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Contents

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

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1. General

1.1 Prevalence of Arbitration

International arbitration has been gaining significant ground in Romania for some time now, with an increasing use resulting predominantly from disputes related to the various infrastructure projects started by the public authorities in Romania with the help of European financing (from pre-adhesion and post-adhesion funds). International arbitration is based on the International Federation of Consulting Engineers (FIDIC) General Conditions of Contract, which includes the standard International Chamber of Commerce (ICC) arbitration clause. At one stage, a government decision was issued to regulate the use of the FIDIC General Conditions of Contract.

International arbitration is well established in Romania, with a more or less constant number of arbitration cases per year. The majority of these involve construction disputes, but various other contractual disputes are also referred to international arbitration, including energy-related disputes.

1.2 Trends
Arbitration in Romania has experienced a steady growth since 2014.

An even steadier growth of international arbitration is expected, given that the most frequently used international arbitration institution in Romania, the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CICA), adopted a new set of rules starting from 1 January 2018 which align to the rules of ICC and other similar institutions, such as the London Court of International Arbitration (LCIA), and which make the arbitral proceedings more flexible for the parties.

International arbitration is currently carried out under the auspices of the ICC, the Vienna International Arbitral Centre (VIAC), the London Court of International Arbitration (LCIA), the Swiss Chamber of Commerce (SCC), but also under those of German and Italian institutions of arbitration (the German Institution of Arbitration (DIS), and the Court of Arbitration attached to the German-Romanian Chamber of Commerce and Industry (AHK), mainly used by German/Italian companies and investors).

1.3 Key Industries
As mentioned above (**1.1 Prevalence of Arbitration**), the main sector experiencing international arbitration activity has been and continues to be the construction industry. This trend is due to fact that infrastructure projects started by the public authorities in Romania with the help of European financing are concluded in agreements based on the International Federation of Consulting Engineers (FIDIC) General Conditions of Contract, which includes the standard International Chamber of Commerce (ICC) arbitration clause. At one stage, a government decision was issued to regulate the use of the FIDIC General Conditions of Contract.

1.4 Arbitral Institutions
The most frequently used international arbitration institutions in Romania are (i) the ICC, mostly for international arbitrations seated in Romania or disputes with an international component and (ii) the CICA, mainly for local arbitral disputes.

2. Governing Legislation

2.1 Governing Law
The main body of law governing international arbitration is included in the new Code of Civil Procedure which came into force on 15 February 2013. Title IV of Book VII (International Arbitration and the Effects of Foreign Arbitral Awards) sets out specific legal provisions regarding international arbitration and the effects of foreign arbitral awards, which are also supplemented with a general set of provisions included in Book IV of the Code of Civil Procedure (On Arbitration) applicable to international arbitration whenever the parties have not agreed on certain aspects by means of the arbitration agreement and have not vested the arbitral tribunal with settling those aspects either.

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

2.2 Changes to National Law
As the applicable legislation is relatively recent – the new Code of Civil Procedure was enacted on 15 February 2013, no significant changes have been implemented as regards national arbitration law and no reforms are expected in the near future. Discussions are ongoing around the need to broaden the scope of arbitrability of disputes.

As mentioned above (**1.2 Trends**), a new set of rules of CICA – which align to the rules of ICC and other similar institutions such as LCIA – entered into force starting from 1 January 2018, being applicable to the disputes started after this date under the purview of CICA.

3. The Arbitration Agreement

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

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

3.2 Arbitrability
A dispute can be referred to international arbitration provided that:

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

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

3.3 National Courts' Approach

National courts in Romania recognise arbitration agreements and their effects. As far as is known, there are no cases of anti-arbitration injunctions or any other similar form of court denial of arbitration agreements.

Provided that the arbitration agreement meets the legal requirements of validity and the dispute is arbitrable, the national courts respect the will of the parties and proclaim that the agreement has the force of law among them.

3.4 Validity

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

4. The Arbitral Tribunal

4.1 Limits on Selection

Party autonomy to select arbitrators is recognised and well-established in Romania. The parties are free to agree whether disputes should be submitted to a sole arbitrator or an arbitral tribunal and also to select the arbitrators. The Code of Civil Procedure provides for the nullity of the arbitration clause which allows one of the parties privileged participation in the nomination of the arbitrator or which provides a party's right over the other party to nominate the arbitrator or to have more arbitrators than the other party.

