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IBA ARBITRATION COMMITTEE

Arbitration Guide

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 gained significant ground in Romania over the past decade and a half, with a constant increase in its use resulting predominantly from disputes relating to the various infrastructure projects started by the public authorities in Romania with the help of European financing (from pre-adhesion and post-adhesion funds). International arbitration in such projects started based on the standard International Chamber of Commerce (ICC) arbitration clause from the International Federation of Consulting Engineers (FIDIC) General Conditions of Contract, but has further evolved and changed.

Starting in 2018, important legislative amendments were adopted, covering a broad category of publicly financed projects subject to public procurement procedures. This led to the replacing of the FIDIC General Conditions of Contract with new forms of public procurement contracts that are mandatory for public works. The new conditions of contract bring significant changes to the claims/dispute resolution procedure, including the removal of the Dispute Adjudication Board (DAB) from the contractual mechanism for dispute settlement and the referral of the dispute to the national arbitration court – the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CICA) – as the arbitral institution within the standard arbitration clause (thus replacing the jurisdiction of the International Court of Arbitration (ICC), which was applicable under the former FIDIC General Conditions of Contract).

The main advantage of arbitration is the flexibility of the proceedings, given that the parties play a significant role in choosing the applicable rules, setting a calendar of proceedings, choosing the experts who will perform the expert reports. Another important advantage is that the parties have a chance to orally present at length their evidence and pleadings before the panel of arbitrators, while the hearings before a court are much more limited. The main disadvantage of arbitration is the higher costs of arbitration proceedings, especially when the panel is comprised of three arbitrators.

Also, in the era of technology, constant change and corresponding adaptation (such as the practice of virtual hearings and electronic submissions which are now the norm) are key words which favour arbitration. Moreover, great progress is being brought by the latest technologies, including AI, which are being rapidly adopted in international arbitration which is seeking to develop the best instruments to enhance efficacy.

In such context, the advantages of this Alternative Dispute Resolution (ADR) method clearly delineate it from domestic litigation; and the business community has understood that national courts will never have the same rapid pace in adapting to change and distress, which has boosted interest among companies in including arbitration clauses in their commercial agreements or opting to switch to arbitration.

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

Most arbitration is institutional. Domestic and international arbitration are both common, but international arbitration is slightly more frequent.

CICA is currently the most frequently used and important international arbitration institution in Romania. Its 2018 Rules of Arbitration align with the existing rules of the ICC and other similar institutions, and seek to enhance the flexibility and efficiency of arbitration in Romania while at the same time sidestepping the formalism of domestic courts. This change has helped maintain the steady growth trend of national and international arbitration before CICA.

Besides the CICA Rules, international arbitration disputes in Romania are currently carried out under the auspices of the ICC, the Vienna International Arbitral Centre (VIAC), the London Court of International Arbitration (LCIA), and the Swiss Chamber of Commerce (SCC), but also under German and Italian institutions of arbitration (the German Arbitration Institute (DIS) and the Court of Arbitration attached to the German-Romanian Chamber of Commerce and Industry (AHK), mainly used by German/Italian companies and investors).

(iii) What types of disputes are typically arbitrated?

The majority of arbitration matters are construction-related disputes (and equally infrastructure projects), but various other contractual disputes are also referred to international arbitration, including energy-related disputes.

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

Article 567 of the Romanian Civil Procedure Code (henceforth referred to as 'RCPC') provides that, unless the parties agree otherwise, the arbitral tribunal must render an award within six months of the constitution of the tribunal for domestic arbitration and, according to Article 1115, a year with respect to international arbitration. In this respect, the parties are asked at the first hearing when they are lawfully summoned if they wish to allege later on that the arbitration has become moot due to the failure to observe the time limit. If no such declaration has been made by the parties or in case the parties expressly waive the right to invoke the arbitration became moot, the proceedings shall continue even if the time limit was exceeded. If the time limit cannot be observed, the arbitral tribunal may extend it only once with another three months with respect to domestic arbitration and another six months with respect to international arbitration. If the arbitral tribunal fails to render its decision within the aforementioned time limit and at least one party has declared that it wishes to challenge the validity of the arbitral proceedings based on the failure to observe the six months deadline, the arbitral tribunal shall render a decision ascertaining the arbitration became moot.

Similar provisions are also included in the new set of CICA Arbitration Rules which were recently adopted (in 2018), with the distinction that there is no limit to the number of times and/or period of time the arbitral tribunal may extend the term of arbitration with the parties' approval.

However, usually parties choose to waive their right to challenge the proceedings based on the failure to observe the time limit. Arbitration proceedings last on average between one and two years and in case no expert report is carried out, the proceedings may last even less than one year.

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

In arbitration, the law does not require the representative of a party to be a certified lawyer. Therefore, a party is free to represent itself or to arrange for representation by a certified lawyer, a legal advisor or by a trustee.

In case the party opts for representation by a certified lawyer, the lawyer is bound to present its power of attorney to the arbitral tribunal, in order to prove its powers of representation.

In this case, the party may choose to be assisted by a national lawyer, admitted to the National Romanian Bar Union, or a foreign lawyer, admitted to a foreign bar.

