Global Arbitration Review

The Guide to Challenging and Enforcing Arbitration Awards

General Editor
J William Rowley QC

Editors
Emmanuel Gaillard and Gordon E Kaiser

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Publisher's Note

Global Arbitration Review is delighted to publish this new volume, *The Guide to Challenging and Enforcing Arbitration Awards*.

For those unfamiliar with Global Arbitration Review, we are the online home for international arbitration specialists, telling them everything they need to know about all the developments that matter. We provide daily news and analysis, and a series of more in-depth books and reviews, and also organise conferences and build work-flow tools. Visit us at www.globalarbitrationreview.com.

As the unofficial journal of international arbitration, sometimes we spot gaps in the literature earlier than other publishers. Recently, as J William Rowley QC observes in his excellent preface, it became obvious that the time spent on post-award matters has increased vastly compared with, say, 10 years ago, and it was high time someone published a reference work focused on this phase.

The Guide to Challenging and Enforcing Arbitration Awards is that book. It is a practical know-how text covering both sides of the coin – challenging and enforcing – first at thematic level, and then country by country. We are delighted to have worked with so many leading firms and individuals to produce it.

If you find it useful, you may also like the other books in the GAR Guides series. They cover energy, construction, M&A and mining disputes in the same unique, practical way. We also have books on advocacy in international arbitration and the assessment of damages.

My thanks to the editors for their vision and energy in pursuing this project and to my colleagues in production for achieving such a polished work.

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Editor's Preface

During the past two decades, the explosive and continuous growth in cross-border trade and investments that began after World War II has jet-propelled the growth of international arbitration. Today, arbitration (whether *ad hoc* or institutional) is the universal first choice over transnational litigation for the resolution of cross-border business disputes.

Why parties choose arbitration for international disputes

During the same period, forests have been destroyed to print the thousands of papers, pamphlets, scholarly treatises and texts that have analysed every aspect of arbitration as a dispute resolution tool. The eight or 10 reasons usually given for why arbitration is the best way to resolve cross-border disputes have remained pretty constant, but their comparative rankings have changed somewhat. At present, two reasons probably outweigh all others.

The first must be the widespread disinclination of those doing business internationally to entrust the resolution of prospective disputes to the national court systems of their foreign counterparties. This unwillingness to trust foreign courts (whether based on knowledge or simply uncertainty as to whether the counterparty's court system is worthy – i.e., efficient, experienced and impartial) leaves international arbitration as the only realistic alternative, assuming the parties have equal bargaining power.

The second is that, unlike court judgments, arbitral awards benefit from a series of international treaties that provide robust and effective means of enforcement. Unquestionably, the most important of these is the 1958 New York Convention, which enables the straightforward enforcement of arbitral awards in approximately 160 countries. When enforcement against a sovereign state is at issue, the ICSID Convention of 1966 requires that ICSID awards are to be treated as final judgments of the courts of the relevant contracting state, of which there are currently 161.

Awards used to be honoured

A decade ago, international corporate counsel who responded to the 2008 Queen Mary/PricewaterhouseCoopers Survey on Corporate Attitudes and Practices in Relation to Investment Arbitration (the 2008 Queen Mary Survey) reported positive outcomes on the use of international arbitration to resolve disputes. A very high percentage (84 per cent) indicated that, in more than 76 per cent of arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award. Where enforcement was required, 57 per cent said that it took less than a year for awards to be recognised and enforced, 44 per cent received the full value of the award and 84 per cent received more than three-quarters of the award. Of those who experienced problems in enforcement, most described them as complications rather than insurmountable difficulties. The survey results amounted to a stunning endorsement of international arbitration for the resolution of cross-border disputes.

Is the situation changing?

As an arbitrator, my job is done with the delivery of a timely and enforceable award. When the award is issued, my attention invariably turns to other cases, rather than to whether the award produces results. The question of enforcing the award (or challenging it) is for others. This has meant that, until relatively recently, I have not given much thought to whether the recipient of an award would be as sanguine today about its enforceability and payment as those who responded to the 2008 Queen Mary Survey.

