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Zamfirescu Racoți Vasile & Partners

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Zamfirescu Racoți Vasile & Partners provides fully integrated advice in litigation, contractual disputes, banking litigation, insolvency/restructuring, public and administrative law, arbitration, mediation, competition, IP, enforcements and debt recovery, tax litigation and employment disputes. The firm, which has its headquarters in Bucharest, offers advice on litigation and arbitration matters at both local and international level thanks to its considerable experience.

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1. General

1.1 General Characteristics of Legal System

Romania's legal system is based on civil law and follows an inquisitorial model in which the court is actively involved in investigating the case, being able to address questions to the parties, decide upon the necessity of particular evidence, invoke procedural incidents, etc. The court is also responsible for leading the hearings. Several principles govern the development of a trial, among which are the equality of the parties, the adversarial nature of the proceedings, the parties' right to a fair trial, and the legality of the proceedings.

The proceedings commence when a claim is submitted by the plaintiff in court, are followed by a phase of written submissions, in which the claim is communicated to the defendant, which in its turn files a statement of defence, to which the plaintiff files a reply. After the written phase, the judge schedules the first hearing, which marks the start of the oral phase, in which the parties discuss any preliminary aspects, the evidence to be admitted by the court and present their oral arguments.

1.2 Court System

The Romanian court system comprises the following subdivisions: the first courts (located in the main towns), the Tribunals (located in every county), the Court of Appeal (corresponding to larger regions) and the High Court of Cassation and Justice (the highest jurisdiction in Romania). Depending on its nature or size, a claim may be settled, in the first instance, by any of these courts, except for the High Court of Cassation and Justice, which is solely an appellate court (with some exceptions in special matters). Most of the courts have different divisions corresponding to general subject matter categories, civil, administrative, and criminal, for example.

As a rule, from the point of view of court hierarchy, a claim that has been settled in the first instance by the first court will be subject to appeal at the Tribunal and to a second appeal at the Court of Appeal. Similarly, a claim that has been settled in the first instance by the Tribunal will be subject to appeal at the Court of Appeal and to a second appeal at the High Court of Justice. A claim settled in the first court before the Court of Appeal will be subject to (final) appeal at the High

Court of Justice. No omission of either of these jurisdictions is acceptable in the course of appeals.

However, following a major modification of the Romanian Civil Procedure Code, which came into force on 15 February 2013 (New Civil Procedure Code), there have been some changes to the civil court system. Previously, any litigation case would normally go through all three levels of jurisdiction described above. Under the new provisions, most claims will be settled only in the first instance and appeal: that is, in two degrees of jurisdiction; however, if a claim is important enough either by virtue of its nature or size, a second appeal will be possible. It should be mentioned that during the transitional phase from the former Civil Procedure Code to the New Civil Procedure Code, all the situations described above are possible, depending on the date on which the claim was first filed.

Currently, there is one judge in the first instance, two judges at appeal and three judges at second appeal, with some exceptions in special matters. However, for litigation files initiated starting from 1 January 2020, the appeals will be adjudicated by three judges.

Specialised courts, as well as specialised sections within the courts, exist in matters like labour law, administrative and fiscal law, insolvency, etc.

1.3 Court Filings and Proceedings

As a rule, court hearings are held in public sessions. In particular cases, the law provides that some types of claims are to be settled only in the presence of the parties. In addition, following a well-grounded request from a party, the court itself may instruct that hearings are only to be held in the presence of the parties.

Under the provisions of the New Civil Procedure Code, the trial has been divided into two phases: (i) the administration of evidence and debate of any prior issues necessary for the settlement of the case which are to be held behind closed doors and only in the presence of the parties, and (ii) the closing arguments which are to be held be held in public sessions. For organisational reasons and due to a lack of space, the applicability of these provisions was delayed until 1 January 2019. Following the adoption of Law No 310/2018, which applies as a general rule to all the litigation files initiated after its entering into force in 21 December 2018, the provision that the first stage of the trial was to be held behind closed doors was eliminated. The rule that the trial has two phases remains applicable, but both phases are to be held, as a matter of principle, in public sessions.

Court documents are only available to the parties in the trial and their representatives. To study a file, applicants must present an identification document proving their capacity. Under specific conditions provided by law, members of the press or third parties, proving they bear an interest in relation to the file, may study court documents.

1.4 Legal Representation in Court

There are no particular requirements for legal representatives appearing before Romanian courts. Legal representatives have rights of audience before any type of court.

The members of a foreign Bar may provide legal counsel on Romanian law after undertaking an exam on the Romanian law and language, organised by the National Association of Romanian Bars. A foreign lawyer practising law in Romania has the obligation to register with the special table of each local Bar Association. However, a foreign lawyer does not have rights of audience before Romanian courts, except for international arbitration courts.

2. Litigation Funding

2.1 Third-Party Litigation Funding

Litigation funding by a third party is not officially provided for within the Civil Procedure Code. Therefore, third-party funding of the proceedings is permitted as there is no provision interdicting this procedure. However, third-party funding is not frequently used in Romania. The third-party funding will be governed by the agreement concluded between the funder and the beneficiary. Such an arrangement does not affect the procedural frame unless the third party purchases the rights stemming from the claim and becomes a party in the trial. In this case, there are certain cases in which certain third parties cannot purchase the rights stemming from the claim.

2.2 Third-Party Funding: Lawsuits

There are no limitations to the types of lawsuits available for third-party funding, unless the third party purchases the rights stemming from the claim and becomes a party in the trial, in which case certain interdictions related to the profession of the third party and the object of the claim might apply. For example, judges, prosecutors and other judicial participants in a civil trial may not acquire the litigious rights that fall under the jurisdiction of the court in which they exercise their profession.

2.3 Third-Party Funding for Plaintiff and Defendant

Third-party funding is available to both the plaintiff and defendant.

2.4 Minimum and Maximum Amounts of Third-Party Funding

Third-party funding generates private law effects between the third party and the beneficiary, the limits of the amounts funded are subject to the agreement between the third party and the beneficiary, there being no legal provision regulating them.

2.5 Types of Costs Considered under Third-Party Funding

The costs funded will be established in the agreement between the third party and the beneficiary and will vary depending on the object matter, the value of the litigation file, etc. Usually, a third-party funder will cover costs such as stamp fees and lawyers' fees.

