Arbitration Guide
IBA Arbitration Committee

ROMANIA

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration has been used in Romania for more than 60 years. Since 1992, the Romanian Civil Procedural Code has contained a book dedicated to arbitration (Book IV), which, essentially, is the arbitration law in Romania. The Romanian Parliament adopted a new Civil Procedural Code (CPC) which came into force on 15 February 2013. As in the previous codification, the main body of provisions regulating arbitration in the CPC is to be found under the same Book IV, '*On Arbitration*'; the provisions on international arbitration and foreign arbitral awards, few in the previous Code, have been developed into a title on its own, '*On International Arbitration and the Effects of Foreign Arbitral Awards*', part of Book VII of the CPC, '*The International Civil Trial*'. The increased attention to arbitration of the CPC drafters is a response to this alternative dispute resolution method gaining more and more ground with disputing parties in Romania.

In the perception of the parties, the main advantages of arbitration are considered to be: the possibility of the parties to participate in the process of the appointment of the arbitrators with a professional profile adapted to the needs of the case; the involvement of the parties in establishing the duration of the arbitral proceedings; the possibility to use languages other than Romanian in the arbitral proceedings. These are all features not to be found in the courts of law.

Parties perceive as a disadvantage of arbitration mainly the cost of the arbitral proceedings.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most of the arbitrations are institutional. There are very few ad hoc arbitration proceedings and most of them rely on the services of an arbitral institution for administrating the cases. The majority of arbitrations are domestic, but in a substantial portion of international commercial cases, parties prefer arbitration to state courts. When the place of arbitration is chosen to be Romania, parties most frequently use the services of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CICA-CCIR). Parties also use ICC arbitration.

(iii) What types of disputes are typically arbitrated?

Typical types of disputes include disputes arising out of various commercial contracts, such as trade, international trade, construction, lease, management, leasing, banking and transportation contracts.

(iv) How long do arbitral proceedings usually last in your country?

The duration of the arbitral proceedings may be included by the parties in their arbitral agreement. In the absence of such agreement, the law provides for a term of six months for domestic arbitration and one year for international arbitration. However, the lapsing of this term leads to the termination of the arbitral proceedings only if one of the parties invokes the termination at the time of the first hearing date, at the latest. The continuation of the arbitration proceedings after the term of the arbitration elapsed is defined by the Romanian Civil Procedural Code as a cause of annulment of the arbitral award. However, the jurisprudence clarified that such cause of annulment may not be invoked by the party who caused the prolongation of the arbitral proceedings beyond the arbitration term. Arbitral tribunals may also decide, on their own motion, to extend this term by up to three months.

Other provisions on the duration of the arbitral proceedings may be found in rules of various institutions. For instance, the rules of CICA-CCIR provide six months for domestic arbitrations and one year for international arbitrations. According to these rules, the term of the arbitration is suspended for the time necessary to generate any expert report(s) ordered by the arbitral tribunal.

Apart of the issue of the lapsing of the arbitration term, in practice, the duration of arbitrations depends very much on the complexity of the evidence to be presented (for instance the number of expert reports to be prepared) or by various procedural incidents that may occur. Among such incidents one may find situations when the arbitration proceedings are suspended for a certain period of time because of a party's insolvency. In other cases, parties file a request to stay the proceedings for the purpose of finalizing another litigation, particularly when the outcome of that dispute may have a significant influence on the issue in dispute in the arbitration. Furthermore, sometimes the non-constitutionality of certain law provisions applicable in the dispute is invoked and then the arbitration is suspended until the Constitutional Court decides on non-constitutionality and other issues.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Under the provisions of the Romanian arbitration law, there are no such restrictions for counsel in arbitrations or the arbitrators.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

The CPC is dedicated to arbitration and applies to both domestic as well as to international arbitration if (a) it is seated in Romania, (b) at least one of the parties, at the time of concluding the arbitration agreement, was not seated or domiciled/residing in Romania and (c) the parties did not exclude in writing the application of the CPC. It is not based on the UNCITRAL Model Law, but it is consistent with its principles.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The CPC distinguishes between domestic and international arbitration, the latter being treated under the broader scope of the international civil trial. However, there are few distinctions in the law between domestic and international arbitration, mainly focusing on procedural time limits (which are doubled in international arbitration compared with domestic arbitration proceedings).

(iii) What international treaties relating to arbitration have been adopted (eg, New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Romania ratified the New York Convention (1958), the Geneva Convention (1961) and the Washington Convention (1965).