With respect to arbitrators, according to both the RCPC and the CICA Arbitration Rules, any natural person with full capacity to exercise his/her rights may act as an arbitrator, without any other criteria such as citizenship or residence needing to be met. Foreign nationals may be appointed as 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 main body of law governing arbitration is included in the RCPC which came into force on 15 February 2013. Book IV of the RCPC ('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. It shall be mentioned that these provisions usually apply in ad hoc arbitration since otherwise the rules of the institution handling the arbitration apply.

The arbitration law includes mostly non-mandatory provisions, as a reflection of the principle provided for in the RCPC 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 of 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 ensured equal treatment, the right to defence and a reasonable opportunity to present their case).

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

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

The provisions of the RCPC cover both domestic and international arbitration. The provisions are quite similar for domestic and international arbitration, both being governed by non-mandatory provisions, except the provisions which refer to observing the public policy rules and fundamental principles such as the right to be heard, the equal treatment which shall be ensured to the parties etc. The provisions regulating domestic arbitration (Book IV) also represent the general set of rules applicable to international arbitration, unless parties agreed otherwise. The basic difference is that international arbitration occurs when an element extraneous to Romania is present.

A difference is that the deadlines provided for national arbitration are doubled in international arbitration. Such a difference is no longer applicable in case the CICA Arbitration Rules apply.

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

Romania is party to several treaties facilitating recognition and enforcement of arbitral awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 July 1958 (the 'New York Convention'), the European Convention on International Commercial Arbitration of 21 April 1961 (the 'Geneva Convention'), and since 1975 the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (the 'ICSID Convention').

Romania ratified the New York Convention in 1961 by means of Decree no. 186/1961 which came into force on 24 July 1961, but with reservations regarding commercial relations and reciprocity prerequisites, reserving the right to apply the Convention only to:

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

(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?

The arbitral tribunal applies the substantive law designated by the parties. If no law has been designated, the arbitral tribunal applies the law that it deems appropriate in light of the elements of the dispute. In all cases, the arbitral tribunal shall take into account the trade usages and professional rules.

An arbitrator can decide *ex aequo et bono* only if the parties have expressly authorised him or her to do so.

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?

Under Romanian law, in order to be valid an arbitration agreement must be concluded in writing. However, the RCPC sets a broadly construed 'written form' requirement for arbitration agreements, to the effect that an agreement to arbitrate may be reached following an exchange of correspondence (irrespective of its form – such as exchange of letters, emails, faxes, electronic means of communication etc) or an exchange of procedural acts (after the commencement of arbitral proceedings – eg, in a situation where the claimant files a request for arbitration and the respondent does not contest jurisdiction in its answer).

As an exception, Article 548 RCPC provides that an arbitration agreement should be authenticated by a notary public if it refers to disputes regarding the transfer of ownership rights or other rights in rem over an immovable asset. Non-compliance with this formal requirement leads to the absolute nullity of the arbitration agreement.

(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?

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

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

(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 common only for disputes arising from FIDIC contracts which provide for a number of steps which shall be pursued before commencing arbitration: the determination of the Engineer, a decision of the DAB in case one of the parties is dissatisfied with the determination of the Engineer and a period of amicable settlement.

The case-law is divided: some tribunals suspend the proceedings until the steps prior to arbitration are undertaken, some others reject the arbitration for lacking jurisdiction. However, under certain circumstances, the tribunal adjudicates the matter even without undertaking the prior steps, for example when the works are terminated, the positions of the parties are irreconcilable and there the multi-tier system of dispute settlement cannot reach its purpose.

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

The validity requirements for a multi-party agreement are the same as the ones for any other arbitration agreement.

With respect to multi-party arbitration, Article 556 RCPC provides that where there is more than one claimant or more than one respondent, the parties that have common interests will appoint one arbitrator.

In case a certain clause in the arbitration agreement confers one of the parties a privileged position with respect to appointing the arbitrators or it provides the right of a party to nominate an arbitrator on behalf of the other party or to have more arbitrators than the other party, the clause is null.

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

Although there is no provision thereto, there are high chances that a court would deem such an arbitration agreement as null and inoperable as such an agreement is against the very nature of arbitration. However, in case the agreement provides that the claimant (regardless of which of the parties) may choose between arbitration and national courts, case law decided that such an agreement is not null and void but will be interpreted according to the general rules of interpreting a contract. In such a case, exercising one option or the other is subject to the subsequent agreement of the other party, the latter behaviour in the course of the proceedings being relevant thereto – ie not raising any objections with respect to the arbitral tribunal competence equals to an agreement to arbitrate.

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

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

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

With regard to the law applicable to the arbitration agreement, Romanian law differentiates between formal requirements, which are governed, as expected, by Romanian law, and substantive requirements. Pursuant to Article 1113 of the RCPC, the sole formal requirement for an arbitration agreement to be enforceable is that it must be concluded in writing. The concept of ‘writing’ is interpreted broadly (inspired by the UNCITRAL Model Law), encompassing remote communication methods that leave a written trace, such as email, fax, telegram and similar means.

Regarding the substantive requirements of the arbitration agreement, the legislator has adopted a flexible approach. To be valid and effective, the arbitration agreement must comply with the requirements of one of the following laws, applied alternatively: the law chosen by the parties, the law governing the subject matter of the dispute, the law applicable to the contract containing the arbitration clause, or, ultimately, Romanian law.