It should be noted that there was a provision within the Rules of CICA which limited (in fact eliminated) the parties' autonomy to select arbitrators, by introducing a specific procedure for the selection of arbitrators by a special body – the Authority of Nomination (held by the president of the Chamber of Commerce and Industry). This provision was inserted into the Rules in 2012 and revoked in 2014, during which period the number of arbitration cases before this court decreased. Moreover, the High Court of Cassation and Justice admitted the set-aside claims filed against arbitral awards rendered under these conditions because of this violation of the fundamental right of party autonomy in selecting arbitrators.

4.2 Default Procedures

The Code of Civil Procedure provides that the interested party may request the local courts to appoint the arbitrators.

The new rules of CICA provide that where the parties have not agreed on the procedure for the nomination of the arbitrators or if the procedure failed, the nomination or the appointment of the arbitrators, as the case may be, shall be made as follows.

- Where the arbitral tribunal is to consist of a sole arbitrator, the parties shall be given 30 days to jointly nominate the arbitrator. If the parties fail to nominate the arbitrator within this time, the President of the Court shall make the appointment within five days.
- Where the arbitral tribunal is to consist of three arbitrators (also the default option where the parties have not agreed on the number of arbitrators), the claimant and the respondent shall each nominate an arbitrator and the third – the chairperson – shall be elected by these two arbitrators. Where a party fails to nominate the arbitrator within ten days, the President of the Court shall make the appointment within five days. Where the nominated arbitrators do not agree within five days on the person who shall act as chairperson, the President of the Court shall make the appointment within the same time limit.

4.3 Court Intervention

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

4.4 Challenge and Removal of Arbitrators

The parties may agree on a procedure for challenging the appointment of an arbitrator and replacing the arbitrator either by means of the arbitral agreement or subsequently. In the absence of an agreement, the parties may ask the local courts, namely the tribunal whose jurisdiction covers the seat of the arbitration to issue on the challenge or removal of arbitrators.

Pursuant to the Code of Civil Procedure, the arbitrator may be challenged if:

- he does not meet the qualifications provided in the arbitration agreement;

- there is a reason of challenge provided for in the rules of arbitral procedure agreed on by the parties or, in the absence of an agreement, by the arbitrators;
- the circumstances cast a legitimate doubt regarding the arbitrator's independence and impartiality.

A party may challenge an arbitrator whom it has appointed only for reasons of challenge occurring after the appointment.

Otherwise, for example, if the arbitration agreement provides for institutional arbitration, the rules of the arbitral institution will govern the whole procedure and – in the majority of cases – will cover any issues related to the challenge or replacement of arbitrators.

The rules of CICA provide for similar, yet more detailed reasons of challenge:

- cases of incompatibility, namely in case the arbitrator finds himself in one of the situations of incompatibility provided for judges in the Code of Civil Procedure (for example, the arbitrator previously expressed his opinion in relation to the solution in the dispute he was appointed to settle, there are circumstances which justify the doubt that he, his spouse, his ancestors or descendants have a benefit related to the dispute, his spouse or previous spouse is a relative of maximum the fourth degree with one of the parties etc) or for the following reasons which cast a doubt on the arbitrator's independence and impartiality:
  (a) the arbitrator does not meet the qualifications or other requirements regarding arbitrators provided in the arbitration agreement;
  (b) the arbitrator is a partner, has a co-operation relationship with or is a member of the management bodies of an entity without legal personality or of a legal person that has an interest in the case or is controlled by one of the parties or is under joint control together with this party;
  (c) the arbitrator has employment or work relations with one of the parties, with a legal person controlled by one of the parties or is under joint control together with this part;
  (d) the arbitrator provided advisory services to one of the parties, assisted or represented one of the parties or testified in the preliminary stages of the dispute.

As for the procedure for such a challenge of arbitrators, the rules of CICA provide as follows:

- the challenge of any member of an arbitral tribunal consisting of multiple arbitrators shall be adjudicated, in the absence of parties, by an arbitral tribunal constituted by three members appointed by the President of the Court;
- the challenge of the sole arbitrator shall be resolved, in the absence of the parties, by an arbitral tribunal constituted from the President of the Court or an arbitrator appointed by it.

The person with respect to whom a challenge was filed may resign.