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

As regards domestic arbitration, the CPC provides that the arbitral dispute is settled on the basis of the main contract and of the applicable rules of law, taking applicable commercial usages into consideration.

In the case of international arbitrations, the CPC provides that the applicable substantive law is the law indicated by the parties. If the parties do not expressly refer to the substantive law applicable to the merits of the dispute in the arbitration agreement, the arbitral tribunal shall apply the law which it considers adequate and in any case take into consideration the applicable commercial usages and rules. In either case, that is, of a domestic or an international arbitration, the arbitral tribunal may settle the dispute *ex aequo et bono* only on the basis of the express agreement of the parties.

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

According to the CPC, the arbitration agreement must be made in writing under pain of nullity. The written form requirement of the arbitral agreement shall also be deemed satisfied when the parties have agreed to arbitration by an exchange of correspondence or of procedural documents.

The arbitration agreement may take the form of an arbitration clause or a compromise; it may predate the arbitration request or be made by the parties before the arbitral tribunal and written down in the record of the first hearing in arbitration.

In the case of institutional arbitration organized by the CICA-CCIR, a valid arbitration agreement according the rules of this institution results from a request for arbitration filed by the claimant, with the respondent expressly accepting the jurisdiction of the CICA-CCIR. The respondent's acceptance must be recorded in writing.

A particular condition as regards the arbitration agreement is provided for by the CPC in case the arbitration concerns the transfer of ownership (or other real rights) in real estate situated in Romania. In this case, the arbitration agreement must be made in authentic form (ie, notarized), under pain of absolute nullity.

In the case of ad hoc arbitration, the arbitration clause of an agreement must indicate the method to appoint the arbitrators, while the compromise must also identify the object of litigation, under pain of nullity. In institutional arbitration, it is sufficient to refer to the rules of that institution, which, in turn, refer to the procedure for the appointment of the arbitrators.

As concerns international arbitration, the CPC provides that an arbitration agreement will be deemed valid if it meets the requirements of either (a) the law chosen by the parties, (b) the law governing the object of the litigation, (c) the law of the agreement comprising the arbitration clause or (d) the Romanian law.

In the case of institutional arbitration organized by the CICA-CCIR, model arbitration agreements are offered (available at **http://arbitration.ccir.ro/engleza/models.htm**).

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

The courts strictly observe the provisions of the CPC regarding the validity and enforceability of agreements to arbitrate. If a dispute for which an arbitration agreement was concluded is referred to a court of law, that court of law shall declare its lack of jurisdiction only if a party invokes the arbitration agreement. The court of law shall retain jurisdiction and decide the case if (a) the respondent filed its defenses on the merits without reservation grounded on the arbitration agreement, (b) the arbitration agreement is null or ineffective or (c) the arbitral tribunal cannot be constituted for reasons obviously imputable to the respondent in arbitration.

(iii) Are multi-tier clauses (eg, arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Multi-tier clauses are not used very frequently, except in the case of FIDIC contracts, where the general conditions provide for a Dispute Adjudication Board (DAB) procedure prior to arbitration. Otherwise parties rarely provide for a different ADR procedure prior to arbitration. Where such provisions exist they are usually rather vague. For example, one such provision states that 'parties shall strive to settle their disputes amicably before commencing the arbitration'. The consequences of commencing the arbitration in disregard of such provisions depend very much of the wording of the contractual provision. There is very little jurisprudence on this issue.

(iv) What are the requirements for a valid multi-party arbitration agreement?

A valid multi-party arbitration agreement requires the consent of all the parties, either in the form of a written arbitral agreement or express acceptance of

jurisdiction by the respondent, recorded in writing, before or on the first hearing date in the arbitral proceedings.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

No. The consent of both parties is required, either in the arbitration agreement or before or on the first hearing date in the arbitral proceedings.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Yes, certain arbitration agreements may bind non-signatories if such non-signatories substituted for one of the signatories in the main contractual relationship, with no reservation on the issue of the arbitral agreement. Examples of such situations may be the continuation of a contract with the heir of the initial signatory party or the continuation of a contract with a different party in the case of a transfer of rights rising out of a contract with a new party.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

According to the CPC, arbitration can be used for the settlement of disputes other than those concerning marital status, capacity of persons, succession and distribution of estate, family relations, and rights which cannot be disposed of.

Once a case is submitted to arbitration, the arbitrators are to decide on their own jurisdiction (*competence-competence*). However, the issue of jurisdiction may be again raised with the courts through proceedings to set aside the arbitral award.