My interest in the question of whether international business disputes are still being resolved effectively by the delivery of an award perked up a few years ago. This was a result of the frequency of media reports – pretty well daily - of awards being challenged (either on appeal or by applications to vacate) and of prevailing parties being required to bring enforcement proceedings (often in multiple jurisdictions).

Increasing press reports of awards under attack

During 2018, *Global Arbitration Review*'s daily news reports contained literally hundreds of headlines that suggest that a repeat of the 2008 Queen Mary Survey today could well lead to a significantly different view as to the state of voluntary compliance with awards or the need to seek enforcement.

A sprinkling of last year's headlines on the subject are illustrative:

- 'Well known' arbitrator sees award set aside in London
- Gazprom challenges gas pricing award in Sweden
- ICC award set aside in Paris in Russia–Ukrainian dispute
- Yukos bankruptcy denied recognition in the Netherlands
- Award against Zimbabwe upheld after eight years
- Malaysia to challenge multibillion-dollar 1MBD settlement
- Uzbekistan escapes Swiss enforcement bid
- India wins leave to challenge award on home turf

Regrettably, no source of reliable data is available as yet to test the question of whether challenges to awards are on the increase or the ease of enforcement has changed materially

since 2008. However, given the importance of the subject (without effective enforcement, there really is no effective resolution) and my anecdote-based perception of increasing concerns, last summer I raised the possibility of doing a book on the subject with David Samuels (*Global Arbitration Review*'s publisher). Ultimately, we became convinced that a practical, 'know-how' text that covered both sides of the coin – challenges and enforcement – would be a useful addition to the bookshelves of those who more frequently than in the past may have to deal with challenges to, and enforcement of, international arbitration awards. Being well equipped (and up to date) on how to deal with a client's post-award options is essential for counsel in today's increasingly disputatious environment.

David and I were obviously delighted when Emmanuel Gaillard and Gordon Kaiser agreed to become partners in the project.

Editorial approach

As editors, we have not approached our work with a particular view on whether parties are currently making inappropriate use of mechanisms to challenge or resist the enforcement of awards. Any consideration of that question should be made against an understanding that not every tribunal delivers a flawless award. As Pierre Lalive said in a report 35 years ago:

> *an arbitral award is not always worthy of being respected and enforced; in consequence, appeals against awards [where permitted] or the refusal of enforcement can, in certain cases, be justified both in the general interest and in that of a better quality of arbitration.*

Nevertheless, the 2008 Queen Mary Survey, and the statistics kept by a number of the leading arbitral institutions, suggest that the great majority of awards come to conclusions that should normally be upheld and enforced.

Structure of the guide

This guide is structured to include, in Part I, coverage of general matters that will always need to be considered by parties, wherever situated, when faced with the need to enforce or to challenge an award. In this first edition, the 13 chapters in Part I deal with subjects that include (1) initial strategic considerations in relation to prospective proceedings, (2) how best to achieve an enforceable award, (3) challenges generally, (4) a variety of specific types of challenges, (5) enforcement generally, (6) the enforcement of interim measures, (7) how to prevent asset stripping, (8) grounds to refuse enforcement, and (9) the special case of ICSID awards.

Part II of the book is designed to provide answers to more specific questions that practitioners will need to consider when reaching decisions concerning the use (or avoidance) of a particular national jurisdiction – whether this concerns the choice of that jurisdiction as a seat of an arbitration, as a physical venue for the hearing, as a place for enforcement, or as a place in which to challenge an award. This first edition includes reports on 29 national jurisdictions. The author, or authors, of each chapter have been asked to address the same 35 questions. All relate to essential, practical information on the local approach and requirements relating to challenging or seeking to enforce awards in each jurisdiction. Obviously, the answers to a common set of questions will provide readers

with a straightforward way in which to assess the comparative advantages and disadvantages of competing jurisdictions.

Through this approach, we have tried to produce a coherent and comprehensive coverage of many of the most obvious, recurring or new issues that are now faced by parties who find that they will need to take steps to enforce these awards or, conversely, find themselves with an award that ought not to have been made and should not be enforced.