The validity of an arbitration agreement cannot be challenged on the grounds that the dispute has not yet arisen or based on the invalidity of the principal contract.

National courts determine the applicable law for the arbitration agreement when an arbitration agreement has been concluded regarding the dispute brought before them, and at least one of the parties (either the claimant or the respondent) has invoked the arbitration agreement. If the arbitration agreement is valid, the national court will decline its jurisdiction in favour of the competent arbitration institution or reject the claim as not being of the Romanian state courts’ competence in case the competence belongs to a foreign arbitral institution. If the parties have designated an ad hoc arbitral tribunal, the case will be dismissed as falling outside the jurisdiction of the judicial courts. If the arbitration clause is null or inoperable, the national courts will retain jurisdiction. To determine the validity of the arbitration clause, the courts need to determine the law governing the arbitration agreement, which is the law chosen by the parties. In the absence of the parties’ agreement in this respect, the courts will apply the provisions of international private law, depending on the object of the agreement, in order to determine the applicable law.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Romanian law makes a clear distinction between these two concepts, with only the designation of the legal seat of arbitration bearing procedural significance for the parties. In contrast, the venue of the hearings is considered a practical arrangement, without any legal impact on the arbitration process itself.

In this sense, the seat of the arbitration (or the legal place of the arbitration), is crucial because it determines the procedural framework governing the arbitration. The legal seat is the jurisdiction that provides the legal infrastructure for the arbitration, including the law governing the arbitration process, the court's power to intervene, and any challenges to the arbitral award. In Romania, the seat of arbitration is typically where the arbitration is legally based, even if no physical hearings take place there.

The venue is the physical location where arbitration hearings, meetings, or other procedural activities occur. Parties and arbitrators can agree to hold hearings or procedural meetings in locations other than the seat of arbitration. For instance, hearings can be conducted in different countries or cities for logistical or convenience reasons. However, the choice of venue does not affect the legal status of the arbitration, which remains tied to the seat.

For example, even if hearings are held outside of Romania, if the seat of arbitration is in Romania, Romanian law will apply to key aspects of the arbitration, and Romanian courts will have supervisory jurisdiction.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

Since disputes related to blockchain technology and NFTs typically involve contractual and commercial rights, they are generally considered arbitrable. Although blockchain and NFT-related contracts themselves, are relatively new in our jurisdiction, Romanian law does not exclude them from being enforceable, provided they meet the general legal requirements for contracts (capacity, consent, lawful object, etc).

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

Although the general principle in Romania is to uphold the enforceability of arbitration agreements, there are several scenarios in which the arbitration agreement, although valid, may fail to produce its intended effects, being considered inoperable.

Circumstances in which an arbitration agreement may become inoperable are as follows:

- **Insolvency Proceedings:** In Romania, when one of the parties to an arbitration agreement becomes subject to insolvency proceedings, the arbitration agreement will become inoperable. According to Romanian insolvency law, any type of claims against an insolvent entity (even if not yet established by an enforceable title) can only be pursued within the insolvency proceedings, which, once initiated, suspend any other disputes (without distinguishing between those resolved through judicial or arbitral means). Consequently, in such cases, the mandatory jurisdiction of the insolvency judge will override the arbitration agreement, which thus becomes inoperable.
- **Waiver or Implied Abandonment:** If the respondent, through their own actions, waived or abandoned the right to arbitrate, Romanian courts may find the arbitration agreement inoperable. This applies, for instance, when the claimant initiates legal proceedings despite the arbitration agreement, and the respondent presents their defences on the merits of the case without invoking the arbitration agreement before the first court hearing, a procedural conduct that is interpreted as an implicit waiver of the arbitration agreement.
- **Failure to Appoint Arbitrators or Arbitral Tribunal Inoperability:** An arbitration agreement may become inoperable if the arbitral tribunal cannot be constituted due to the failure of the respondent to appoint arbitrators. This solution was designed in accordance with the RCPC to correct and prevent any bad-faith attempts by a defendant to evade the adjudication of a dispute.

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?**

A dispute can be referred to international arbitration provided that:

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

- (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?**

A state court vested with a dispute in respect of which an arbitral agreement has been concluded will check its own competence and if at least one of the parties invokes the existence of the arbitration clause, it declines its jurisdiction to a national arbitration institution or it rejects the claim as not being of the Romanian state courts' competence in case the competence belongs to an international institution.

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

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

- (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?**

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

V. Selection of Arbitrators

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

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

Under the arbitration law, any natural person with full capacity to exercise his/her rights may act as an arbitrator, without any other criteria needing to be met (eg, citizenship, as the previous rules stipulated or certain qualifications).

If the parties agree to arbitrate under the purview of the CICA, they must check the specific requirements set out in the regulations of this arbitral institution. It should be mentioned that for a period of two years CICA, the main arbitration institution, had changed its rules by prohibiting the parties from nominating the arbitrators, this role being fulfilled by an appointing authority; in 2014, CICA changed such much contested rule and returned to the traditional approach of party autonomy in selecting arbitrators.

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

(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?