Lack of arbitrability is generally considered a matter of jurisdiction.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

Should a party file a case with a local court, in spite of an arbitration agreement, the respondent may object to the jurisdiction of the courts of law before or on the

first hearing date. Should the respondent fail to raise such an objection, the jurisdiction will stay with the local courts, and the arbitration agreement will become ineffective (please also refer to Section III(ii) above).

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of *competence-competence* applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

Yes. The only control of the courts of law is by way of the set aside proceedings against the arbitral awards.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Arbitrators are selected according to the provisions of the arbitration agreement, if any. The courts of law act as appointing authority in ad hoc arbitrations.

In the case of institutional arbitration, the applicable rules of the institution will describe the procedure of appointment of arbitrators.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

According to the CPC, the arbitrators must inform the parties and the other arbitrators about any issues which would qualify as a ground for a challenge.

The courts of law have jurisdiction in deciding on the challenges of arbitrators in ad hoc arbitrations, when the arbitration agreement does not provide otherwise. In institutional arbitration, the jurisdiction for deciding on the challenge is defined in the rules of that institution. In the case of the CICA-CCIR, the challenges are decided by the arbitral tribunal, where the challenged arbitrator is replaced by a member of the Court College, designated by the CICA-CCIR president or prime vice-president.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

According to the CPC, in domestic arbitration, an arbitrator may be any individual who has the full capacity of exercising his/her rights.

The requirement related to the full capacity of exercise is considered to be of public order. One should also note that certain professions generate, according to special laws, an incompatibility with the arbitrator capacity. For example, under current legislation, a magistrate is incapable of being an arbitrator.

Parties are free to set out in their arbitration agreement certain requirements for the arbitrators such as qualifications or experience. The rules of the institutions may also add requirements.

The rules of arbitration of CICA-CCIR (in force 2013) provide that in the case of institutional arbitration, the appointment of arbitrators is made by the appointing authority from the list of arbitrators that are listed by the CICA-CCIR (both Romanian or foreign arbitrators, without limitation based on nationality), with due regard to their professional training, experience and involvement in the Court's activity and after consulting the elements in the case file which allow the assessment of the case complexity and of the value of the dispute. In ad hoc arbitration, parties may decide the conditions for the appointment of the arbitrators.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

The only legal provisions regarding the conflict of interest for arbitrators are the norms defining the grounds for challenging the arbitrators. CPC defines these grounds as being the same as for judges, namely the lack of independence and impartiality, including the existence of professional or commercial relations with one of the parties and involvement as a witness in previous stages of the dispute, and the non-fulfillment of the conditions provided in the arbitration agreement.

The IBA Guidelines on Conflicts of Interest in International Arbitration are followed only voluntarily by the arbitrators experienced in international arbitration. Failing to observe the Guidelines is not sanctioned by the courts of law in annulment proceedings or otherwise.

VI. Interim Measures

(i) Can arbitrators enter interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

Yes, arbitrators may enter into various forms of interim measures between the parties. Arbitrators may not, however, enter interim relief involving third parties (such as freezing the bank accounts of a company where the bank is not a party in the arbitration agreement). Under Romanian procedural law provisions, arbitral tribunals are permitted to render awards in various forms, including 'interim awards' (in Romanian, '*incheieri*') or 'final awards' (in Romanian, '*hotarari*'). When the seat of arbitration is in Romania, the interim measures issued by the arbitrators are enforceable in the Romanian courts of law. However, when not seated in Romania, interim measures issued by the arbitrators are not enforceable in Romania. Only final arbitral awards are enforceable under the New York Convention.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following constitution of the arbitral tribunal?

Yes, under CPC, the courts have general jurisdiction in issuing any measures that ensure the continuation of arbitral proceedings, when one party seeks to block the proceedings and the other party requests the court to ensure that the proceeding continue.

Before the constitution of an arbitral tribunal, courts may issue provisional measures such as measures for preservation of evidence or other interim measures.

The provisional measures ordered by a court will remain in force for the duration established in the court's order. The order may remain in effect beyond the constitution of the arbitral tribunal.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

The courts may be required to grant evidentiary assistance in support of the arbitration. For instance, only courts may issue sanctions against a witness or an expert who fails to observe his or her duties. The consent of the arbitral tribunal is

not required by law but, as a matter of practice, once the arbitral tribunal is in place, parties generally inform the tribunal about the requests they make to the courts of law related to the arbitration.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

The general approach is similar to other civil law countries, namely only disclosure of specific documents is permitted. It does not amount to the type of disclosure one may find in the practice of the common law countries.