Quality control and future editions

Having taken on the task, my aim as general editor has been to achieve a substantive quality consistent with *The Guide to Challenging and Enforcing Arbitration Awards* being seen as an essential desktop reference work in our field. To ensure content of high quality, I agreed to go forward only if we could attract as contributors, colleagues who were some of the internationally recognised leaders in the field. Emmanuel, Gordon and I feel blessed to have been able to enlist the support of such an extraordinarily capable list of contributors.

In future editions, we hope to fill in important omissions. In Part I, these could include chapters on successful cross-border asset tracing, the new role played by funders at the enforcement stage, and the special skill sets required by successful enforcement counsel. In Part II, we plan to expand the geographical reach with chapters on China, Saudi Arabia, Turkey and Venezuela.

Without the tireless efforts of the Global Arbitration Review team at Law Business Research, this work never would have been completed within the very tight schedule we allowed ourselves; David Samuels and I are greatly indebted to them. Finally, I am enormously grateful to Doris Hutton Smith (my long-suffering PA), who has managed endless correspondence with our contributors with skill, grace and patience.

I hope that all my friends and colleagues who have helped with this project have saved us from error – but it is I alone who should be charged with the responsibility for such errors as may appear.

Although it should go without saying, this first edition of this publication will obviously benefit from the thoughts and suggestions of our readers on how we might be able to improve the next edition, for which we will be extremely grateful.

J William Rowley QC

April 2019

London

Part II

Challenging and Enforcing Arbitration Awards: Jurisdictional Know-How

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Romania

Cosmin Vasile[1]

Applicable requirements as to the form of arbitral awards

Applicable legislation as to the form of awards

1 Must an award take any particular form (e.g., in writing, signed, dated, place, the need for reasons, delivery)?

According to the Code of Civil Procedure, the arbitral award shall be drawn up in writing and shall include:

- the names of the members of the arbitral tribunal, the place and date of rendering the award;
- the names of the parties, their domicile or residence – or, as the case may be, the name and registered office – and the names of the parties' representatives and of the other persons having attended the hearings of the dispute;
- the arbitration agreement based on which the arbitral proceedings were initiated;
- the object of the dispute and a summary of the parties' respective claims;
- the factual and legal grounds for the award, or, if the arbitration was decided *ex æquo et bono*, the grounds considered by the tribunal;
- the operative part; and
- the signatures of all arbitrators, and the signature of the arbitral assistant, if appropriate.

1 Cosmin Vasile is managing partner at Zamfirescu Racoți Vasile & Partners.

Applicable procedural law for recourse against an award

Applicable legislation governing recourse against an award

2 Are there provisions governing modification, clarification or correction of an award?

If clarifications are necessary with respect to the meaning, extent and application of the operative part of the award, or if the operative part of the award includes inconsistent terms, any party may request the arbitral tribunal that made the award, within 10 days of the date of notification of the award, to give an interpretation of the operative part or to remove the inconsistencies.

If the arbitral tribunal omitted in its award to issue a decision with respect to a main or secondary claim, or with respect to a related or associated claim, any party may request that the award be supplemented within 10 days of notification thereof.

Clerical errors in the award, or any other errors that do not change the merits of the solution, and any errors in calculations may be corrected at the tribunal's own behest or following a request by a party, which must be filed within 10 days of the date of notification of the award.

The award clarifying, supplementing or rectifying the errors will be issued immediately and forms an integral part of the arbitral award.

Appeals from an award

3 May an award be appealed to or set aside by the courts? If so, on what grounds and what procedures? What are the differences between appeals and applications for set-aside?

An arbitral award may not be appealed. Further, an arbitral award may only be set aside on one of the following limitative grounds:

- 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 that 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; or

- 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.

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 of a ruling declaring provisions unconstitutional, 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 beginning of the process (particularly those relating to the jurisdiction and constitution of the arbitral tribunal). A request to set aside is subject to a fixed court fee under the law.

The jurisdiction to settle the set-aside claim belongs to the court of appeal of the county where the arbitration took place. The ruling issued by the court of appeal is subject to a higher appeal before the High Court of Cassation and Justice.