2.6 Contingency fees

The legal provisions regulating the relationship between lawyers and clients forbid a pactum de quota litis. However, the parties to the legal assistance contract are free to set any combination of fixed or hourly fees and success fees, the latter being due only if a certain result is reached.

2.7 Time Limit for Obtaining Third-Party Funding

The legal provisions do not impose any time limits on when a party to the litigation can obtain third-party funding.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

In particular cases expressly established by the law, preliminary procedures are compulsory. These procedures may consist in conciliation (for example in administrative disputes) or inquiries at the notary public (for example in inheritance disputes), and proof of fulfilment of these procedures will have to be attached to the action submitted to court. The potential defendant is not bound to respond to an invitation to conciliation, hence there are no penalties for failing to comply. In such a case, the mere invitation to conciliation will count as proof of the fulfilment of the pre-trial conciliation requirement.

In addition, contracting parties may agree that preliminary procedures are to be followed pre-litigation. Other than such legal and contractual preliminary procedures, no pre-action exchange of documents may be considered to be a preliminary step for bringing an action.

3.2 Statutes of Limitations

The purpose of the statute of limitations is to protect the material right of action. As a rule, claims having a pecuniary object are subject to the statute of limitations. The time limits for bringing civil claims differ, according to the nature of the claim and the subjective right at the basis of the claim. Generally, these limits range from six months to ten years, the general term being three years. Time limits are treated as a substantive law matter.

The statute of limitations does not operate ex officio, instead, the objection of limitation can only be invoked, within the applicable terms (which differ according to the category of the right) before the first court, at the first court hearing at the latest. Before the commencement of the statute of limitations period, the parties cannot waive the effects of the statute of limitations, as this is only possible after the commencement of the period. The parties may contractually agree to suspend time limits. Until the adoption of the New Civil Code (in force since 1 October 2011), according to the former legal provisions on limitation (which still govern legal relationships entered into before 1 October 2011), rules on limitation and its course were imperative and the parties could not derogate from them at their own will, although the law described a small number of cases where limitation could be suspended or interrupted.

A limitation period that starts on a particular day will be considered to be fulfilled in the corresponding day of the year/month in which the limitation term expires. During the course of the limitation period, several judicial or factual events may cause the suspension or the interruption of the limitation period.

3.3 Jurisdictional Requirements for a Defendant

A claim may be initiated against a person who has capacity to stand trial, namely both the capacity to have rights and the capacity to exercise those rights. The capacity to have rights is fulfilled, in the case of a natural person, if that person is alive; and, in the case of a legal person, if the company is duly registered with the trade registry. As far as the capacity to exercise rights is concerned, a natural person has full capacity to exercise their rights when turning 18 years old. A natural person aged between 14 and 18 needs to be assisted in trial and a natural person aged less than 14 needs to be represented in court by their legal guardian.

As a rule, the plaintiff shall file a claim to the court whose jurisdiction covers the area where the defendant is domiciled, if the defendant is a natural person; or where the premises of the defendant are located, if the defendant is a legal person. The court's jurisdiction is not affected by a change of residence/premises by the defendant if it takes place after the claim was filed by the plaintiff. The appeal and second appeal are to be settled by the corresponding superior courts of the first-tier court. Different rules apply if the domicile or premises of the defendant are not known by the plaintiff. There are also certain exception where, depending on the subject matter of the dispute, the claim must be filed in a different court than the one whose jurisdiction covers the area where the domicile/premises of the defendant are located. For example, in tort claims, a court has jurisdiction if the tort was committed in the area covered by the court jurisdiction, regardless of whether the defendant is domiciled in Romania or in a different country.

If there are multiple defendants, it suffices that one of them has their domicile/premises in the court jurisdiction in order for that court to have jurisdiction to settle the claim.

The only difference between courts, in terms of jurisdictional requirements, relates to the complexity and value of the claim (different subject matters and values triggers the juris-

diction of a different court) or certain qualities of the parties (for example, a claim against a central public authority/institution is settled by a different court than a claim against a local public authority/institution).

3.4 Initial Complaint

The initial complaint shall comprise the following elements: (i) the identity of the parties; (ii) the name of the plaintiff's representative and proof of its powers of representation; (iii) the claim and its value; (iv) the factual and legal grounds of the claim; (v) the evidence supporting the claim; and (vi) the signature of the plaintiff's representative.

As a rule, the claim may be amended until the first court hearing. After this moment, amendments are only permitted with the other party's consent.

3.5 Rules of Service

After verifying the fulfilment of the formal conditions of the claim, the judge organises the communication of the claim to the defendant as the service of the claim is the responsibility of the court, regardless of whether the defendant's domicile falls within the court's jurisdiction. The communication of the claim is accompanied by a note obliging the defendant to submit a statement of defence within, generally, 25 days from the communication of the claim (a shorter term may apply in special cases).

As a rule, any communication of procedural documents is fulfilled by the court's procedural agents or other employees. If this is not possible, the communication is made by mail, with a confirmation of receipt.

The service may also be fulfilled by fax, email or other means of communication that provide the possibility for a receipt confirmation to be issued.

When the claimant is not able to provide the defendant's address, the communication is made by publication at the court's headquarters, on the court's website and at the defendant's last known domicile.

The deemed date of service is the date when the confirmation of receipt is signed by the receiver.

Outside the country, the communication of documents may also be made by mail with confirmation of receipt and declared content. The service of judicial documents between EU member states is regulated by Regulation No 1393/2007. According to this regulation, as a rule, in civil and commercial matters, the judicial documents are transmitted directly and as soon as possible between the transmitting and receiving agencies of the member states (according to the above mentioned regulation, each member state designates the public officers, authorities or other persons who will act as transmitting and receiving agencies). Afterwards, the receiving agency shall take all necessary steps to effect the service of the document as soon as possible, either in accordance with the law of the member state addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that member state. Another means of transmitting the judicial documents according to the regulation is directly by postal services on persons residing in another member state by registered letter with acknowledgement of receipt or its equivalent.