According to the CPC, the arbitral tribunal may order the parties to present documents that they have in their possession. The arbitral tribunal may also request documentary information from state authorities when such information is necessary for solving the disputes. If the public authorities refuse to provide the information, the parties or the arbitrators will be entitled to request the local courts of law to order the authorities to present such documents.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

The CPC mentions certain limits for disclosure in the context of state courts proceedings. These provisions are applied by most arbitral tribunals, as well. According to the Code, the tribunal shall refuse to order the disclosure of documents that refer to personal private matters, when the disclosure would lead to violation of an obligation to preserve the secrecy of a certain document or when the disclosure of the document would lead to the criminal prosecution of a party or another person or would expose that person to public contempt.

(iii) Are there special rules for handling electronically stored information?

In the context of state court proceedings, electronically stored information is admissible as evidence under the same conditions as documentary, paperback evidence if the document reproducing such information is legible and presents sufficiently serious guarantees as to its true content and the identity of the person having issued it.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Arbitration proceedings are confidential under Romanian law and arbitrators are liable for breaching the confidentiality obligation. The Rules of CICA-CCIR provide for the obligation of the institution and of the parties to observe the confidentiality obligation as well. However, parties may agree otherwise. CICA-CCIR may also allow access to arbitral awards for scientific purposes only (for instance for a student preparing a Ph.D. thesis or for a researcher working on a specific study on arbitral proceedings or jurisdiction). It also publishes extracts of the awards (in all cases with due consideration to all confidential data in the arbitral files).

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

There is no specific provision addressing trade secrets or confidential information in the CPC, except the general obligation to preserve confidentiality, applicable to all the data in the arbitration file.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

The CPC does not provide for any rule on privilege, but various other laws regulating various professions (such as attorneys at law, medical professionals, etc) provide for such privileges.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

No, this is not very common, except in certain ICC proceedings. In such cases, the arbitral tribunal usually retains discretion to depart from them.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

In the case of institutional arbitration, the procedural rules contained in the regulations of the arbitration institution apply.

In the case of ad hoc arbitration, parties may decide in their arbitration agreement the procedural rules that the arbitral tribunal must follow or may authorize the arbitrators to determine such rules. If the arbitral tribunal failed to set these rules, the provisions of the CPC apply.

In both institutional and ad hoc arbitration, as a matter of public order, the arbitral tribunal must observe the equality of treatment of the parties, the respect of their right to defense and the principle of hearing both parties on all issues in dispute. Also, according to the jurisprudence of the Romanian High Court of Cassation and Justice, arbitrators must observe the human rights provided in the European Convention on Human Rights, particularly the right to a fair trial.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

The presentation of the witnesses is not regulated by the arbitration provisions in CPC except for ad hoc arbitration, where the general procedure is similar to the one of the courts of law. Such procedure implies the examination of the witnesses by the arbitral tribunal, with no direct or cross examination. Oral testimony is dictated by the arbitrator and signed by the witness in the hearing, without being preceded by a written statement filed before such oral testimony.

In institutional arbitration, the applicable rules may deviate from such procedure. In the practice of the arbitral institutions active in Romania, oral examination is sometimes preceded by a written statement of the witness, should the arbitral tribunal so choose. The examination of the witness includes a direct examination, a cross examination, sometimes redirect, and questions asked by the arbitral tribunal.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

General procedural provisions in Romania, applicable to the courts, provide for certain prohibitions on who may be a witness, including: relatives by blood and affinity up to the third degree, inclusively; a spouse, even separated; persons that are legally declared without capacity; persons that were convicted for false testimony or perjury. The prohibition is not absolute. Relatives and spouses, for instance, may testify should the parties expressly agree so.

However, in the CPC, there are no legal differences. Accordingly, in practice, arbitrators allow the testimony of witnesses specially connected with the parties, but maintain the discretion as to how to assess the weight of such testimony. Also,

parties may include in their arbitration agreement various procedural limitations, including an agreement on witness capacity.

There is no oath for witnesses. Nor is their affirmation mandatory. As a matter of practice, arbitrators inform witnesses that they are expected to tell the truth.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg, legal representative) and the testimony of unrelated witnesses?