If the challenging petition is accepted, the arbitrator, the presiding arbitrator or the sole arbitrator shall be appointed as provided by the rules of CICA.

The rules of CICA stipulate that the mission of arbitrator shall terminate by: resignation, challenge, physical or moral incapacity to fulfil their mission continuously for a long period of time (due to reasons that have occurred, or of which they became aware, after accepting the mission of arbitrator), revocation for an arbitrator failure to perform his/her obligations or death.

4.5 Arbitrator Requirements

Both under the Code of Civil Procedure and CICA rules, the arbitrator is required to be independent, impartial and to disclose any conflicts of interest.

According to the Code of Civil Procedure, a person aware of a challenging reason regarding himself/herself shall be bound to inform the parties and the other arbitrators before accepting the office of arbitrator, or, should such reasons occur after his/her acceptance of the office as soon as he/she has knowledge of them. In this case, the arbitrator may not participate in the arbitral proceedings unless the parties, apprised thereupon, notify in writing that they do not intend to challenge the arbitrator. Even in this particular case, the arbitrator has the right to refrain from adjudicating the dispute.

In a similar manner, according to the new rules of CICA, within five days from the date when the appointment proposal was communicated to them, the arbitrator shall fill in and sign the statement of acceptance, independence, impartiality and availability, where they shall indicate any circumstances that may give rise to justifiable doubts with respect to their impartiality or independence. An arbitrator shall immediately inform the parties and the other arbitrators in writing if any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence arise during the course of the arbitration.

In common with other jurisdictions, Romanian law does not explicitly define these concepts, but merely provides for the general principle, the case law being left to consider these matters depending on the circumstances of the case.

5. Jurisdiction

5.1 Matters Excluded from Arbitration

A dispute can be referred to international arbitration provided that:

- it is of a patrimonial nature;
- it deals with rights the parties may freely dispose of;
- it falls outside the exclusive jurisdiction of the courts pursuant to the law of the seat of arbitration.

Under these circumstances, exempt from arbitration are any disputes which are not of a patrimonial nature, such as civil status litigations, litigations in respect of capacity, inheritance litigations, and family litigations, as well as litigations regarding rights that the parties cannot dispose of (eg, in matters of labour and employment litigation where the law expressly provides that a party cannot waive the legal rights established in their favour).

5.2 Challenges to Jurisdiction

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

5.3 Circumstances for Court Intervention

A state court court vested with a dispute in respect of which an arbitral agreement has been concluded will check its own competence and decline its jurisdiction if at least one of the parties invokes the existence of the arbitration clause.

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

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

The state courts will also adjudicate claims to set aside the final arbitral award which may be grounded on the lack of jurisdiction of the arbitral tribunal rendering the award.

5.4 Timing of Challenge

The arbitral tribunal's ruling that it has jurisdiction may not be challenged before the courts during the arbitral proceedings. Such decision may be subject to judicial review by state courts only by means of a claim to set aside the final arbitral award. Therefore, the arbitration law provides no procedural grounds allowing a party to ask the local courts, during the arbitral proceedings, to determine whether an arbitral tribunal has jurisdiction.

5.5 Standard of Judicial Review for Jurisdiction/ Admissibility

Romanian law does not provide for the concepts of deferential or de novo as standards of review. Matters of admissibility and jurisdiction may be addressed by means of a set-aside claim filed against the arbitral award.

5.6 Breach of Arbitration Agreement

A state court vested with a dispute in respect of which an arbitral agreement has been concluded will check its own competence and decline its jurisdiction if at least one of the parties invokes the existence of the arbitration clause.

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

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

In case none of the three exceptions is applicable, the court will admit the lack of competence plea and will reject the claim as not being of the Romanian state courts' competence.

5.7 Third Parties

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

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

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

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

6. Preliminary and Interim Relief

6.1 Types of Relief

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

The new rules of CICA in force from 1 January 2018 provide for the possibility of the arbitral tribunal to bifurcate the proceedings and render partial awards as case management techniques aimed at increasing the efficiency of the proceedings by reducing the duration and costs of the arbitration.

The protective measures and interim reliefs are merely recommended for the parties as the award issued by the arbitral tribunal is not enforceable under Romanian law. However, according to Article 1117 of the Civil Procedure Code, the arbitral tribunal can request national courts to enforce the award regarding the protective measures and interim relief measures.

