enforcement court's permission for the enforcement procedure. The court will render a decision in up to seven days, without summoning the parties.

The court's decision approving enforcement is not appealable, but it can be analysed within a challenge against the enforcement procedure, in limited and specific circumstances. A decision denying enforcement can only be appealed by the creditor, within 15 days of notification.

The competent court is the district court where the debtor is domiciled or headquartered, as the case may be. If the debtor's domicile or headquarters is located overseas, the district court at the creditor's domicile or headquarters has jurisdiction. If the creditor is also located overseas, the competent court is that where the official receiver has its headquarters.

Foreign awards

34. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Romania has ratified the following conventions relating to recognition and enforcement of foreign arbitration awards:

- Geneva Convention on the Execution of Foreign Arbitral Awards 1927, through Law no. 50/1931.
- Geneva Convention on International Commercial Arbitration 1961, through Decree no. 281/1963.
- The New York Convention, through Decree no. 186/1961, with two reservations, in that it will apply the New York Convention:
  - only to disputes resulting out of contractual or non-contractual relationships, considered as commercial under its legislation; and
  - to the recognition and enforcement of awards rendered in another contracting state. For those awards rendered in non-contracting states, Romania applies the New York Convention only on the basis of reciprocity established by joint agreement between the parties.
- Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965, through State Council Decree no. 62/1975.

35. To what extent is a foreign arbitration award enforceable?

Foreign arbitral awards are subject to the *exequatur* procedure (*see Question 30*). Romanian national courts, in the spirit of the New York Convention, have a pro-recognition and enforcement approach.

Recognition and enforcement is only denied in limited and extreme circumstances, such as non-arbitrability of the dispute, an invalid arbitration agreement or a serious breach of Romanian international private law public policy.

The interested party must file the request before the tribunal in the jurisdiction in which the respondent's domicile or headquarters is located. If the competent tribunal cannot be determined, the Bucharest Tribunal has jurisdiction.

According to the procedure regulated by Article 1128 Civil Procedure Code, along with the request, the party must submit the arbitral award and the arbitration agreement, subject to superlegalisation. Romania has ratified the Hague Convention Abolishing the Requirement for Legalisation for Foreign Public Documents. If necessary, a certified translation into Romanian of these documents (in their entirety, not excerpts) must be provided.

After the *exequatur* decision is issued, the creditor can begin the general enforcement procedure (*see Question 33*).

Length of enforcement proceedings

36. How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the first instance court makes its final order? Is there an expedited procedure?

Enforcement proceedings do not usually take long in front of the local courts. On average, the procedure for approval of enforcement takes around one month, from the date of filing the application to the date when the court renders its decision. The Civil Procedure Code provides for an expedited procedure: the judicial receiver has three days to file the application for approval of enforcement, while the enforcement court has seven days to issue its order, without summoning the parties. A decision denying enforcement is appealable, within 15 days of notification.

Foreign awards must first be subject to the *exequatur*, which is also an expedited procedure taking two months at the very most. All in all, enforcement of a foreign arbitral award can be obtained in up to three months.

Reform

37. Are any changes to the law currently under consideration or being proposed?

The CICA-CCIR Arbitration Rules are currently undergoing structural reform, so that they will have the state of the art approach across the most successful jurisdictions in international arbitration. Enhancing party autonomy, procedural flexibility and simplification, transparency and efficiency, time and cost-wise, are key objectives of the upcoming arbitration rules, which are expected to enter into effect in 2017.

Main arbitration organisations

Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry

Main activities. Administering international and domestic arbitrations.

W http://arbitration.ccir.ro/engleza/index.htm

Content for table (Enforcement of arbitral awards)

Jurisdiction	Are domestic arbitration awards (that is, those made in your jurisdiction) enforceable in the local courts?	Is your jurisdiction a party to the New York Convention? If so, has it made any reservations?	Are foreign arbitration awards enforceable in your jurisdiction?
Romania	Yes, like state court decisions.	Yes. The two reservations are: • Commercial reservation. • Applying the New York Convention to awards rendered in another Contracting State. For awards in a non-Contracting State, reciprocity applies.	Yes, subject to the *exequatur* procedure.

Online resources

Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry

W http://arbitration.ccir.ro/engleza/index.htm

Description. Official website, including an up-to-date English translation of its arbitration rules.

Romanian Ministry of Justice

W http://legislatie.just.ro

Description. Website containing Romanian legislation (including the Civil Code and the Civil Procedure code) in Romanian, updated as of 9 May 2016.

Contributor profiles

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Recent transactions

- Representing the subsidiaries of the largest CEE real estate investor in multiple ICC arbitrations, in relation to real estate retail, residential and development projects or leases.
- Representing a property and construction company in an ICC arbitration arising from a share sale and purchase agreement and joint venture.
- Representing Hassan Awdi, Enterprise Business Consultants INC. and Alfa El Corporation in front of ICSID, under the bilateral investment treaty signed between Romania and the US, regarding various alleged breaches by Romania (nationalisation of real estate properties and companies). Working with Mayer Brown and Bredin Prat.
- Representing a leading Dutch company in an ICC arbitration concerning a wind turbine installation contract.
- Legal assistance and representation of a prominent Romanian manufacturer of vessels in an ICC arbitration deriving from a shipbuilding contract.
- Legal advice to a group of US citizens in an ICDR arbitration concerning a multimillion claim deriving from the confiscation of assets by the Romanian State during the communist regime.

Languages. Romanian, English, French

Professional associations/memberships

- Member of the Bucharest Bar and the Romanian Bar Association.
- Member of the Court College and Arbitrator at the Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry.
- Member of the Young Presidents Organization (YPO) Romanian Chapter.

- For more than a decade, constantly ranked as a leading lawyer in Romania in the areas of mergers and acquisitions, investments, real estate and international arbitration (Chambers and Partners, Legal 500, IFLR 1000).

Publications

- International Comparative Legal Guide to: International Arbitration 2015 Edition, co-author.
- *Financier Worldwide – Commercial Arbitration - Annual Review 2015 – Litigation and Dispute Resolution.*
- *"EU Public Policy in International Commercial Arbitration", Romanian Arbitration Journal no. 2/2016.*
- *"From Autonomy to Delocalisation in International Commercial Arbitration – the French experience and the Romanian echo" – co-author, Romanian Arbitration Journal no. 3/2014.*
- *Speaker at the conference "Arbitration in Eastern Europe. Trends and Developments", Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry, November 2015*.

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- Paris 1 Panthéon-Sorbonne, France (LL.M.).
- US Legal Methods - Introduction to US Law, Institute for US Law, in Washington.

Recent transactions

- Representing the subsidiaries of the largest CEE real estate investor in multiple ICC arbitrations, in relation to real estate retail, residential and development projects or leases.
- Representing a property and construction company in an ICC arbitration arising from a share sale and purchase agreement and joint venture.
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- Representing a leading Dutch company in an ICC arbitration concerning a wind turbine installation contract.

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Publications. *International Comparative Legal Guide to: International Arbitration 2015 Edition, co-author*

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- Representing a leading Dutch company in an ICC arbitration concerning a wind turbine installation contract.

Languages. Romanian, English, German

Professional associations/memberships. Member of the Bucharest Bar and the Romanian Bar Association.

Publications. *The International Comparative Legal Guide to: International Arbitration 2015 Edition, contributor*.

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Series: Country Q&A

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Commencing an Arbitration (http://uk.practicallaw.com/topic8-203-6791)

Costs and Funding: Arbitration (http://uk.practicallaw.com/topic8-203-6786)

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