Applicable procedural law for recognition and enforcement of arbitral awards

Applicable legislation for recognition and enforcement

4 What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction? Is your jurisdiction party to treaties facilitating recognition and enforcement of arbitral awards?

The recognition and enforcement procedure of arbitral awards is governed in Romania by Articles 1124 to 1133 of the Code of Civil Procedure (note that this procedure applies only to foreign arbitral awards). In accordance with Article 615 of the Code of Civil Procedure, domestic arbitral awards are enforceable and can be enforced in the same manner as a domestic court decision. A similar regime is set forth in Article 1121 of the Code of Civil Procedure, which provides that Romanian international awards are enforceable and binding, starting with the date on which the parties are notified.

Romania is party to several treaties facilitating recognition and enforcement of arbitral awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 July 1958 (the New York Convention), the European Convention on International Commercial Arbitration of 21 April 1961 (the Geneva Convention), and the Convention on the Settlement of Disputes between States and Nationals of Other States of 18 March 1965 (the ICSID Convention).

The New York Convention

5 Is the state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under Article I(3) of the Convention?

Yes. Romania acceded to the New York Convention in 1961, but expressed commercial relationship and reciprocity reservations. In accordance with Decree No. 186/24 July 1961, Romania mentioned that it would apply the Convention only to disputes arising out of legal relationships, whether contractual or not, that are considered as commercial under the national law of the state making the declaration. In addition, Romania stipulated that application of the Convention would be limited to awards made only in the territory of another contracting state. As to awards made on the territory of a non-contracting party, the Convention will be applied only on the basis of reciprocity.

Recognition proceedings

Competent court

6 Which court has jurisdiction over an application for recognition and enforcement of arbitral awards?

An application for enforcement of a domestic award (including international awards rendered in Romania) should be made to the court of first instance in whose jurisdiction the debtor is domiciled, or, if the debtor has no domicile in Romania, to the court of first instance in whose jurisdiction the creditor is domiciled or the enforcement officer (bailiff) is seated. More precisely, an application for enforcement should be submitted to the competent court by the enforcement officer within three days starting of the date when a request for enforcement was registered with the enforcement officer's office by the creditor, and submitted with the original or a certified copy of the award.

The competent court to decide on an application for recognition and enforcement of a foreign arbitral award is the tribunal in whose jurisdiction the debtor has its domicile or headquarters. If the debtor's domicile or headquarters cannot be established, then the competent court is the Bucharest Tribunal. The Court of Appeal handles appeals against the decisions rendered by the tribunals.

Jurisdictional issues

7 What are the requirements for the court to have jurisdiction over an application for recognition and enforcement of arbitral awards? Must the applicant identify assets within the jurisdiction of the court that will be the subject of enforcement for the purpose of recognition proceedings?

There are no specific requirements for the court to have jurisdiction over an application for recognition and enforcement of arbitral awards. Therefore, the applicant does not have to identify assets within the jurisdiction of the court. The general condition that should be complied with by the applicant is the existence of a legitimate interest in obtaining the recognition and enforcement of an award in Romania.

Form of the recognition proceedings

8 Are the recognition proceedings in your jurisdiction adversarial or *ex parte*?

The proceedings for the recognition of foreign awards are adversarial. Pursuant to Article 1131 of the Code of Civil Procedure, an application for recognition of a foreign arbitral award is decided by the court following the summoning of the parties. In exceptional cases, an application can be reviewed *ex parte* if it is clearly shown by the award that the defendant agreed to the claimant's claims.

Form of application and required documentation

9 What documentation is required to obtain the recognition of an arbitral award?

In accordance with Article 1128 of the Code of Civil Procedure, an application should be accompanied by the arbitration agreement and the arbitral award (the originals or duly certified copies that are subject to over-legalisation, except for states that apply the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, which was ratified by Romania on 7 June 2000). As the opposite party has to be summoned, the applicant should submit two copies of the application and the corresponding documents, one for the court and one for the other party (if there are more parties, then a copy for each party should be submitted).

Translation of required documentation

10 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition of an arbitral award? If yes, in what form must the translation be?