6.2 Role of Courts

In case the parties do not comply voluntarily with the interim relief rendered by the arbitral tribunal, the arbitral tribunal may request the involvement of the state courts.

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

Interim Relief in Aid of Foreign-seated Arbitrations

Under Romanian law, there are no express provisions regarding the possibility of the national courts to grant interim relief in aid of foreign-seated arbitrations. The Code of Civil Procedure only regulates the possibility of granting such relief with respect to arbitration seated in Romania.

However, Book VII of the Civil Procedure Code – International Civil Trial, Article 1075 – provides that national courts are competent to grant interim relief regarding individuals and goods located in Romania at the moment of the request, even if, according to national law, the Romanian courts are not competent to render an award with respect to the merits of the case. Although the legal provisions do not address directly international-seated arbitrations, they can be included in the notion of international civil trial.

Emergency Arbitrators

The Code of Civil Procedure contains no provisions with respect to emergency arbitrators.

The 2018 CICA Rules enables the parties to resort to an emergency arbitrator when they are in need of interim relief before the constitution of the arbitral tribunal. According to Article 4 of Annex 2 of the CICA Rules, upon receiving the request, the President of the Court will appoint an emergency arbitrator within 48 hours, who will deliver a decision in a maximum of ten days.

The emergency arbitrators can allow the same type of interim relief granted by the constituted arbitral tribunal: freezing measures on goods, provisional measures or conservatory measures regarding evidence (ie, acknowledgement of matters of fact); likewise, the protective measures or interim relief are not enforceable under Romanian law.

As mentioned above, in case the parties do not comply voluntarily with the interim relief rendered by the emergency arbitrator, the emergency arbitrator may request the involvement of the state courts.

6.3 Security for Costs

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

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

7. Procedure

7.1 Governing Rules

The arbitration procedure is governed by the Code of Civil Procedure, which contains both substantive law provisions and procedural provisions with respect to arbitration.

Pursuant to the Code of Civil Procedure, parties may establish the procedure of arbitration as such or by reference to the set of rules applicable to a particular arbitration institution. The parties may also choose any procedural law to

govern the procedure of arbitration. In case the parties fail to establish such a procedure, the arbitral tribunal will do so.

Regardless of the chosen procedure of arbitration, the arbitral tribunal has to guarantee certain fundamental principles such as parties' equality and their right to be heard.

7.2 Procedural Steps

Romanian law does not provide for any specific procedural steps in respect to filing an arbitration claim.

In order to commence arbitration a party must submit to the arbitral tribunal its written request for arbitration. If the parties have agreed on ad hoc arbitration, the first step is to establish the composition of the arbitral tribunal. If the composition is not stipulated in the arbitration agreement, the party requesting arbitration shall invite the other party in writing to proceed with the procedure to appoint the arbitrators. Where the arbitration is held under the purview of an arbitral institution, the parties shall follow the procedural rules of that institution. In the majority of cases (including before CICA), the party which wishes to commence arbitration must first file the request for arbitration with the secretariat of the arbitral institution. A fixed filing fee is generally required.

The parties arbitrating under FIDIC rules are undergoing a multi-tier dispute resolution procedure (DAB procedure, 56 days amicable settlement period).

7.3 Powers and Duties of Arbitrators

Arbitrators enjoy the powers agreed by the parties (eg, the power to determine the procedural rules applicable in the proceedings), but subject to the limitations provided under the arbitration law, where applicable. Regarding the powers conferred by law, an arbitrator can:

- decide on his or her own jurisdiction;
- assess the case according to his or her 'intimate belief';
- determine the place of arbitration and the law applicable to the substance of the dispute, in the absence of parties' agreement;
- determine the language of arbitration, in certain circumstances and in the absence of parties' agreements.

Similarly, the arbitrators' obligations may be agreed in the arbitration agreement, subject to the limitations imposed by law. Regarding statutory duties, an arbitral tribunal is obliged to determine a dispute within six months of its constitution (although this time limit may be readjusted). Further, the arbitrator has a duty to act impartially and independently and must disclose any circumstances that may prevent him or her from doing so.

7.4 Legal Representatives

There are no particular qualifications or requirements for legal representatives appearing in front of the arbitral tribunal. An authorised legal professional may duly represent a party in arbitration proceedings.