3.6 Failure to Respond

The failure of the defendant to respond to a lawsuit does not hinder the development of the case. If the defendant does not submit a statement of defence during the written submissions phase, the judge will schedule the first hearing. The defendant may still appear at the first hearing, but the arguments that they can invoke might be limited because, if the statement of defence is not submitted in time, the defendant may be unable to propose further evidence in its defence or invoke objections regarding the claim (except for objections of public order). Even if the defendant does not appear at the hearings, the proceedings will continue in its absence, as long as the claimant is present or has requested the court to settle the case even in its absence. Otherwise, the proceedings will be suspended.

In conclusion, the court vested with the claim will issue a judgment regardless of the defendant's silence. However, this does not mean that the court will invariably rule in favour of the claimant. In virtue of its active role and of the principle of establishing the truth, the court will impartially analyse the case and issue a judgment based on the facts, the evidence submitted and their legal and/or contractual interpretation.

3.7 Representative or Collective Actions

The concept of class actions is not regulated in Romania. However, several litigants may address the court with a collective claim if their rights stem from the same cause or if there is a close connection between their claims. These elements (same cause, connection) must be justified in front of the court. In addition, class actions may be filed by organisations representing the interests of its members; for example, a trade union can represent its members in a claim with respect to labour rights.

3.8 Requirements for Cost Estimate

The legal assistance agreement concluded between the lawyer and the client at the outset of the dispute shall comprise the fees the lawyer is entitled to. However, if the fee agreed is computed on hourly rates, there are no legal and/or statutory requirements to provide the client with an estimate of the cost of litigation. In practice, however, lawyers usually provide clients with such a cost estimate.

4. Rules on Pre-action Conduct

4.1 Interim Applications/Motions

The parties have the possibility to apply for interim measures before the hearing of a claim and, in particular cases and under strict conditions, even before the trial. As an interim remedy, the interested party may apply for freezing measures on goods, provisional measures or conservatory measures regarding evidence. Under Romanian law, there are no interim applications on case management issues.

4.2 Early Judgment Applications

Romanian civil procedure law does not provide for the possibility to apply for an early judgment of the issues in dispute, apart from the interim measures mentioned in **4.1 Interim Applications/Motions** (freezing injunctions, provisional measures, conservatory measures regarding evidence) and for the possibility to issue partial decisions on the issues in dispute, with respect to which the defendant has admitted the claimant's allegations. Sometimes, provisional measures may be ordered by a court even before trial, under the condition that the claim is filed within a certain deadline from the moment the provisional measures were granted. For example, provisional measures related to intellectual property rights may be ordered even before a claim on the merits of the case is filed. However, such provisional measures will cease to exist if the claim on the merits is not filed within 30 days after the provisional measures are awarded.

The other party's case cannot be struck-out before trial, but it can be struck out before the substantive hearing of the claim if a plea/objection to this effect is admitted. The pleas which might lead to a striking out of the case, if admitted, may either be procedural pleas/objections (for example lack of payment of stamp fees, lack of representation powers of the representative filing the claim, exceeding the deadline to file a claim) or substantive pleas/objections the settlement of which does not require the verification of the merits of the case (for example, a statutes of limitation plea).

4.3 Dispositive Motions

Dispositive motions are not available in the Romanian jurisdiction.

4.4 Requirements for Interested Parties to join a Lawsuit

There are several possibilities for a third party to join ongoing civil proceedings, either voluntarily or compulsorily.

A third party bearing an interest can voluntarily join an ongoing procedure, either to support one of the parties' positions (accessory joinder claim), or to settle its own right in connection to the ongoing procedure (main joinder claim). The accessory joinder claim may be filed at any moment during the civil proceedings, even during the appeals. The main joinder claim may only be filed in front of the first court, before the closure of the debates. As an exception, the main joinder claim may be filed during the appeal, with the other party's consent.

Another situation in which a third party can join an ongoing procedure is a forced joinder, by means of which any party, including someone who has filed a main joinder claim, can request the participation in the proceedings of a third party which can claim the same rights as the claimant. A forced joinder may be filed by the defendant within the term of submission of the statement of defence or, if the statement of defence is not mandatory, at the first court hearing at the latest. The claimant and someone who has filed a main joinder claim may file a forced joinder in front of the first court until the closure of the debates.

A party in an ongoing procedure may also file a forced guarantee joinder against a third party that may be held liable through a separate claim, with regard to the main claim. The forced guarantee joinder may be filed within the same term as the forced joinder.

When a defendant holding an asset for another, or exercising a right in the name of another, is sued in connection with an in rem right, the defendant may indicate the person on whose behalf it is holding the asset or exercising the right by means of a joinder claim against a third party within the term of submission of the statement of defence or, if the statement of defence is not mandatory, at the first court hearing at the latest.

There are also several particular cases in which the court may order a joinder, even in the absence of the parties' consent.

4.5 Applications for Security for Defendant's Costs

This possibility is not regulated under Romanian law.

4.6 Costs of Interim Applications/Motions

There are no provisions governing the manner in which the court will order the parties to cover the costs of litigation in such applications/motions. Given the time frame of such applications, namely before the hearing of the claim or even before the trial, the court will not order costs for such applications when deciding on the interim applications themselves, but will take into account such costs when ordering all the costs accrued at the end of the trial.

Apart from the urgency of the procedure which is a common to all the interim measures, each of them – namely freezing measures on goods, provisional measures or conservatory measures regarding evidence – are governed by rules providing for the special conditions which need to be met in order for such a remedy to be admitted, the urgency of the procedure and the manner in which the measure will be fulfilled.

For example, provisional orders may be ordered by the court in urgent cases when, at first hand, the plaintiff seem to be entitled to the right claimed in the substantive hearing, in order to preserve a right that might be damaged by delay, in order to prevent imminent damage which might not be otherwise recovered, or in order to set aside the obstacles which might be encountered in the enforcement proceedings.

4.7 Application/Motion Timeframe

Under the general rules of civil procedure, following the registration of the action or claim, a preliminary written procedure takes place solely between the court and the claimant during which the court makes sure that the claim complies with all the mandatory conditions regarding its contents and that the claimant has filed all the necessary documents that need to be attached to the claim. Only after the moment when the claim fulfils all formal conditions, does the court proceed to communicate the claim to the defendant, accompanied by a note obliging the defendant to submit a statement of defence within (a general term of) 25 days from the communication of the claim. If the statement of defence is not submitted in time, the defendant may be unable to propose further evidence in its defence or invoke objections regarding the claim (except for objections of public order). The submitted statement of defence will thereafter immediately be communicated to the claimant, accompanied by a note obliging them to submit an answer to the statement of defence within ten days from the communication of the statement of defence. Within three days of the submission of the answer to the statement of defence, the judge establishes the first court hearing, which will be no later than 60 days from this date.