An application for recognition and enforcement should be submitted in Romanian. All supporting documents (in particular the arbitration agreement and the arbitral award) that are in a foreign language should be accompanied by a certified full translation.

Other practical requirements

11 What are the other practical requirements relating to recognition and enforcement of arbitral awards?

An applicant seeking the recognition and enforcement of an arbitral award is required to pay a stamp duty in the amount of 20 lei. Representation by a lawyer is allowed but not imposed by the law.

Recognition of interim or partial awards

12 Do courts recognise and enforce partial or interim awards?

Courts may recognise partial awards provided that they resolve, in a final and binding manner, part of the dispute, with no possibility of being further reviewed or revoked by the arbitral tribunal. As regards interim awards (i.e., awards by which certain measures are ordered or by which the dispute is only provisionally settled, pending the final resolution of the dispute by means of a final award), the courts will generally be reluctant to enforce an award with a provisional effect, irrespective of the label given to it by the arbitral tribunal (interim or partial award).

Grounds for refusing recognition of an award

13 What are the grounds on which an award may be refused recognition? Are the grounds applied by the courts different from the ones provided under Article V of the Convention?

The main grounds for refusing the recognition or enforcement are stipulated under Articles 1125 and 1129 of the Code of Civil Procedure, which are similar to those provided under Article V of the New York Convention, namely: arbitrability issues; issues concerning a breach of public policy; incapacity of the parties to conclude an arbitration agreement; invalidity of an arbitral agreement; the absence of a proper notice to a party regarding the appointment of an arbitrator or to arbitral proceedings; the composition of an arbitral award or arbitral proceedings did not observe the parties' agreement or the law of the country where the arbitration took place; jurisdictional issues, such as deciding a dispute not contemplated by the parties; or the award has not become binding, has been suspended or set aside in the country in which that award was rendered.

Effect of a decision recognising an award

14 What is the effect of a decision recognising an award in your jurisdiction? Is it immediately enforceable? What challenges are available against a decision recognising an arbitral award in your jurisdiction?

The enforcement of a foreign arbitral award can start once 30 days have passed since notification of the decision rendered in the recognition and enforcement procedure, unless an appeal is submitted by the opposite party. In the latter case, the enforcement can start immediately after the tribunal's decision becomes final (i.e., after rejection of the appeal).

Decisions refusing to recognise an award

15 What challenges are available against a decision refusing to recognise an arbitral award in your jurisdiction?

The decisions rendered in recognition and enforcement proceedings are subject to appeal before the Court of Appeal, regardless of whether the application was granted or refused.

Stay of recognition or enforcement proceedings pending annulment proceedings

16 Will the courts adjourn the recognition or enforcement proceedings pending the outcome of annulment proceedings at the seat of the arbitration? What trends, if any, are suggested by recent decisions? What are the factors considered by courts to adjourn recognition or enforcement?

Pursuant to Article 1.130 of the Code of Civil Procedure, the court may stay the recognition and enforcement proceedings pending the outcome of an application for annulment or suspension of the award filed at the seat of arbitration. Note that, although the court will have to analyse whether the application to stay the enforcement is based on sound grounds, it has a wide discretion to render a decision in this respect, depending on the exact circumstances encountered in each case.

Security

17 If the courts adjourn the recognition or enforcement proceedings pending the annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security? What are the factors considered by courts to order security? Based on recent case law, what are the form and amount of the security to be posted by the party resisting enforcement?

At the request of the party seeking recognition and enforcement, the court may order the opposite party to give security as a condition-precedent for granting a stay of the recognition or enforcement proceedings. In establishing the amount of the security, the court will take into consideration the amount of the damages that may be incurred by the party seeking the enforcement. Nevertheless, the value of the security cannot exceed 20 per cent of the total amount claimed. As a rule, a security deposit is required. Provided that the other party agrees, the security may be also posted in the form of a bank guarantee, or in another suitable form, including a mortgage. However, most commonly, parties provide security deposits.

Recognition or enforcement of an award set aside at the seat

18 Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an award is set aside after the decision recognising the award has been issued, what challenges are available against this decision?