Both under the RCPC and CICA rules, the arbitrator is required to be independent, impartial and to disclose any conflicts of interest. In common with other jurisdictions, Romanian law does not explicitly define these concepts, but merely provides for the general principle, it being left to case law to consider these matters on a case-by-case basis, depending on the circumstances of the case.

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

- he does not meet the qualifications provided in the arbitration agreement;
- there is a reason of challenge provided for in the rules of arbitral procedure agreed on by the parties or, in the absence of an agreement, by the arbitrators;
- the circumstances cast a legitimate doubt regarding the arbitrator's independence and impartiality.

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

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

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

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

As for the procedure for such a challenge of arbitrators, according to Article 563 RCPC, the challenge against the appointment of an arbitrator is to be adjudicated within ten days by the local courts, namely the court whose jurisdiction covers the seat of the arbitration, after hearing the parties and the arbitrator concerned. The decision of the local courts is in writing, contains reasons and is not subject to appeal.

For a case under the CICA Arbitration Rules, those Rules provide in Article 23 that if all parties agree with the challenge, the arbitrator's mission shall terminate. Furthermore, the person with respect to whom a challenge was filed may resign, his or her mission being thus terminated. If none of these situations has occurred, the challenge petition shall be decided by an arbitral tribunal constituted by three members appointed by the President of the Court. If the challenge concerns the sole arbitrator, it shall be resolved by the President of the Court or an arbitrator appointed by the President. Such decision must be in writing and contain reasons and it is not subject to appeal to the national courts.

(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 both the RCPC and the CICA Arbitration Rules, any natural person with full capacity to exercise his/her rights may act as an arbitrator, without any other criteria such as citizenship or residence needing to be met.

The RCPC does not specify any qualifications required to be an arbitrator, but does stipulate that parties may determine in the arbitration agreement such qualifications to be met by the arbitrator.

If the parties agree to arbitrate under the purview of CICA, this institution's Regulation on its organisation provides that any individual having the full capacity to exercise his or her rights may be an arbitrator provided that he or she benefits from an outstanding reputation and enjoys a high level of qualifications and professional expertise in the field of law, domestic and international economic relations and domestic and/or international arbitration. Amongst others, in order to register on CICA's list of arbitrators, an individual should bring evidence of actual experience in law and juridical activities of at least eight years.

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

(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?

According to Article 562 of the RCPC, a person approached to be an arbitrator who is aware of a reason for challenge regarding himself or herself (including related to his or her impartiality or independence) shall be bound to inform the parties and the other arbitrators before accepting the office of arbitrator, or, should such reasons occur after his or her acceptance of the office, as soon as he or she has knowledge of them. In such case, the arbitrator may not participate in the arbitral proceedings unless the parties, apprised of the relevant information, notify in writing that they do not intend to challenge the arbitrator. Even in such a case, the arbitrator has the right to refrain from adjudicating the dispute.

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

Although the IBA Guidelines on Conflicts of Interest in International Arbitration are not expressly mentioned in the RCPC, the provisions of the RCPC and the CICA rules are along the same lines as IBA Guidelines. Additionally, the parties refer to the IBA Guidelines on Conflicts of Interest when presenting their arguments.

VI. Interim Measures and Emergency Arbitration

- (i) Can arbitrators issue 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?**

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

The provisional or interim measures will be issued in the form of an order and not that of an award.

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

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

- (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 the constitution of the arbitral tribunal?**

According to the law, the courts are able to issue any interim measure necessary to aid the arbitral proceedings, such as attachment orders, orders prohibiting the sale or purchase of the good that forms the object of the dispute and suchlike. The said measures may be ordered after the constitution of the arbitral tribunal as well and will remain in force following the constitution of the arbitral tribunal. The law provides no limitations as to the provisional measures that may be taken in arbitration.

- (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 local court whose jurisdiction covers the seat of the arbitration may grant protective measures and interim relief, at the parties' request, before or during the arbitral proceedings such as emergency injunctions for the preservation of a right, ascertaining of a factual situation, attachment orders. Since the similar order for protective measures or interim relief issued by the arbitral tribunal is not enforceable under Romanian law, the courts play a significant role in obtaining such measures and are preferred by the parties for the reason that the courts issue enforceable decisions.

- (iv) Are decisions by emergency arbitrators enforceable in your country?**

The RCPC contains no specific or explicit provisions governing the enforcement of decisions rendered by an emergency arbitrator; however, the parties have the option to seek assistance from the court within the jurisdiction where the arbitration is conducted, in order to compel the respondent to comply with the imposed measures.

The emergency arbitrators can allow the same types of interim relief granted by the constituted arbitral tribunal: freezing measures on goods, provisional measures, or conservatory measures regarding evidence (ie, acknowledgement of matters of fact).

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

Anti-suit injunctions are neither explicitly stipulated in Romanian law nor recognised therein, as compelling a party to refrain from pursuing a particular legal avenue would amount to a genuine denial of justice, inconsistent with the standards set forth by the European conventions to which Romania is a signatory, particularly in the context of EU regulations that favour court jurisdiction and mutual trust between EU states.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

There is no direct mechanism established under the provisions of the Romanian Civil Procedure Code.

The Romanian law establishes ways in which courts may be called to intervene in the evidence-taking process only if the seat of arbitration is, by its nature, in Romania (eg, Articles 585 and 1118 of the Romanian Civil Procedure Code – RCPC).