In urgent matters and applications for interim measures, the preliminary written procedure between the court and the claimant, aimed to ensure the claim fulfils all formal conditions, might not take place. The terms for filing the written submissions may be reduced in urgent matters and the terms for setting the hearings may also be reduced by the judge, according to the circumstances of each matter. Sometimes, for example in an application for provisional orders, filing a statement of defence is not mandatory. In other cases, the judge may issue a ruling on a freezing injunction or on a provisional measures application without communicating the claim to the defendant and without hearing the parties, based only on the application and the evidence submitted by the plaintiff.

Generally, the civil procedure rules provide for the urgent settlement of urgent matters.

5. Discovery

5.1 Discovery and Civil Cases

In the Romanian jurisdiction, discovery covers only the production of documents, not the taking of witness testimony. The Romanian civil procedure rules provide for a specific process which enables the court to order the production of documents from the parties if certain conditions are met. The court administers the discovery of documents. Thus, when a party claims that the opposing party holds a document relating to the dispute, the court may order its discovery.

There are no mechanisms by way of which the scope and/or costs of the discovery process can be curbed.

5.2 Discovery and Third Parties

If one of the parties indicates that a document, useful for the settlement of the dispute, is held by a third party, the court may summon the third party, ordering it to disclose the mentioned document. Failure to comply with the court's order may lead to an order for the payment of a fine. However, public authorities and public institutions may decline to disclose a document when it relates to national safety, public safety or diplomatic relations.

5.3 Discovery in This Jurisdiction

When a party claims that the opposing party holds a document relating to the dispute, the court may order its discovery. The request for discovery cannot be rejected if the document is a joint document of the parties, if the opposing party itself has referred to the document in the proceedings or if, according to the law, it is obliged to submit it.

As a rule, if the court orders disclosure of a document, the parties must obey. However, the court will not order disclosure of a document that: contains strictly personal information regarding a person's dignity or private life; breaches a legal confidentiality obligation; and/or leads to a criminal investigation of the party, its spouse or a third degree relative. The court alone checks if one of the cases mentioned above is applicable, after studying the respective document. Refusal to submit ordered documents may be interpreted in some cases as an acknowledgement of the contents of those documents.

5.4 Alternatives to Discovery Mechanisms

In Romanian civil trials, as a rule, all evidence is managed by and through the court. It is the court, at the parties' request, that allows for different types of evidence to be submitted. All exchanges of written evidence between the parties will be done only after the commencement of the trial.

Witness statements are given orally before the judge. Each of the parties has the right to address questions to the witness. The answers to these questions and the statement are written down by the court clerk and signed by the witness. The document thus drafted is attached to the file as a witness statement.

On the other hand, experts give primarily written evidence, in the form of an expert report that is submitted to the file.

However, if the judge requires additional information, the expert may be called in front of the court for an oral statement of clarification.

The rule is that all evidence is presented directly in front of the judge and not by intermediary means. As an exception, after being admitted by the court, the administering of evidence might be conducted between lawyers or legal counsels if both parties agree to do so. The schedule for administering the evidence between lawyers is approved by court and is binding for the parties and their lawyers. The possibility to administer the evidence through lawyers is available in all civil disputes; apart from those concerning marital status, the capacity of persons, family relations and any rights related to which the law does not allow a transaction between the parties. However, in practice, this procedure is hardly ever used.

5.5 Legal Privilege

Attorney-client communications and information received by an attorney fall under the attorney's obligation of confidentiality. The extent of the obligation may vary depending on the agreement of the parties, but a general obligation of confidentiality is applicable to all attorneys, regardless of whether they are external or in-house counsel.

5.6 Rules Disallowing Disclosure of a Document

Apart from the rules mentioned in **5.3 Discovery in This Jurisdiction**, there are no other rules allowing a party not to disclose a document.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

There are multiple injunctive reliefs a party can obtain.

On the one hand, a freezing injunction may be placed in relation to the debtor's assets, in particular conditions, upon the creditor's request, when there is a risk that the debtor may alienate their assets during the trial. This measure freezes the assets of the debtor and prevents him or her from selling them, taking them abroad, etc. The levy may be lifted if the debtor provides a sufficient guarantee that the debt will be paid.

On the other hand, certain provisional orders may also be ordered by the court in urgent cases related to family relations, neighbouring and property relations, commercial relations, when at first hand the plaintiff seems to be entitled to the right claimed in the substantive hearing, in order to preserve a right that might be damaged by delay, in order to prevent imminent damage which might not be otherwise recovered or in order to set aside the obstacles which might be encountered in the enforcement proceedings.

Injunctions to prevent parallel proceedings in another jurisdiction are not recognised under Romanian law.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

Injunctive reliefs are considered urgent matters by the Romanian civil procedure rules, the rules providing, as a general rule, for an urgent settlement of such cases.

Therefore, when such an application is filed, the preliminary written procedure between the court and the claimant, aimed to ensure the claim fulfills all formal conditions, theoretically no longer take place (there is case law where judges still follow this procedure, but under shortened terms). Where the ruling is issued after hearing both parties, the defendant is summoned according to the rules of summoning in urgent matters, namely the service no longer needs to observe the rule that a summons must be served at least five days before the hearing, the judge having the option to reduce the term for setting the hearing and servicing the summons depending on the circumstances of the case. Another provision, meant to ensure the urgent settlement of such matters, states that in such cases, the court will not admit evidence whose administering will take a long time.

For example, the civil procedure rules provide that in extremely urgent matters, a provisional order may be obtained in the same day, the court issuing a ruling based on the request for a provisional order and the evidence submitted, without hearing any of the parties.

In practice, obtaining an injunctive relief may take between a few days and a few months.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

In certain cases, the civil procedure rules provide that a freezing injunction or an order for provisional measures (depending on the circumstances of the case) may be granted without hearing the parties, the court ruling only based on the application and evidence submitted by the plaintiff.