Such testimonies are accepted, but the arbitrators always request details on the relationship between the witness and the party. Arbitrators have discretion to assess the weight of testimony of witnesses connected with one of the parties.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

Experts are not considered witnesses and their task is limited to preparing a written report. They are not bound to testify orally in the arbitration except if the arbitral tribunal requests certain clarifications that are to be given orally.

In institutional arbitration, the applicable rules may rarely deviate from such provisions.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

Usually, experts are appointed by the arbitral tribunals. However these experts are commonly assisted by party appointed experts (usually called 'side experts'). The opinion of the party appointed experts does not share the same weight with the expert appointed by the arbitral tribunal, but their opinion is analyzed along with all the evidence in the file.

In Romania, experts are to be registered with the Ministry of Justice Bureau of Judicial Expertise, and set forth on a specific list. In ad hoc arbitrations where the CPC's provisions apply, only registered experts may provide a valid expert report in the arbitration. If there are no registered experts in a certain area of expertise, other specialists may also provide an opinion.

In institutional arbitration, the applicable rules rarely deviate from such provisions. There is little jurisprudence on the consequence of failure to observe the rules concerning the capacity of experts. Thus, where there is no express deviation from the provisions of the CPC in the arbitration rules, it is advisable for such provisions to be followed to avoid the risk of the setting aside of the awards.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Yes, but witness conference occurs only in rare cases, when the witnesses are providing contradictory testimony. It takes place usually orally, in a hearing where both witnesses are present.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

There are no provisions in the CPC on the issue of the secretaries of the arbitral tribunal. In ad hoc proceedings, the issue is one to be decided by agreement among the parties and arbitral tribunal.

In institutional arbitration, this issue is regulated by the applicable rules. In practice, the use of such secretaries is very common. In the Rules of CICA-CCIR, all arbitral tribunals work with the help of such a secretary, called an 'arbitral assistant' provided by the CICA-CCIR, who is present in all the hearings and prepares the minutes of the hearings, as well as all correspondence of the arbitral institution. In ICC proceedings, the use of secretaries is at the discretion of the arbitral tribunal.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

An arbitral award must be in a written form and, according to CPC, must include: the members of the tribunal; the place and date of the award; the names of the parties and their identification data; a reference to the arbitration agreement; the subject of the dispute and the summary of arguments presented by each party; the factual and legal grounds of the award; the decision; the signatures of all arbitrators and, if applicable, the signature of the arbitral assistant. In the case of dissenting opinion, the dissenting arbitrator drafts and signs his own opinion, which is attached to the majority award.

Specific rules of the arbitral institutions may add other requirements. For instance, under the Rules of CICA-CCIR, the arbitral assistant is bound to sign the award as well.

There are no specific provisions as to the type of relief permissible. A particularity appears in the case of an arbitration concerning the transfer of ownership (or other real right) in real estate – in this case, the award is to be presented to the local court or to the notary public in order to obtain either a court decision or an authentic deed based on which the mandatory registration with the land book of the ownership (or other real right), if transferred by virtue of the award, will be performed.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

Yes, the arbitral tribunal may award any type of damages permitted by applicable law (Romanian or otherwise).

Under Romanian law, the type of damages which may be awarded would be a matter of substantive law. Punitive damages or exemplary damages are not provided by Romanian law. However, interest may be awarded under Romanian substantive law. Compound interest is limited under Romanian substantive law to certain circumstances.

(iii) Are interim or partial awards enforceable?

If the seat of arbitration was in Romania, the interim or partial arbitral awards are enforceable in the Romanian courts. Interim awards rendered in arbitral proceedings where the place of arbitration was not Romania are not enforceable in Romania. Partial awards are enforceable but only if they are final.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Yes, arbitrators may issue dissenting opinions to the award. Such opinions should contain the reasoning of the dissenting arbitrator, be drafted in writing and communicated to the parties together with the arbitral award.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Yes, awards by consent are permitted, if the consent of the parties is in writing and authenticated by a notary public or presented to the arbitral tribunal by the

parties in person. The arbitral tribunals may refuse to issue an award recording the consent if the terms of the agreement of the parties are not legal.

The proceedings may be terminated only by an award, but such award may be either on the merits of the case (granting or dismissing the requests of the parties or recording the consent of the parties), or on procedural issues (eg, non-payment of the arbitral fees, lack of jurisdiction, lack of capacity of the parties, annulment of the request for arbitration for various reasons, lapse of the arbitration term without any party taking any actions for the continuation of the arbitration, etc).