Based on the provisions of Article 1129 of the Code of Civil Procedure, the court shall refuse the recognition and enforcement of an award that has been set aside by the competent authority at the seat of arbitration.

A decision granting recognition of an arbitral award can be reversed by the appellate court if the award is subsequently set aside at the seat of arbitration.

Service

Service in your jurisdiction

19 What is the applicable procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction?

Service of the judicial documents issued in the course of civil and commercial proceedings may be conducted by registered letter with declared value against acknowledgment of receipt or by court officers. The documents are to be served at the place of residence or the domicile of the consignee.

Service of extrajudicial documents may be carried out by an enforcement officer (bailiff) or, in some cases, by a notary public.

As regards documents coming from abroad, international regulations are applicable (such as Regulation (EC) No. 1393/2007, bilateral or multilateral treaties, etc.). If there is no international regulation in place, the documents are received by the Ministry of Justice and are forwarded to the competent court for service to the defendant.

Service out of your jurisdiction

20 What is the applicable procedure for service of extrajudicial and judicial documents to a defendant out of your jurisdiction?

When judicial or extrajudicial documents are sent by a Romanian authority to a defendant domiciled abroad, service is carried out in accordance with international provisions, such as the Hague Convention of 1965 or Regulation (EC) No. 1393/2007. When the international conventions are not applicable, service of documents is entrusted to the Ministry of Justice in accordance with Law No. 189/2003 regarding international judicial assistance in civil and commercial matters.

Identification of assets

Asset databases

21 Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction?

There are several databases or publicly available registers that may be used for identifying a debtor's assets, such as the Land Registry for immovable assets and the Electronic Archive for Security Interests in Movable Property for movable assets.

Moreover, during an enforcement procedure, a bailiff can request information from banks relating to a debtor's bank accounts. Further, the bailiff can request competent authorities to provide other relevant information (e.g., information from fiscal authorities regarding movable or immovable assets for which the debtor pays taxes).

Information available through judicial proceedings

22 Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

Information about a debtor's involvement in public court proceedings is publicly available on the official website of the Romanian courts at http://portal.just.ro/SitePages/acasa.aspx. However, court files are kept confidential and only the parties have access to them.

Nevertheless, in insolvency proceedings, many documents are published in the Insolvency Proceedings Bulletin and thus become generally accessible.

With respect to a debtor's assets, information can be obtained only by a bailiff, once the enforcement procedure has started, as discussed in question 21.

Enforcement proceedings

Availability of interim measures

23 Are interim measures against assets available in your jurisdiction? May award creditors apply such interim measures against assets owned by a sovereign state?

Interim measures can be ordered against a debtor's assets located in Romania. The courts can grant the interim measures provided in Articles 952 to 979 of the Code of Civil Procedure, such as conservatory or judiciary seizure of assets or conservatory garnishment.

There is no provision in the procedural law forbidding interim measures against assets owned by a sovereign state, except for the assets that are in the public domain of the state, which are inalienable. Moreover, there may be certain situations in which such measures cannot be awarded against the assets of another sovereign state: for example, in the case of diplomatic missions and the assets of the personnel of diplomatic missions.

Procedure for interim measures

24 What is the procedure to apply interim measures against assets in your jurisdiction? Is it a requirement to obtain prior court authorisation before applying interim measures? If yes, are such proceedings *ex parte*?

Interim measures can be granted by means of a decision rendered by the competent court in *ex parte* proceedings (except if conservatory seizure of ships is requested, when the proceedings are adversarial). With a conservatory seizure, the party requesting the interim measure against assets should prove that it has filed a claim in court or before an arbitral tribunal.

The decision of the court can be challenged by the opposite party, the proceedings becoming adversarial in the appellate phase.

Interim measures against immovable property

25 What is the procedure for interim measures against immovable property within your jurisdiction?

The procedure is similar, up to a certain point, for immovable and movable property. After an application is made and the court renders its decision, as discussed in question 24, the measure is enforced by an enforcement officer. As far as immovable assets are concerned, the enforcement procedure implies the fulfilling of the necessary formalities for seizing the assets in the land register.