6.4 Liability for Damages for the Applicant

In most of the cases when an injunctive relief is requested, the plaintiff is obliged (by the applicable legal provisions or following the judge's decision to this end) to post a bail prior to the application being admitted. The bail acts as a form of security aimed to cover potential damages incurred by the defendant as a result of the injunctive relief, in case the defendant discharges the plaintiff's claims following the substantive hearings. When the defendant discharges the plaintiff's claims following the substantive hearings, the injunctive relief ceases to apply and the punitive damages which might be obtained by the defendant are not limited to the amount of the bail.

The rules apply regardless of whether the parties were heard before the relief was granted or not.

6.5 Respondent's Worldwide Assets and Injunctive Relief

As a rule, injunctive relief is granted only in relation to the assets of the respondent located in Romania, as Romanian courts are not competent to settle claims related to assets which are located in foreign countries.

6.6 Third Parties and Injunctive Relief

Injunctive relief cannot be obtained against third parties, apart from a freezing injunction which might be placed on the defendant's assets when they are held by a third party.

6.7 Consequences of a Respondent's Non-compliance

Disobeying a court decision or order, aside from the criminal consequences which might materialise in being condemned for the criminal offence of contempt of court, gives the creditor the right to request the application of enforcement procedures.

An injunctive relief is enforced with the assistance of an enforcement officer (bailiff) under the general rules of enforcement, following the request of the creditor, if the debtor does not willingly obey the dispositions of the court.

In addition, the plaintiff may also claim from the respondent, any damages incurred due to the latter's failure to comply with the terms of an injunction.

7. Trials and Hearings

7.1 Trial Proceedings

The trial is conducted by the judge and its development is governed by several principles, among which are the equality of the parties, the adversarial nature of the proceedings, the parties' right to a fair trial, and the legality of the proceedings.

The written submission phase is followed by the oral phase, comprised of judicial inquiry and debates. During the judicial inquiry, the court settles all preliminary matters, such as competence, payment of the stamp fee, admissibility of the claim, etc. Subsequently, the parties submit to the court's attention the proposed evidence, which is then administered according to the court's ruling.

The witness statement is given orally before the judge. During the hearing established by the court, witnesses testify under oath. Each of the parties has the right to address questions to the witness. A witness's oral statement is recorded by the court clerk and signed by the witness in front of the court. Written statements are not admissible as such but will be treated as written documents.

Experts give primarily written evidence, in the form of the expert report that is submitted to the file. However, if the judge requires additional information, the expert may be called in front of the court for an oral statement of clarification.

The judicial inquiry is followed by the debates, during which each party states its case, and also considers the evidence that has previously been administered. At the end of the oral debates, the court may instruct the parties to submit written briefs or the parties may do so in the absence of the court's instruction. This phase is followed by the issuance of the ruling.

7.2 Case Management Hearings

In the case of shorter hearings, the defendant is summoned according to the rules of summoning in urgent matters, namely the service no longer needs to observe the rule that a summons must be served at least five days before the hearing, the judge having the option to reduce the term for setting the hearing and servicing the summons, depending on the circumstances of the case. Another provision regarding the manner in which short hearings are conducted is that in certain cases, for example in the case of an application for provisional measures, the court will not admit evidence whose administering takes a long time. In certain cases, for example in the case of a provisional order application, the rules governing the judicial inquiry are no longer applicable.

In terms of case management, at the first hearing when parties are legally summoned, the judge will ask the parties to estimate the duration of the judicial inquiry phase of the trial and, after hearing them, the judge will estimate this duration, depending on the circumstances of the case, so that the case in settled in a reasonable and predictable term. This estimation is not binding, the judge being able to reconsider the duration, based on thorough grounds and after hearing the parties.

Another measure related to case management is that after admitting the necessity of administering an expert report, the court might set a hearing in order to hear the expert regarding the estimated duration for performing the expert report.

7.3 Jury Trials in Civil Cases

The Romanian civil procedure rules do not provide for the participation of a jury.

7.4 Rules That Govern Admission of Evidence

The admissible pieces of evidence provided by Romanian law are the following: written documents, witness statements, cross examination of the parties, expert reports and on-location inspection by the court.

Each party in a trial is responsible for submitting evidence in favour of their claims or as a defence to the opposing party's claims. There are certain conditions related to the point in the proceedings when evidence might be proposed. As a rule, the plaintiff presents their proposal regarding the evidence in their claim, while the defendant indicates it in their statement of defence, under the sanction that they may be unable to propose further evidence. As an exception, additional pieces of evidence may be submitted during the trial if there is the need for submission resulting from the debates, or the interested party was unable to propose it within the legal term due to justified reasons.

In order for a piece of evidence to be admissible, the following elements must be proven by the party requesting the admission of evidence, regardless of its type: the evidence must be legal (in accordance with material and procedural law); plausible (realistic, in accordance with the laws of nature); pertinent (in connection with the object of the trial); and conclusive (regarding elements that may lead to a solution of the trial) for the litigation.

As far as the condition that the evidence should be legal is concerned, it is not possible to use witness statements to prove the existence or content of a judicial act of a higher value than RON250, except for judicial acts made by a professional in the exercise of their professional activity (when the evidence is made against the professional), provided that the law does not require written evidence.

7.5 Expert Testimony

Expert testimony is a common type of evidence in civil trials, administered either following a party's request or the court's order. An expert report is usually presented in a written form, but it is also possible for the court to hear the appointed expert during the court hearing and record their statement.

Experts are appointed by the court. An appointed expert must be an impartial professional. The court may grant to each party the assistance of a counsel expert who will owe his or her duties to the party and who will guard that party's interests.

In complex cases, the court may appoint an expert committee consisting of three experts.

7.6 Extent to Which Hearings are Open to the Public

As a rule, court hearings are held in public sessions. In particular cases, the law provides that some types of claims are to be settled only in the presence of the parties. In addition, following a well-grounded request from a party, the court itself may instruct that hearings are only held in the presence of the parties.

Under the provisions of the New Civil Procedure Code, the trial has been divided into two phases: (i) the administration of evidence and debate of any prior issues necessary for the settlement of the case which were to be held behind closed doors and only in the presence of the parties, and (ii) the closing arguments which are to be held be held in public sessions. For organisational reasons and due to a lack of space, the applicability of these provisions was successively delayed until 1 January 2019. Following the adoption of Law No 310/2018, which applies as a general rule to all the litigation files initiated after its entering into force on 21 December 2018, the provision that the first stage of the trial was to be held behind closed doors was eliminated. The rule that the trial has two phases remains applicable, but both phases are to be held as a matter of principle in public sessions.