Theoretically, if the arbitration is foreign-seated, the only means to obtain the assistance of Romanian courts would be through judicial cooperation – specifically, by notifying the competent foreign court, which could submit a request for a letter of request to the courts in Romania.

However, to our knowledge, there are no cases where Romanian courts aided foreign-seated arbitration. One possible reason is the uncertainty surrounding the applicability of Regulation (EU) 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (the Taking of Evidence Regulation). The Regulation applies only to courts or other authorities in Member States (communicated to the Commission under Article 31(3)) that exercise judicial functions, act under a delegation of powers from a judicial authority or operate under the control of a judicial authority. Arbitral tribunals do not fall within these categories, which casts doubt on whether the Regulation can be relied upon to support arbitration.

VII. Disclosure/Discovery

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

Romanian law, as a civil law system, does not recognise the possibility of discovery or disclosure of documents as contemplated in the American legal system.

Thus, each party is bound to present the written evidence it possesses but has the opportunity of requesting certain specific documents that are in the possession of the other party and are relevant for the resolution of the case.

However, in an arbitration conducted under the CICA Arbitration Rules, if the parties opt for the application of the IBA Rules on the Taking of Evidence in International Arbitration, disclosure of documents shall be possible.

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

Since Romanian law does not recognise the possibility of discovery or disclosure of documents as contemplated in the American legal system, limits to the permissible scope of disclosure/discovery are not provided by the law.

As far as production of documents is concerned, the arbitral tribunal has both the power to order the parties to produce certain documents that are in their possession as well as request that written documents and other information be produced by public authorities that hold such documents or information that are relevant for the resolution of the case.

In the event that the public authority requested refuses to produce the documents or send the information, the parties may appeal to the national courts in order to take measures compelling the public authorities to submit said documents or information.

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

Since Romanian law does not recognise the possibility of discovery or disclosure of documents as contemplated in the American legal system, there are no special rules for handling electronically stored information.

VIII. Confidentiality

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

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

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

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

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

There are no special provisions with respect to the arbitral tribunal’s power to protect trade secrets and confidential information, but as mentioned above, arbitration is confidential.

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

The relevant law covering the confidentiality privilege of the client–lawyer communication falls under substantive law. Romanian law recognises the confidentiality of client-lawyer communications.

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?

The CICA Arbitration Rules expressly refer to the IBA Rules on the Taking of Evidence in International Arbitration, mentioning that the parties may mutually opt for their application. It is up to the parties whether they adopt the IBA Rules entirely or leave certain discretion to the arbitral tribunal for departing from them.

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

While arbitral tribunals benefit from a large discretion in governing the hearings, the fundamental principles of civil procedure, such as equality of arms, adversarial procedure, right to be heard etc need to be observed.

(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?

As concerns the actual hearing of the witness, both the arbitral tribunal and the parties are allowed to ask the witnesses questions. However, it should be noted that the parties' questions may be scrutinised by the arbitral tribunal and the tribunal may determine that some questions are irrelevant and reject them. Cross-examination is allowed, the parties having the opportunity to directly question the witness.

The CICA Arbitration Rules allows for the submission of written witness statements, with a specific rule in terms of form which has to be either as a notarised declaration or a legalised document by a lawyer.

Furthermore, under the CICA Arbitration Rules, after consulting with the parties, the arbitral tribunal may decide not to cross-examine the witnesses.

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

There are no interdictions provided by the RCPC or the CICA Arbitration Rules with respect to whom can appear as witness. As a matter of principle, the parties may invoke the grounds based on which they oppose to a witness being heard and the arbitral tribunal will decide whether to hear that person or not.

Unlike the situation in court proceedings, witnesses are not sworn in before the arbitral tribunal and cannot be compelled by the arbitrators to appear before them, since the arbitral tribunal does not have direct recourse to the coercive powers of the state.

However, the parties may appeal to the national courts in order to compel reluctant witnesses to appear before the arbitral tribunal, as a measure of removing impediments for arbitration.

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

There is no difference with respect to the value of the evidence between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses. The arbitrators will bear in mind the connection between the party and the witness in weighing the sincerity of the witness statement.

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

In principle, Romanian law provides for tribunal-appointed expert witnesses to be consulted in relation to technical or other specialised matters.

However, based on the general rule that parties may derogate from such provisions and determine the procedural rules applicable to arbitration, it is possible to opt for party-appointed expert witnesses only. The party-appointed experts shall still be independent and impartial.

In this respect, it should be noted that the CICA Arbitration Rules provide, as a novelty, that parties may choose a procedure seen in many international arbitration rules, namely that of appointing their own expert witnesses, without the existence of a tribunal-appointed expert as well.

Cross-examination is allowed and actual examination of the expert witnesses shall take place in a similar manner to that of fact witnesses, the remarks mentioned above being applicable in this case as well.

(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?

Following the parties' agreement, the arbitral tribunal might either appoint an independent expert from the list of authorised experts and allow the parties to be assisted by a party-appointed expert or allow the parties to replace expert reports carried out by tribunal-appointed experts with expert reports issued by party-appointed experts, experts who will further be cross-examined before the tribunal. In the first case, the views of the tribunal appointed expert are embraced by the tribunals, but the views of the party-appointed experts in case they formulated a separate opinion are taken into account. In the latter case, when each party presents an expert report carried out by an expert appointed by a party, the arbitral tribunal will not appoint another expert.