8. Evidence

8.1 Collection and Submission of Evidence

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

The most common means of proof are written records, expert reports, witness statements and cross-examination. All pieces of evidence are of equal value and subject to the court's evaluation and conviction. According to the traditional rules of evidence within the Civil Procedure Code evidence such as a witness statement or cross-examination is taken directly before the arbitral tribunal at the hearing and the expertise should be of a judicial nature (ie, it is carried out under the legality control of the arbitral tribunal).

However, the rules on evidence are flexible in international arbitration, which makes it possible in procedures such as ad hoc arbitration, under ICC Rules or under the new rules of CACI of 2018 to submit written witness statements and expert reports drafted by party-appointed experts, followed by a cross-examinations of witnesses and experts by the Arbitral Tribunal.

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

8.2 Rules of Evidence

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

As a matter of principle, the rules on evidence are flexible when it comes to international arbitration and thus parties may derogate from them. Parties are allowed to choose means of administering the evidence which are different than the ones provided by the national law (Civil Procedure Code). As such, parties have the possibility to use any type of rules, such as the ICC Rules or the Rules on the Taking of Evidence in International Arbitration adopted by the International Bar Association. The new rules of CACI of 2018 actually stipulate that the arbitral tribunal, following the parties' agreement, may apply the Rules on the Taking of Evidence in International Arbitration adopted by the International Bar Association.

8.3 Powers of Compulsion

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

The arbitral tribunal can also order a party to produce certain evidence. The arbitral tribunal cannot order the production of documents from non-parties. For example, the arbitral tribunal might request written information to public authorities regarding their documents and actions, but in case the public authority refuses to comply with such a request and submit the information, the parties or the arbitrators have recourse to local courts to request the enforceable court's order for production of documents. The local courts might also play a role in acknowledging certain matters of fact prior or during the arbitration proceedings, such as the state of certain assets, the statement of a certain witness where there is urgency due to the risk the evidence might get lost.

9. Confidentiality

9.1 Extent of Confidentiality

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

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

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

10. The Award

10.1 Legal Requirements

Article 567 of the Civil Procedure Code stipulates that, unless the parties provided otherwise, the arbitration tribunal must render an award within six months of the constitution of the tribunal for local arbitration and, according to Article 1115, a year with respect to international arbitration.

According to the Code of Civil Procedure, the arbitral award shall be written, reasoned and dated and it shall bear the signatures of all the members of the arbitral tribunal. The provisions of Article 602 and 605 of the Civil Procedure Code stipulate that the delivery of the award can be delayed for a period of 21 days and require for the decision to be communicated to the parties within a month of its delivery.

According to the CICA rules of arbitration, the arbitration award shall be drawn up in writing and shall include:

- the names of the members of the arbitral tribunal and of the arbitral assistant, the place and date of rendering the award;
- the names of the parties, their domicile or residence or, as the case may be, name and registered office, as well as the names of the parties' representatives and of the other persons having attended the hearings of the dispute;
- an indication of 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, in case the arbitration was decided ex aequo et bono, the grounds considered by the tribunal;
- the operative part;
- the signatures of all arbitrators, as well as the signature of the arbitral assistant.

CICA rules imply for the award to be delivered and drawn up within a month since the debate, a term that can be prolonged by the CICA President, on justified grounds. Also, the award is to be communicated to the parties within three days of its being drawn up.

10.2 Types of Remedies

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

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

10.3 Recovering Interest and Legal Costs

The parties are entitled to recover interest on the principal claim upon such request.

The legal costs of the arbitral proceedings are incumbent on the parties, according to their agreement. In the absence of any such agreement, the legal costs are incumbent on the party who lost the case, proportionally to the admission/rejection of the claim/defence.

With respect to the arbitrators' fees and expenses, according to the Code of Civil Procedure, unless parties agreed otherwise, each party will bear the costs if its appointed arbitrator whereas the costs incurred by the sole arbitrator or by the presiding arbitrator are to be equally shared by the parties.

11. Review of an Award

11.1 Grounds for Appeal

The parties may appeal an arbitral award by means of a set-aside claim, on one of the following 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 which was not requested (ultra petita) or more than was requested (plus petita);
- the award failed to mention the tribunal's decision on the relief sought and did not include the reasoning behind the decision, the date and place of the decision or the signatures of the arbitrators;
- the award violated public policy, mandatory legal provisions or morality;
- subsequent to issuance of the final award, the Constitutional Court has declared unconstitutional the legal provisions challenged by a party during the arbitral proceedings or other legal provisions included in the challenged piece of legislation that are closely related to and inseparable from those challenged.