Interim measures against movable property

26 What is the procedure for interim measures against movable property within your jurisdiction?

The procedure for interim measures against movable property is similar to that described in question 25, except that the necessary formalities are made in the Electronic Archive for Security Interests in Movable Property.

Interim measures against intangible property

27 What is the procedure for interim measures against intangible property within your jurisdiction?

For intangible properties, such as securities or other intangible assets, a creditor can apply to the court for a conservatory pledge. If the conservatory pledge refers to shares, then the measure must be recorded in the Companies Trade Register, whereas if it refers to other intangible assets, the measure must be registered with the Electronic Archive for Security Interests in Movable Property.

Attachment proceedings

28 What is the procedure to attach assets in your jurisdiction? Is it a requirement to obtain prior court authorisation before attaching assets? If yes, are such proceedings *ex parte*?

There is no requirement for a prior authorisation of the court for attachment proceedings to start (except for decisions authorising the start of an enforcement procedure or enforcement procedures against immovable assets). The creditor that holds an enforceable title, and has obtained court approval to start the enforcement procedure, can opt for the measure that it considers to be appropriate for the recovery of its debts: garnishment, enforcement against the debtor's movable assets or enforcement against immovable assets.

Attachment against immovable property

29 What is the procedure for enforcement measures against immovable property within your jurisdiction?

Enforcement measures against immovable assets must be authorised by the court, either when authorising the enforcement of the writ of execution or afterwards.

After receiving the court's authorisation, the bailiff sends a notice in which it requests the debtor to pay the debt within 15 days. At the same time, the bailiff registers a notice in the land register, which has the effect of forbidding the alienation or encumbrances. Afterwards, the immovable property is evaluated and the date for a public auction is established. The money raised through the public auction is distributed to the creditors – those that hold mortgages or other security rights are given priority. Any residual amount left after all creditors are paid is returned to the debtor.

Attachment against movable property

30 What is the procedure for enforcement measures against moveable property within your jurisdiction?

The enforcement procedure against movable assets starts with a notice sent by the bailiff requesting the debtor to pay the debt within one day. If no payment is made by the given deadline, the bailiff seizes the debtor's assets. Within 15 days of the date when the assets are seized, the bailiff sells the assets in a public auction. If the parties agree, the debtor itself can be authorised to sell the assets or the bailiff can sell them in a direct sale-purchase procedure.

Attachment against intangible property

31 What is the procedure for enforcement measures against intangible property within your jurisdiction?

Enforcement against intangible property observes the procedures established for garnishment combined with the enforcement procedure against movable assets. Thus, the procedure starts with the bailiff seizing the intangible property and then continues with the procedure for selling the property as described in question 30.

Enforcement against foreign states

Applicable law

32 Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

There are no specific rules in place for the recognition and enforcement of arbitral awards against foreign states.

Service of documents to a foreign state

33 What is the applicable procedure for service of extrajudicial and judicial documents to a foreign state?

In the absence of international regulations signed or ratified by Romania, the service will be regulated by Law No. 189/2003 regarding international judicial assistance in civil and commercial matters.

Immunity from enforcement

34 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? If yes, are there exceptions to such immunity?

There are no specific regulations issued by the Romanian state on foreign sovereign immunity. Therefore, the provisions of international treaties and conventions apply, such as the United Nations Convention on Jurisdictional Immunities of the States and their Property of 2 December 2004 (signed by Romania in 2005 and ratified in 2006).

Waiver of immunity from enforcement

35 Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? If yes, what are the requirements of such waiver?

The issue of a foreign state waiving immunity from enforcement is not regulated any domestic legislation.

Appendix 1

About the Authors

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

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

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

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Enforcement used to be an irrelevance in international arbitration. Most losing parties simply paid. Not so any more. The time spent on post-award matters has increased vastly.

The Guide to Challenging and Enforcing Arbitration Awards is a comprehensive volume that addresses this new reality. It offers practical know-how on both sides of the coin: challenging, and enforcing, awards. Part I provides a full thematic overview, while Part II delves into the specifics seat by seat. It covers 29 seats.

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