Court documents, including the notes taken by the court clerk during the hearing, are only available to the parties in the trial and their representatives. To study a file, applicants must present an identification document proving their capacity. At their request and their expense, the parties may also obtain an electronic copy of the record of the hearing. Under specific conditions provided by the law, members of the press or third parties, proving they bear an interest in relation to the file, may study court documents.

7.7 Level of Intervention by a Judge

The judge has an inquisitorial role, being actively involved in investigating the case, able to address questions to the parties, decide upon the necessity of particular additional evidence, invoke procedural incidents, etc. The judge is also responsible for leading the hearings.

Usually, the court will settle, during the hearing, issues such as jurisdiction, admission of evidence and procedural incidents. Sometimes, however, if the discussed issue is the subject of strong debate between the parties, the judge may postpone issuing a solution until in chambers.

In practice, as a rule, the judges issue the solution in their chambers and not in public session. The judge might postpone the issuance of the solution several times.

7.8 General Timeframes for Proceedings

Under the general rules of civil procedure, civil proceedings start with an extended exchange of written submissions prior to the setting of the first court hearing, a novelty introduced by the New Civil Procedure Code. After the registration of the claim, the court ensures that all the procedural requirements of the claim are met. If this is not the case, the claimant is given a ten-day term to comply with the law.

Only after the moment when the claim fulfils all formal conditions, does the court proceed to communicate the claim to the defendant, who is granted a term of 25 days to submit their statement of defence. The statement of defence is then

communicated to the claimant, who, within ten days following its receipt, may submit an answer.

The written submission phase is followed by the oral phase, comprised of judicial inquiry and debates. Thus, within three days of the submission of the answer to the statement of defence, the judge establishes the first court hearing, which will be no later than 60 days from this date.

During the judicial inquiry, the court settles all preliminary matters, such as jurisdiction, payment of the stamp fee, admissibility of the claim, etc. Subsequently, the parties submit to the court's attention the proposed evidence, which is then administered according to the court's ruling.

The judicial inquiry is followed by the debates, during which each party states its case, and also considers the evidence that has previously been administered. At the end of the oral debates, the court may instruct the parties to submit written briefs, or the parties may do so in the absence of the court's instruction.

The next phase of civil proceedings is the issuance of the judgment, which may be succeeded by the legal means of appeal or by the enforcement procedure.

The duration of the trial is largely dependent on the complexity of the case, the means of evidence to be administered and the preliminary aspects invoked by the parties. As such, a trial in the first tier of jurisdiction may last between a couple of months to several years.

8. Settlement

8.1 Court Approval

When settling a lawsuit, if the parties wish the court to approve their settlement, they need to request that the court issue a ruling acknowledging that settlement. The settlement must be concluded in written form and will form the solution part of the ruling. The parties may settle the case at any stage of the proceedings. The same rules apply when the settlement is reached following mediation.

8.2 Settlement of Lawsuits and Confidentiality

The settlement of a lawsuit may remain confidential in cases where the parties agree not to present the settlement agreementto the judge and, instead, request that the judge close the case by acknowledging a waiver of the claim or of the right claimed instead.

8.3 Enforcement of Settlement Agreements

The means of enforcement of a settlement differ depending on whether the settlement represents an enforcement title or not. If the settlement is acknowledged in an authenticated agreement or in a court ruling, the party in default may be obliged to fulfill its obligations deriving from the settlement with the assistance of an enforcement officer (bailiff).

If the settlement takes the form of a written agreement, not authenticated, the damaged party needs to file a claim against the other party to the settlement agreement in order to have the court ascertain the breach of the obligations within the settlement agreement and compel the latter to cover the damages incurred as a result of the latter's failure to fulfill its obligations deriving from the settlement agreement; after obtaining this court decision it may enforce it through an enforcement officer.

8.4 Setting Aside Settlement Agreements

On the one hand, a party to a settlement agreement may request the annulment of that agreement for breach of any of the conditions for the legal conclusion of an agreement (consent, capacity, object, cause, form). A party might also file a claim to set aside the settlement as a means of holding liable the party who breached its obligations deriving from the settlement agreement.

On the other hand, if a party challenges the ruling acknowledging the settlement agreement only on procedural grounds, it must do so by means of a second appeal which will be settled by the superior court.

9. Damages and Judgment

9.1 Awards Available to Successful Litigant

According to the parties' claims, the court may grant compensatory or punitive damages, legal or contractual interest, as well as judicial expenses.

9.2 Rules Regarding Damages

Punitive damages are available in the case of observance of the debtor's fault. There are no provisions limiting the maximum amount of damages which may be awarded to a party.

Interest is payable upon request, and its amount is either previously established by the parties or, in the absence of an agreement, the legal interest rate applies.

9.3 Pre and Post-Judgment Interest

A successful party may collect interest starting from the moment the other party was summoned to comply with its obligations, if such a summons is requested by law or starting from the moment the other party failed to comply with its (generally contractual) obligations, if summoning the other party is not requested by law (subject to the statute of limitations). A successful party may collect interest until the obligation is fulfilled by the other party, the court being able to order the amount of interest accrued until the complaint was filed, the further amounts which will accrue until the

obligations is going to be performed, being calculated by the enforcement officer (bailiff).

For both pre and post-judgment interest, its amount is either previously established by the parties by means of an agreement or, in the absence of an agreement, the legal interest rate applies.

The statute of limitation which applies for the accrued interest is three years. Account needs to be taken of the fact that, as outlined in this chapter, the statute of limitation is subject to suspension and interruption.

In case the claimed rights take the form of an obligation which needs to be performed successively (for example, a monthly rent payment), a statute of limitation of three years applies to each of the elements of the successive obligation (in this example, for each rent payment) and consequently, to the interest accrued following the failure to comply with each of the named elements.

9.4 Enforcement Mechanisms of a Domestic Judgment

Any final, or otherwise enforceable, court decision or order can be enforced with the assistance of an enforcement officer and under the court's supervision, following the request of the creditor, if the debtor does not willingly obey the dispositions of the court.