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Arbitrators may issue an award for correcting various material errors of their award, and may also interpret the award. These may be decided on the arbitral tribunal's own motion or at the request of the parties, within a certain timeframe.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The unsuccessful party bears the costs within the limits that it was unsuccessful. This means that, if one party is only partially successful, it may not obtain full compensation for its costs in the arbitration from the unsuccessful party.

For international arbitration, the CPC provides that, absent the parties' different agreement, the arbitrators' fees and travel expenses are born by the party who appointed them, while the fee and travel expenses of the presiding arbitrator or sole arbitrator are equally borne by the parties.

(ii) What are the elements of costs that are typically awarded?

The costs that are typically awarded are: the arbitral institution's fees; the arbitrators' fee; travel and accommodation expenses of the arbitrators; experts' and witnesses' travel and accommodation fees; the fees of the legal counsel and their expenses; and the party-representatives' travel and accommodation fees. Other cost elements may be awarded on a case-by-case basis.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

In ad hoc arbitration, the arbitral tribunal decides on its own costs, unless the issue is contested by the parties. If the costs of the arbitral tribunal are contested by the

parties, then the courts have jurisdiction on the issue. In institutional arbitration, the issue is regulated by applicable rules.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

Yes, on the basis of the parties' relative success in the arbitration.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

No, except if such decision would fall under the grounds for challenging the award, which are provided by the CPC.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

According to the CPC, an arbitral award may be set aside with the courts of law only for a limited number of reasons:

(a) the dispute was not capable of resolution by means of arbitration;

(b) the arbitral tribunal decided the dispute in the absence of an arbitration agreement or on the basis of a void or inoperative agreement;

(c) the arbitral tribunal was not constituted according to the arbitration agreement;

(d) the party was not present on the date when the dispute was heard and the summoning procedure was not legally fulfilled;

(e) the decision was rendered after the expiry of the agreed time limit although termination had been invoked by one of the parties and there was no party agreement for the continuation of the arbitration;

(f) the arbitral tribunal decided on matters not requested or awarded more than it was requested;

(g) the decision did not include the reasons, did not state the date and place where it was rendered, or was not signed by the arbitrators;

(h) the arbitral award is in violation of public policy, good morals or mandatory provisions of the law;

(i) after the award was rendered, the Constitutional Court rendered its decision on the unconstitutionality objection raised in the arbitration, declaring unconstitutional the law or piece of legislation or provision thereof which formed the subject of the objection.

The time limit for challenging the award is one month after the serving of the award to the parties.

The challenge proceedings do not stay the enforcement of the award automatically, but the interested party may apply to the courts with a specific request for an interim measure for this purpose. Such requests are frequently granted, but in most of the cases the requesting party is required to provide a certain guarantee.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

Parties may waive the right to challenge an arbitral award, but only after the award is rendered.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

Arbitral awards may not be appealed, only set aside for the grounds provided by Article 608 (1) of the CPC. The decision of the courts in such a proceeding may be appealed to the higher courts. There is only one level of such appeal.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

According to the CPC, if the award is set aside for the reasons listed as (c), (d), (f)–(i) under Section XII (i) above (which correspond to the letters under Article 608 (1) of the CPC), the court, upon the explicit request of at least one of the parties, shall remand the award to the arbitral tribunal for a re-trial. Otherwise, the

court shall retain jurisdiction and settle the case on the merits, within the limitations of the arbitration agreement.

XIII. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

The main regulatory documents applicable to the recognition in Romania of foreign arbitral awards are: the Convention of the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) ratified by Romania in 1961; the European Convention on International Commercial Arbitration (Geneva, 1961) ratified by Romania in 1963; and the CPC.

The CPC applies mainly to the recognition, on its own, and to the recognition and enforcement of international arbitral awards made in countries Romania is not bound to by the abovementioned conventions or by bilateral agreements. The CPC also applies when such conventions do exist, but only to complement the rules they include.

According to the CPC, awards can be recognized and enforced in Romania if the following conditions are cumulatively met: (a) the dispute referred to arbitration can be settled in arbitration in Romania and (b) the award does not contain provisions contrary to the public order of Romanian private international law.