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

Calling witnesses to be cross-examined together/concurrently is not used.

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

The use of arbitral secretaries is not provided by law. Arbitral secretaries appointed by the chairman are not used in practice either. Instead, it is common for arbitral proceedings administered by an arbitral institution to use an arbitral assistant which is defined by CICA rules as a specialised person within the Secretariat of the Court of Arbitration fulfilling roles mainly related to the administration of the proceedings before the constitution of the arbitral tribunal and of recording the arguments of the parties.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

There are various ethical codes and professional standards applicable to both counsel and arbitrators in Romania, encompassing national laws, institutional rules and international guidelines. These frameworks help ensure the integrity and fairness of arbitration proceedings, promoting confidence in the arbitration process.

These rules emphasise the importance of independence and impartiality, mandating that arbitrators remain neutral and disclose any potential conflicts of interest to uphold the integrity of the arbitration process. Furthermore, the codes require diligence and competence, ensuring that arbitrators possess the necessary expertise and handle cases with the requisite care and attention. Additionally, confidentiality is a key principle; arbitrators must safeguard all matters related to the arbitration, thereby fostering trust and protecting sensitive information shared during the proceedings.

Counsel representing parties in arbitration proceedings in Romania are also bound by ethical standards outlined by the National Union of Romanian Bar Associations. These standards underscore a duty of honesty, requiring counsel to act ethically in all dealings with clients and opposing parties. Client confidentiality is paramount, and attorneys are obligated to protect their clients' information rigorously. Moreover, the rules mandate professional diligence, compelling counsel to provide competent representation and to act with due care throughout all proceedings in which counsel assists and represents clients.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

The sole instance of incompatibility outlined in the CICA rules in Romania pertains to an attorney who is listed as an arbitrator for the institution, as such an individual is prohibited from also serving as counsel in proceedings conducted under CICA rules.

Beyond this, any potential conflict of interest is fundamentally a private matter, left to the discretion of the parties, who retain the freedom to select their legal representation. Any alleged unethical representation that conflicts with the interests of the client who engaged the attorney could lead to disciplinary sanctions against the attorney, in accordance with the professional conduct standards.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

Romanian law does not provide for the possibility of conducting court hearings in an online format; however, there are certain courts in the country (albeit a minority) that allow lawyers to participate via video conference at hearings.

Regarding arbitration proceedings, the practice is more flexible, as the arbitral tribunal may establish, from the outset, that arbitration conferences can be conducted using remote communication systems, even if the parties' express opposition. There is no obligation to conduct proceedings in a remote format; however, especially in the post-pandemic context, there is a recommendation to carry out these proceedings (to the extent possible) using remote communication methods.

This approach is one of the means to enhance the efficiency of the arbitration process, as expressly outlined, for example, in Annex IV of the CICA Rules.

X. Awards

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

The award must be in writing and contain the reasoning of the tribunal. There is also a specific requirement that any dissenting opinion be included and reasoned in the arbitral award as well. If this reasoning requirement is not fulfilled, any party may seek the annulment of the award.

Furthermore, the law provides that the arbitral award must be signed by all arbitrators (except for those having a dissenting opinion, who shall sign only that opinion) and by the arbitral assistant. If this condition is not met, the parties may seek the annulment of the arbitral award. The law makes no express provision for the situation where one arbitrator refuses or is unable to sign the arbitral award.

Additionally, the arbitral award must also contain the time and place the award was rendered. Absent such express mention the award is subject to annulment.

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

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

Although there is no specific limitation in the arbitration law as to the type of remedies available, to a large extent, the admissibility of the remedies depends on the substantive and procedural law applicable to the dispute. For example, if the arbitral tribunal applies Romanian procedural law, it may consider a request for a declaratory judgment (such as acknowledgement of a debt) to be inadmissible to the extent that the claimant has the option to bring a claim to enforce its rights (such as obliging the defendant to pay the debt).

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

The possibility to award compound interest depends in its turn on the substantive law applicable to the dispute. According to Romanian law, only yearly compounded interest may be awarded and only in case the parties have

concluded an agreement to this effect after the maturity date of the interest (and not also an agreement concluded before the maturity date of the interest).

(iii) Are interim or partial awards enforceable?

According to Romanian law, the arbitrators cannot bifurcate the procedure and issue a partial award finally resolving certain aspects in dispute. The only situation where the law provides the possibility of issuing a partial award is when the respondent admits to some of the claimant's claim, in which case a partial award shall be issued in connection with the acknowledged claims.

As far as interim awards are concerned, the arbitral tribunal has the possibility to take provisional or interim measures, but these will be issued in the form of an order and not that of an award. Since these orders issued by the arbitral tribunal are not binding for the parties, a party wishing to enforce such order must resort to the courts of law (ie, the court at the place of arbitration) and request that such interim measures be imposed. The procedure for obtaining these measures shall be that provided for according to common court litigation (such as urgency, irreparable damage and others). The opposing party will have the opportunity to show that the measure requested is unwarranted and it will also have the opportunity to challenge such a measure, irrespective of the status of the main arbitral proceedings at that time.

