GAR CHALLENGING AND ENFORCING ARBITRATION AWARDS 2020

Romania

Cosmin Vasile and Alina Tugearu
Zamfirescu Racoti Vasile & Partners

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Applicable requirements as to form of arbitral awards

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

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

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

Applicable procedural law for recourse against an award

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

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

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

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

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

Applicable procedural law for recognition and enforcement of arbitral awards

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

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

- the dispute was non-arbitrable;
- the arbitration agreement did not exist or was invalid or ineffective;
- the constitution of the arbitral tribunal was not in accordance with the arbitration agreement;
- the party requesting the setting aside of the award was not duly notified of the hearing when the main arguments were heard and was absent when the hearing took place;
- the arbitral award was rendered after expiry of the time limit, even though at least one party submitted its intention to object to the late issuance of the award and the parties opposed the continuation of the proceedings after expiry of the time limit;
- the award granted something that was not requested (ultra petita) or more than was requested (plus petita);
- the award failed to mention the tribunal's decision on the relief sought and did not include the reasoning behind the decision, the date and place of the decision or the signatures of the arbitrators;
- the award violated public policy, mandatory legal provisions or morality; or

- subsequent to issuance of the final award, the Constitutional Court has declared unconstitutional the legal provisions challenged by a party during the arbitral proceedings or other legal provisions included in the challenged piece of legislation that are closely related to and inseparable from those challenged.

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

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

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

The recognition and enforcement procedure of arbitral awards is governed in Romania by articles 1124–1133 of the Code of Civil Procedure. It should be mentioned that the recognition and enforcement procedure applies only to foreign arbitral awards. In accordance with article 615 of the Code of Civil Procedure domestic arbitral awards are enforceable and can be enforced in the same manner as a domestic court decision. A similar regime is set forth by article 1121 of the Code of Civil Procedure, which provides, in paragraph 3, that Romanian international awards are enforceable and binding, starting with the date on which the parties are notified.

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

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

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

Recognition proceedings

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Do courts recognise and enforce partial or interim awards?

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

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

The main grounds for refusing the recognition or enforcement are stipulated under article 1124 and 1129 of the Code of Civil Procedure and they are similar with the ones provided under article V of the New York Convention, namely:

- arbitrability issues;
- issues concerning the breach of public policy;
- incapacity of the parties to conclude the arbitration agreement;
- invalidity of the arbitral agreement;
- absence of a proper notice to the party regarding the appointment of the arbitrator or to the arbitral proceedings;

- composition of the arbitral award or the arbitral proceedings did not observe the parties' agreement or the law of the country where the arbitration took place;
- jurisdictional issues, such as deciding a dispute not contemplated by the parties; and
- the award has not become binding, has been suspended or set aside in the country in which that award was rendered.

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

The enforcement of a foreign arbitral award can start following the expiry of 30 days after the communication of the decision rendered in the recognition and enforcement procedure, unless an appeal is submitted by the opposite party. In the latter case, the enforcement can start after the moment when the Tribunal's decision becomes final (ie, after the rejection of the appeal).

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

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

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

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

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

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

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

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

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

Service

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

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

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

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

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

When judicial or extrajudicial documents are sent by a Romanian authority to a defendant domiciled abroad, service is carried out in accordance with international provisions, such as the Hague Convention of 1965 or Regulation (EC) No. 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000. When the international conventions are not applicable, service of documents is entrusted to the Ministry of Justice in accordance with Law No. 189/2003 regarding international judicial assistance in civil and commercial matters.

Identification of assets

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

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

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

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

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

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

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

Enforcement proceedings

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

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

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

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

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

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

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

The procedure is similar, up to a certain point, for immovable and movable property. After obtaining the court's decision following an application made as mentioned in the previous answer, the measure is enforced by an enforcement officer. As far as immovable assets are concerned, the enforcement procedure implies the fulfilling of the necessary formalities for seizing the assets in the Land Registry.

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

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

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

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

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

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

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

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

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

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

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

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

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

Enforcement against foreign states

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

The are no specific rules issued for the recognition and enforcement of arbitral awards against foreign states.

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

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

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

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

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

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

Cosmin Vasile

Zamfirescu Racoti Vasile
& Partners

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

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

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

Alina Tugearu

Zamfirescu Racoti Vasile
& Partners

Alina Tugearu, partner at Zamfirescu Racoţi Vasile & Partners, specialises in civil and commercial litigation and focuses her practice on international arbitration, administrative/contentious disputes and intellectual property disputes.

She presently represents corporate clients in various national disputes and has solid experience in trying arbitration cases before national and international arbitral panels in arbitration proceedings held under the auspices of the International Chamber of Commerce, the London Court of International Arbitration, the Vienna International Arbitration Center, the Court of International Commercial Arbitration (Bucharest) and under the UNCITRAL arbitration rules in ad hoc arbitration, in complex projects involving construction disputes, including matters regarding FIDIC contracts, post-privatisation related disputes arisen following the exercise of a put and call options and energy-related disputes.

Alina has been a member of the Bucharest Bar since 2005 and holds a law master's (LLM) degree from Sorbonne University.

ZAMFIRESCU RACOȚI VASILE & PARTNERS
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Zamfirescu Racoti Vasile & Partners (ZRVP) 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 engineering insolvency maritime law media banking and finance distribution and transport production real estate and others.

12 Plantelor Street
District 2
Bucharest RO-023974
Romania
Tel: +40 21 311 05 17 / 18
Fax: +40 21 311 05 19

www.zrvp.ro

Cosmin Vasile
cosmin.vasile@zrvp.ro

Alina Tugearu
alina.tugearu@zrvp.ro