Recognition and enforcement of the foreign award may be refused in any of the following cases:

(a) the parties lacked capacity to conclude the arbitration agreement in accordance with the provisions applicable to each party, as determined by the law of the state where the award was rendered;

(b) the arbitration agreement was not valid in accordance with the law governing such agreement as per the parties' choice or, absent such choice, in accordance with the law of the state where the award was rendered;

(c) the party against which the award is invoked was not duly informed on the appointment of arbitrators or on the arbitral procedure or was prevented from using all its defenses in the arbitration;

(d) the constitution of the arbitral tribunal or the arbitral procedure was not in accordance with the parties' agreement or, absent such agreement, with the law of the place of arbitration;

(e) the award resolves a dispute not referred to in the arbitration agreement or beyond the limits of such arbitration agreement (still, the award can be recognized as regards aspects comprised in the arbitration agreement if such aspects can be separated from the rest of aspects, exceeding such agreement);

(f) the arbitral award has not become binding for the parties or was set aside or suspended by a competent authority of the state where it was rendered or in accordance with the law of such state.

The recognition and enforcement proceedings can be stayed if the set aside or the suspension of the foreign arbitral award was requested to the competent authority of the state where such award was rendered or of the state pursuant to whose law it was rendered. In this event, according to the CPC, the national competent court addressed with the recognition and enforcement request may only order the party against whom recognition/enforcement is sought to deposit a certain amount as bail, upon request by the other party.

On the request for recognition and enforcement of a foreign arbitral award, the decision is made by the tribunal at the seat/domicile of the party against whom the recognition and enforcement of the award is sought. If determining the above said tribunal proves to be impossible, then the competence rests with the Bucharest Tribunal. The decision is made after having summoned the parties, unless it results from the foreign award that the respondent agreed for the statement of claim to be admitted. The decision may be challenged by way of appeal only.

No enforcement is possible until a decision on the recognition of the foreign award is rendered by the courts of law.

Foreign awards whereby conservatory measures were granted and those with provisional enforcement (for instance, interim measures) may not be enforced in Romania.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

In Romania, the equivalent of the exequatur is the court decision on the recognition and enforcement of the foreign award. Once the exequatur is obtained, the award may be enforced in the same manner as decisions of domestic courts,

namely by way of enforcement with the support of the state bailiffs ('*executor judecatoresc*').

(iii) Are conservatory measures available pending enforcement of the award?

While the enforcement of the proceedings is pending, the creditor may file for interim measures for conserving the patrimony of the debtor. Such interim measures may be granted by the courts, but the creditor is required to present certain guarantees.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The courts regularly enforce foreign arbitral awards. There are very rare exceptions. There are no public data on any jurisprudence of requests for enforcement of arbitral awards set aside by the courts at the place of arbitration.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

An enforcement procedure with the courts may take between three months (in the absence of any opposition of the debtor) and two years (in the case of opposition, for both the enforcement and the appeal against the first level court decision).

The time limit for seeking the enforcement of an award is the limitation period under the statute of limitation (three years in Romania).

XIV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

Romania does not enjoy immunity in international commercial arbitration cases.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

The creditors of the Romanian State or the state entities must notify first the state or state entity, requesting the payment and a budgetary allocation of the amount necessary to perform that payment. To ensure adequate time for allocation approval, no enforcement of an award may be initiated except after six months after the receipt of the notification by the state entity. Also, Romanian State

entities may apply to the courts for the suspension or rescheduling of their obligations, even if such amounts are included in an award, if those entities lack the necessary amounts in their budget. (In Romania, the budget of the state entities is approved annually and rectifications are possible only exceptionally.)

The above procedure applies only to the Romanian State and state entities, and does not apply for other states or state entities, as far as the enforcement on their assets on Romanian territory is concerned.

XV. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Yes, Romania is a party to the Washington Convention. Romania is also a signatory party of the Energy Charter Treaty.

(ii) Has your country entered into bilateral investment treaties with other countries?

Yes, Romania signed over 85 bilateral investment treaties, which include arbitration clauses.

XVI. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

The Romanian Arbitration Review, published by the CICA-CCIR is the main source for practitioners on recent jurisprudence and doctrine on arbitration in Romania. Many of the articles in the review are bilingual (ie, in Romanian and English).

From time to time, international reviews also publish articles focusing on arbitration in Romania.

There are a number of books and university courses on arbitration law published in Romania. There is also a fair number of Ph.D. theses on topics related to arbitration. All are in the Romanian language, only. Such books may be found in the National Library, as well as in the libraries of the faculties of law in Romania.

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

CICA-CCIR annually organizes a national conference in cooperation with the National Institute for Training of Attorneys at Law and an international conference focusing the presentation of recent developments in arbitration. In the last few years, a tradition was built in presenting the arbitration rules of various institutions and laws of various countries, in a bilateral approach, with the cooperation of various organizations or institutions (such as the ICC, the Swiss Arbitration Association and the Austrian Arbitration Association).