Disobeying a court decision or order, aside from the criminal consequences, gives the creditor the right to request the application of enforcement procedures that may consist of the capitalisation of movables and immovables or the garnishment of bank accounts.

9.5 Enforcement of a Judgment from a Foreign Country

A judgment from a foreign country that is not willingly complied with by the losing party might be enforced on Romanian territory, following a successful request by the interested party that the enforcement is approved by the tribunal in whose jurisdiction the enforcement is going to take place. The approval of the enforcement is admitted under the same conditions imposed for the recognition of a judgment from a foreign country (detailed below), with the additional condition that the judgment intended to be enforced is enforceable according to the law of the issuing country.

A foreign judgment is either duly recognised or prone to undergo a recognition procedure, according to the nature of the litigation. Thus, a foreign judgment is duly recognised when it relates to the personal status of the citizens of the state in which it was issued; if it has previously been recognised in the citizenship state of each party; if it was issued according to the applicable law, according to Romanian international private law; is not contrary to Romanian public order; and the right to defence was respected.

In cases other than those stated above, foreign judgments are recognised following a judicial procedure, provided that several conditions are met: the judgment is final according to the law of the issuing state; the issuing court had competence to settle the trial; and there are reciprocity agreements regarding the effects of foreign judgments between Romania and the issuing state.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

As a rule, a first court judgment is subject to appeal. The request for appeal has to be filed within (a general term of) 30 days after the communication of the judgment to the parties.

The judgment issued by the court of first appeal is subject to a second appeal that can only be filed for particular reasons. In certain cases, strictly provided by law, the ruling issued by the appeal court cannot be challenged by means of a second appeal.

The law also provides for exceptional means of appeal, in particular cases.

10.2 Rules Concerning Appeals of Judgments

As a rule, a first court judgment is subject to appeal. Any exceptions to this rule are strictly provided by law. An appeal will be granted provided that: it is admissible, it meets all the requirements of any claim before the court (it is signed by the party or its legal representative, the party filing it bears an interest to this effect, the corresponding stamp fees have been paid) and it is grounded. In addition, for a second appeal to be granted it is necessary that the grounds invoked when filing the second appeal belong to the particular grounds stipulated by law for which a second appeal may be filed.

As a rule, appeals follow the hierarchy of the courts; for example, a claim settled in the first instance by the first court will be subject to a first appeal at the Tribunal and, if the case requires it (depending on its nature), a second appeal at the Court of Appeal. Similarly, a claim settled in the first instance by the Tribunal will be subject to a first appeal at the Court of Appeal and (depending on its nature) to a second appeal at the High Court of Justice. These procedural stages cannot be omitted during the course of the appeals process.

As a rule, the provisions regarding the procedure of adjudicating in the first tier of jurisdiction are applicable to the appeals and second appeals as well, unless derogatory rules apply.

On a general note, if an appeal is admitted, the court will re-hear only the merits of the case which were challenged by

means of the appeal and only the merits which were invoked in the first tier of jurisdiction, new grounds not being admitted.

10.3 Procedure for Taking an Appeal

The procedure for judging an appeal is governed by the rules regulating the settlement of the first tiers of jurisdiction, to which a few derogatory rules apply.

As a general rule, the request for appeal has to be filed within 30 days after the communication of the first-court judgment to the parties.

The appeal is filed to the first-tier court, which will transmit the appeal and the entire file to the superior court. The court proceeds to communicate the appeal to the respondent, who is granted a term of 15 days to submit their statement of defence. The statement of defence is then communicated to the appellant, who, within 10 days after its receipt, may submit an answer.

The written submission phase is followed by the oral phase, comprised of judicial inquiry and debates. Thus, the judge establishes the first court hearing, which will be no later than 60 days from this date.

During the judicial inquiry, the court settles all preliminary matters, such as competence, payment of the stamp fee, admissibility of the claim, etc. Subsequently, the parties discuss the evidence proposed by means of the appeal/statement of defence, which is then administered according to the court's ruling.

The judicial inquiry is followed by the debates, during which each party states its case, and also considers the evidence that has previously been administered. At the end of the oral debates, the court may instruct the parties to submit written briefs or the parties may do so in the absence of the court's instruction.

The next phase of civil proceedings is the issuance of the judgment, which may be succeeded by the legal means of a second appeal (if admissible) which has to be filed within 30 days from the communication of the ruling or enforcement procedure.

The duration of the appeal largely depends on the complexity of the case, the means of evidence to be administered and the preliminary aspects invoked by the parties. As such, settlement of an appeal may last from one month to several years, calculated from the date of the first hearing.

10.4 Issues Considered by the Appeal Court at an Appeal

In Romania, appeal is the ordinary means of challenging a judgment. Filing an appeal triggers a re-hearing of the entire case, unless the parties limit, by means of the appeal filed, the part of the judgment to be re-heard. New forms of evidence may be proposed by parties by means of the appeal or the statement of defence and the court itself may order the re-administering or the supplementation of the evidence administered in the first court.

As a general rule, the parties may not bring new claims by means of an appeal or change the object or cause of the claim. However, in the appeal stage, the parties may explicitly detail claims which were only implicitly included in the claims/defences raised in the first court. As an exception, parties may also request, for the first time in the appeal stage, the interest and rates accrued after the issuance of the ruling of the first court, claims which became outstanding after the issuance of the first court ruling or damages incurred after the ruling of the first court was issued. Parties may also invoke legal set-off for the first time at the appeal stage.

The second appeal is considered an extraordinary means of challenging a judgment. The grounds of the second appeal need to fall within certain categories of grounds expressly stipulated by the law, which generally concern the legal aspects of the ruling and not the factual side. New forms of evidence may not be proposed by parties before the second appeal court, except for new documents, which need to be submitted either attached to the second appeal request or to the statement of defence.

10.5 Court-Imposed Conditions on Granting an Appeal

Once the general conditions for filing an appeal are met and the appeal is granted, the court cannot impose any conditions on, or pursuant to, such granting.

10.6 Powers of the Appellate Court After an Appeal Hearing

After hearing an appeal, the court may:

- either maintain the ruling issued by the first court if the appeal is annulled on procedural grounds (lack of payment of stamp fee, filing the appeal without observing the deadline, etc) or rejected as ungrounded; or
- annul or modify, totally or partially, the ruling issued by the first court (even by amending the reasoning of the ruling) if the appeal is admitted.