(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?

The arbitrator who reaches a different solution from that reached by the majority is bound to include his or her dissenting opinion in the arbitral award. The dissenting opinion should also include the factual and legal elements it is based on.

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

Although there is no express provision in this respect in the chapter of the Romanian Civil Procedure Code dedicated to arbitration, if the parties have reached an agreement during the arbitral procedure, then they can request the arbitrators to incorporate this settlement into an award. Arbitrators may only reject such request if they deem the agreement reached by the parties to be contrary to imperative norms or public policy.

On the other hand, the CICA Arbitration Rules expressly provide that, if the parties reach an agreement before the arbitral award is rendered, the arbitral tribunal will be able, upon request of the parties, to incorporate the parties' agreement in the dispositive part of the award.

When the arbitral tribunal proceeds to render its decision in the form of a settlement reached between the parties, the requirement regarding the reasoning of the decision no longer applies.

Additionally, the arbitrators may even assist the parties in reaching a settlement, but should take care not to prejudge the case before them when doing so.

An award rendered in accordance with the parties' settlement may be enforced in the same manner as any other arbitral award, since it has the nature of an 'authenticated deed'.

This particular type of arbitral award is subject only to an extraordinary appeal, for procedural issues only.

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

According to Article 604(1) RCPC, if the meaning of the arbitral award rendered is unclear or there are certain provisions that seem contradictory, the arbitral tribunal may, at the request of either party, interpret the award/clarify its meaning.

According to Article 604(5) RCPC, the award by means of which the arbitral tribunal corrects or interprets the initial award shall be rendered in the form of an additional award that shall be annexed to the initial award, forming a whole.

XI. Costs

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

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

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

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

The costs of arbitration are usually defined by the arbitration agreement. If not, the costs cover the arbitrators' fees and expenses, the tribunal expert's fees and institutional fees, if relevant, the fees and expenses of party-appointed experts, the possible costs associated with obtaining evidence from and hearing witnesses, translation costs, legal representation cost and any other cost that have been reasonably incurred in connection with the arbitral proceedings.

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

The fees of the arbitrators are traditionally fixed by the arbitrators themselves, and in most cases arbitrators will set their fees as fixed global fees. However, in the event of a dispute regarding those fees, only a court (ie, the competent court at the place of arbitration) can analyse said costs and order payment.

In the case of an arbitration conducted under the CICA Arbitration Rules, there is a scale regulating the arbitrator's fees, based on the value of the amount in dispute in the arbitration. For example, in a claim in the amount of EUR 20,000, the value of the sole arbitrator's fee is of approximately EUR 550.

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

In principle, costs are allocated according to the parties' agreement in this respect.

Absent such an agreement, the arbitral tribunal shall decide the allocation of costs. The governing principle is that the losing party pays the costs (Article 595 RCPC). This principle also allows for an apportionment of costs in instances where one party won some claims and lost others, based on their value or importance in the party's overall claim.

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

The tribunal's decision on costs may only be reviewed in case a set aside claim against the award is admitted. However, taking into account the limited grounds for admitting a set aside claim, it is difficult to conceive situations when such a claim would be admitted based on grounds related only to the decision on costs.

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?

An award may only be challenged by means of a set aside claim, on one of the following grounds:

- the dispute was non-arbitrable;
- the arbitration agreement did not exist or was invalid or ineffective;
- the constitution of the arbitral tribunal was not in accordance with the arbitration agreement;
- the party requesting the setting aside of the award was not duly notified of the hearing when the main arguments were heard and was absent when the hearing took place;
- the arbitral award was rendered after expiry of the time limit, even though at least one party submitted its intention to object to the late issuance of the award and the parties opposed the continuation of the proceedings after expiry of the time limit;
- the award granted something which was not requested (*ultra petita*) or more than was requested (*plus petita*);
- the award failed to mention the tribunal's decision on the relief sought and did not include the reasoning behind the decision, the date and place of the decision or the signatures of the arbitrators;
- the award violated public policy, mandatory legal provisions or morality;
- subsequent to issuance of the final award, the Constitutional Court has declared unconstitutional the legal provisions challenged by a party during the arbitral proceedings or other legal provisions included in the challenged piece of legislation that are closely related to and inseparable from those challenged.

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

In case the set aside claim is admitted, the ruling is subject to a higher appeal which shall be adjudicated by the High Court of Cassation and Justice. In case the set aside claim is dismissed in the first tier of jurisdiction, the majority of the case-law deems the higher appeal inadmissible.

With respect to the duration of the proceeding, a decision with respect to the set aside claim is usually issued in the first tier of jurisdiction in about six-eight months since the claim was filed. In case a higher appeal is filed, the duration to obtain a ruling varies from six-eight months in case the Civil Division is competent to two years in case the Administrative Division is competent, given the caseload of the latter.

As a matter of principle, filing a set aside claim does not influence in any way the enforcement procedure. In other words, the enforcement procedure may be commenced and continued even if a request to set aside the award was filed.