XVII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Arbitration is indeed a real alternative to the courts for commercial and international commercial cases. CICA-CCIR administers over 450 cases per year. ICC arbitrations with Romania as the place of arbitration have become increasingly common. In non-commercial cases, however, arbitration is rarely used.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

In 2006 Romania adopted a law on mediation and mediators' activity, regulating both the procedure of mediation and the mediation profession. While according to this law mediation is not a mandatory preliminary procedure before referring a dispute to the court of law, participation of the disputing parties to an informative session on the advantages of mediation is mandatory in certain cases (eg, referring to consumer protection, certain matters of family law, neighbor relations, individual employment, civil disputes the object of which does not exceed a certain amount, etc).

Similarly, pursuant to the CPC, state courts are bound to recommend mediation to the parties. When such a recommendation is made, the parties are obliged to participate in an informative session on the advantages of mediation.

As of 1 August 2013, proof of participating in said informative session on the advantages of mediation is due to become a condition for the admissibility of the court claim.

If the parties decide to apply for a mediation procedure, the limitation period is suspended. If the mediation is successful while a court case is pending, the judiciary fees are reimbursed to the party who paid them.

As far as other ADR procedures are concerned, by a recent legal provision, the Ministry of Transportation applies FIDIC contracts in infrastructure projects. As a result the DAB procedure is now more and more present as an alternative dispute mechanism prior to arbitration.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

The CPC came into force on 15 February 2013. The main changes introduced by the CPC address the following topics:

The capacity of the public entities to enter into arbitral agreements. The possibility for the state and public authorities to enter into arbitration agreements shall exist only if expressly authorised by law or international conventions entered into by Romania. Public entities engaged in commercial activities shall be expressly allowed to enter into arbitral agreements, except if the law or their constitutive act provides otherwise.

The arbitral agreement. An arbitral agreement shall be allowed even if litigation is already pending with the courts of law. The written form requirement of the arbitral agreement shall be deemed satisfied when the parties have agreed to arbitration by an exchange of correspondence or of procedural documents.

The institutional arbitration. Additional norms are inserted in the CPC regulating institutional arbitration, including: in the case of a contradiction between the arbitral agreement and the rules of the arbitral institution, the arbitral agreement shall prevail; should the parties disagree, the procedural rules of the arbitration institution in force at the date of submitting the a request for arbitration shall be applicable; if the arbitration institution mentioned in the arbitration agreement refuses to administer the arbitral case, the parties shall apply the rules for ad hoc arbitration provided by the CPC.

Participation of third parties in the arbitration. Under the CPC, third parties are entitled to participate in arbitration proceedings only with their agreement and the agreement of all parties. The only exception will be for accessory intervention, meaning when a third party has no claims of its own, but simply supports the defence of one of the parties.

Constitution of the arbitral tribunal. The number of arbitrators is uneven. Parties shall appoint not only the arbitrators, but also replacement arbitrators in the event

that appointed arbitrators can no longer fulfill their responsibilities; the same provision shall apply for the presiding arbitrators.

Jurisdictional decisions. The arbitral tribunal has the duty to decide on its jurisdiction in the first hearing. Should the arbitral tribunal decide that it has no jurisdiction, the CPC requires it to forward the file to the competent institution. Such institution where the file will be forwarded may be a court of law or another arbitral institution.

Powers of attorney at law. The power of attorney given to an attorney at law or in-house counsel shall be deemed to contain, implicitly, the choice of domicile of the party at the headquarters of the attorney at law and the right of the attorney at law/in-house counsel to decide on the position of the party on the duration of arbitration and the procedural consequence of exceeding this duration (namely whether the termination of the arbitral proceedings is invoked or not).

The powers of the arbitral tribunal. The CPC provides for the power of the arbitral tribunal to order the parties to present documents that they have in their possession. The arbitral tribunal shall be entitled to request written information from state authorities when such information is necessary for solving the disputes. If the public authorities refuse to provide the information, the parties or the arbitrators will be entitled to request the local courts of law to order the authorities to present such documents.

Setting aside arbitral awards. The courts of appeal have exclusive jurisdiction over the annulment of arbitral awards. Should the court of appeal annul the arbitral award based on the lack of jurisdiction of the arbitral tribunal, it shall forward the file to the court of law having jurisdiction, for deciding on the merits of the case.