If the appeal is admitted and the appeal court considers that the first court unlawfully issued a ruling without judging the merits of the case or adjudicated the case in the absence of the party unlawfully summoned, the appeal court will re-hear the case, on the merits. However, after admitting the appeal, the appellate court may send the case to the first court to be reheard if the parties expressly request for such a measure, either by means of the appeal or of the statement of defence.

As far as the powers of a court adjudicating a higher appeal are concerned, as a general rule, the court might annul the higher appeal on procedural grounds, reject it as ungrounded or admit it. However, if the higher appeal is admitted, a distinction needs to be made, depending on the court adjudicating the higher appeal.

Thus, if the higher appeal is adjudicated by the Highest Court of Cassation and Justice, the court will send the case either to the appeal court or to the first court if its ruling is also unlawful. If the higher appeal is adjudicated by a Tribunal or a Court of Appeal, the case will be re-heard on the merits either by the same court or by the appeal court, if the latter unlawfully issued a ruling without judging the merits of the case or adjudicated the case in the absence of the party unlawfully summoned.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

In the initial phase of the litigation, each party is responsible for its own costs. The plaintiff is required to pay a stamp fee when filing a claim. The stamp fee is determined by law, according to the object and value of the litigation, and the court ensures that the claimant pays it. As far as the expert's fee is concerned, when admitting an expert report, the court will also establish which party is going to pay the corresponding fee. Usually, the party requesting the expert report will be obliged to pay the corresponding fee, but the fee might also be shared between the parties if both submit certain claims which the expert report should analyse. The expert's fee is determined according to the complexity of the case and the amount of work to be completed by the expert.

Once an award has been issued, the losing party may be ordered, at the prevailing party's request, to reimburse all, or part, of the prevailing party's costs, including attorneys' fees. The prevailing party may claim reimbursement of its costs either during the course of the litigation itself or by means of a separate request, following the issue of the award. The court has the power to order the losing party to cover several types of costs incurred by the winning party, including the stamp fee, the expert's fee, and lawyers' fees. The court has the ability to limit the amount of the prevailing party's attorneys' fees by taking into consideration the difficulty of the litigation, the actual amount of work required from the attorneys and other similar elements. If a claim is only partly admitted, the court may order the costs to be shared, namely each party will cover his or her own costs.

The amount of the costs to be paid by the losing party might be challenged by both parties by means of an appeal.

11.2 Factors Considered When Awarding Costs

When awarding costs, the courts orders the losing party to cover all the costs, including the stamp fee and the expert's fee, incurred by the other party, if the latter's request was fully admitted.

As far as the lawyers' fees are concerned, the court may limit the amount of such costs taking into account elements such as: the difficulty of the litigation, the amount disputed in the file, the actual amount of work performed by the lawyers and the particular circumstances of the case.

11.3 Interest Awarded on Costs

Under Romanian law, interest on costs is not awarded.

12. Alternative Dispute Resolution

12.1 Views of Alternative Dispute Resolution Within the Country

Alternative dispute resolution (ADR), in the form of arbitration and mediation, has not traditionally been commonly used in Romania but has gained in popularity in recent years.

The most commonly used ADR process is conciliation, which is usually organised by the parties themselves or by the assisting attorneys. In the past couple of years, mediation has been intensely lobbied for but has still has not gained usage in a significant share of disputes. Starting from 2012, the law regarding mediation provided for mandatory participation in a meeting regarding the advantages of mediation for certain types of litigation. Since the sanction for filing a claim without complying with this obligation was the dismissal of the claim as non-admissible, most claimants complied. This obligation has subsequently been invalidated by the Constitutional Court. In its Decision No 266/2014, the Constitutional Court stated that the obligation to participate in such a meeting is an infringement of access to justice and is therefore non-compliant with the Romanian Constitution.

Adjudication is also used, generally in disputes arising from International Federation of Consulting Engineers contracts.

Arbitration is more frequently used when one of the parties is of foreign nationality and/or when one or both parties are acting in a professional capacity.

12.2 ADR Within the Legal System

As a rule, the Romanian legal system does not really promote ADR. However, there is a general obligation on a judge to urge parties to try to amicably settle their dispute.

As stated, in **12.1 Views of Alternative Dispute Resolution Within the Country**, since August 2014, following the Constitutional Court Decision No 266/2014, mediation is no longer compulsory before submitting a claim to court.

There are certain cases in which the law provides for a preliminary procedure. For example, in administrative law, the provisions require the fulfilment of a preliminary procedure taking the form of a preliminary request addressed to the institution refusing the claimed right, or the institution superior to the one refusing the right or the form of conciliation, when the claims derive from an administrative contract. In such a case, the preliminary procedure is compulsory, if a claim were filed without observing the preliminary procedure, it would be rejected as premature.

If either the law or the contract provides for another type of preliminary procedure, such as adjudication, the courts or tribunals may compel the parties to undergo that procedure.

12.3 ADR Institutions

In general, there is room for improvement where institutions offering and promoting ADR are concerned.

The main institution for alternative dispute resolution in Romania is the Court for International Commercial Arbitration (CICA), functioning within the Chamber of Commerce and Industry of Romania. In the past few years, arbitration has experienced a steady growth. The majority of the cases involve construction disputes, but various other contractual disputes are also referred to international arbitration, including energy-related disputes. Even steadier growth is expected, following the new set of rules adopted by CICA starting on 1 January 2019, which align to the rules of the ICC and other similar institutions, like the LCIA.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

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

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

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

As the new Civil Code, which came into force in October 2011, repealed the former Commercial Code of Romania of 1887, in the absence of a specific body of law regulating commercial relationships, the concept should be construed broadly in the context of international arbitration, as encompassing relationships that are commercial in nature (whether contractual or not).

13.2 Subject Matters not Referred to Arbitration

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

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

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

- it is of a patrimonial nature;

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

13.3 Circumstances to Challenge an Arbitral Award

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; 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.

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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.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

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. The award can be enforced with the assistance of an enforcement officer and under the court's supervision, following the request of the creditor, if the debtor does not willingly obey the dispositions of the court.

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 not having the capacity to conclude the arbitration agreement, the arbitration agreement not being valid, the award being in regard to a dispute which was not included in the arbitration agreement or which exceeds the limits set by the arbitration agreement.