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

11.2 Excluding/Expanding the Scope of Appeal

The parties cannot waive the right of appeal or challenge to an award by agreement before the dispute arises. The Code of Civil Procedure provides that any agreement to the contrary is null and void. The parties may waive the right to appeal only after the award is rendered.

The parties cannot expand the scope of appeal.

11.3 Standard of Judicial Review

Romanian law does not provide for the concepts of deferential or de novo as standards of review.

The merits of the case may be reviewed by the court of appeal subsequent to the admission of a set-aside claim in the following cases: the dispute was non-arbitrable, the arbitration agreement did not exist or was invalid or ineffective, 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.

In all other cases of set-aside, the court of appeal will refer the litigation to the arbitral tribunal for a new judgment to take place, if at least one of the parties requests it. If not, the court will make a decision on the merits of the case.

12. Enforcement of an Award

12.1 New York Convention

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

Romania reserved the right to apply the convention only to:

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

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

12.2 Enforcement Procedure

Domestic arbitral awards are treated and enforced in the same way as court decisions whereas foreign arbitral awards are subject to recognition and enforcement proceedings before the Romanian courts. As a matter of principle, any foreign arbitral award is recognised and may be enforced in Romania as long as the dispute is arbitrable according to Romanian law and the award does not comprise measures contrary to the public order of Romanian private international law.

In order to be granted the recognition and enforcement of an arbitral award, the parties must comply with certain formal requirements – they must file a request to this effect before a competent court and attach legalised or apostille certified copies of the translated award and arbitration agreement. The court vested with hearing a request for the recognition and enforcement of a foreign arbitral award is prohibited from reviewing the merits of the dispute, its examination being limited to the grounds for refusal of recognition and enforcement, as set out in the Code of Civil Procedure.

The grounds for refusal of recognition and enforcement of the foreign award provided in the code follow those established in the New York Convention, such as the parties did not have the capacity to conclude the arbitration agreement, the arbitration agreement was not valid, the award regards a dispute which was not included in the arbitration agreement or which exceeds the limits set by the arbitration agreement.

12.3 Approach of the Courts

The courts in Romania have a positive approach to recognition and enforcement of arbitration awards and rarely refuse recognition and enforcement requests – in these cases, refusal is generally caused by procedural non-compliances rather than substantial law infringement, such as public policy grounds.

The Romanian case law is not consistent with respect to the recognition of partial awards enforcing DAB decisions in FIDIC disputes.

The Code of Civil Procedure refers to public policy in Article 1124, which sets out the legal ground for the public policy exception as follows. The Romanian legislator explicitly adopted the concept of international public policy, which is addressed as the 'public order of the Romanian private international law'. As regard to the notion of public order of private international law, the Romanian courts overtly approach it as part of the Romanian legal order.

13. Miscellaneous

13.1 Class-action or Group Arbitration

No provision under the Romanian arbitration law addresses class action or group arbitration.

13.2 Ethical Codes

Counsel are subject to strict requirements under Romanian legislation and codes of conduct regarding lawyers' practice. Regarding arbitrators, there is no specific body of law or rules regarding their ethical obligations.

13.3 Third-party Funding

Third-party funding is not expressly regulated under Romanian law. Therefore, being no provision interdicting such procedure, third-party funding of the proceedings is permitted.

13.4 Consolidation

Although the arbitration law does not exclude the consolidation of arbitral proceedings, it makes no specific provision for it. The traditional view is that the parties' consent is required for the consolidation of separate arbitral proceedings where the arbitral tribunals are constituted of different arbitration panels. Otherwise, constitution of the arbitral tribunal may be considered to breach the arbitration agreement.

13.5 Third Parties

Under Romanian law, the arbitration agreement and the award may not impose obligations on third parties. Debate is ongoing over the extension of the arbitration agreement to non-signatories – for example, following their direct involvement in the negotiation, performance or termination of a contract containing an arbitration clause – but existing law provides no such remedy. Conventional or legal successors of the signatory are generally bound by the arbitration agreement.

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