However, following a request thereto, the court may suspend the enforcement of the award challenged with a set aside claim in case the debtor is about to suffer an imminent damage arising from the enforcement (for example, the debtor carries out a public interest activity which would be affected in case the enforcement continues) and on a first sight, the set aside request seems to have merit. The enforcement is stayed only until the ruling of the first court is issued.

The jurisdiction to settle the set-aside claim belongs to the court of appeal of the county where the arbitration took place.

(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?

The parties may waive the right to challenge only after the award is rendered. The parties cannot waive the right to file a set aside claim by agreement before the dispute arises. The RCPC provides that any agreement to the contrary is null and void.

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

Awards cannot be appealed, but only challenged by means of a set aside claim for the limited grounds mentioned above.

(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?

The merits of the case may be reviewed by the court of appeal subsequent to the admission of a set-aside claim in the following cases: the dispute was non-arbitrable, the arbitration agreement did not exist or was invalid or ineffective, the arbitral award was rendered after expiry of the time limit, even though at least one party submitted its intention to object to the late issuance of the award and the parties opposed the continuation of the proceedings after expiry of the time limit.

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

(v) Is there a specialist arbitration court in your jurisdiction?

In Romania, there are no truly specialised arbitration courts; rather, arbitration courts in Romania generally handle any commercial disputes for which the parties have chosen to apply their respective rules.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (*iura novit arbiter*)? Could this be a basis to set aside the award?

While Romanian arbitrators are empowered by the principle of *iura novit arbiter* (the arbitrator knows the law) to amend or replace the law invoked by the parties, this power must be exercised within the bounds of due process and with respect for the parties' rights. Arbitrators must provide parties with an opportunity to address any legal principles that may not have been initially considered. Failure to do so could potentially lead to the annulment of the arbitration award by Romanian courts.

The possibility of setting aside an arbitration award in Romania can be considered under certain circumstances, particularly if the arbitrator amends or replaces the invoked law without providing the parties an opportunity to respond, this could violate due process rights and serve as grounds for annulment. Additionally, if the arbitrator's application of a different law significantly alters the nature of the dispute or its outcome in a manner unforeseen by the parties, it may be argued that the arbitrator has exceeded their authority, leading to potential annulment under Article 608 of the RCPC.

XIII. Arbitrator Liability

- (i) **Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?**

Arbitrators are only liable for violations explicitly stipulated in Article 565 of the RCPC, which include unjustifiably resigning from their mandate after appointment, failing to participate in the arbitration proceedings, neglecting to issue the arbitral award, breaching the confidentiality of the proceedings, or committing any acts of bad faith or gross negligence. Consequently, by contrast, except in cases where bad faith or gross negligence on the part of the arbitrators can be demonstrated in the performance of their duties, they enjoy immunity and cannot be held liable for the awards issued.

With respect to other participants in the arbitration proceedings (such as experts, interpreters, etc), there is no specific rule granting them immunity, whether for their role in judicial proceedings or in arbitration. However, in practice, their liability is typically limited to instances where harm has been caused intentionally or as a result of gross negligence.

- (ii) **Does this immunity, if any, extend to criminal liability?**

In Romania, the immunity granted to arbitrators and other participants in arbitration proceedings primarily pertains to civil liability and does not extend to criminal liability. Arbitrators and other participants can still be held accountable under criminal law for actions that may constitute criminal offenses, such as fraud, corruption, or any other unlawful conduct. If, for example, an arbitrator engages in bribery or collusion, they can be prosecuted and held criminally liable regardless of their role in the arbitration process.

XIV. 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?**

Should the debtor refuse to voluntarily execute an award, domestic and international arbitral awards rendered in Romania can be enforced in the same manner as court decisions because arbitral awards are also enforceable titles, according to the RCPC. The award can be enforced with the assistance of an enforcement officer (bailiff) and under the court's supervision, following the request of the creditor, if the debtor fails to observe its obligations provided for in the arbitral award.

Similarly, a foreign award can be recognised and enforced in Romania if the dispute forming its object may be settled by means of arbitration in Romania and if the award does not comprise elements which are contrary to Romanian private international law public order. In this case, the foreign award must first follow a special procedure for recognition and enforcement, with the observance of certain formal conditions similar to those provided by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 July 1958 (the 'New York Convention'). In this case there is no need for a separate application other than the application for enforcement of foreign arbitral awards.

If domestic and international arbitral awards rendered in Romania are not executed voluntarily, the interested party needs to follow enforcement proceedings, by submitting a request for leave for enforcement.

It should be noted that whenever an action for setting aside of the award is filed, the court may suspend the enforcement following a request thereto.

The application for leave for enforcement may be rejected on the following grounds: lack of jurisdiction of the bailiff; the decision not representing an enforceable title according to the law; a document, other than a court decision, not meeting all the formal conditions; where the debt is not certain, liquid and payable; where the debtor has immunity against enforcement; where the title comprises dispositions that are not enforceable; or in the case of other legal impediments (according to Article 666 of the RCPC).

It should be noted that, in practice, applications are often rejected whenever the creditor fails to file, along with its request for enforcement, the arbitral award, the arbitration agreement or the proof of the communication of the award.

The creditor will submit a request to the competent bailiff, which will further request for leave for enforcement to be issued by the court, ie, the court of first instance from the debtor's headquarters (or in the alternative, if the debtor's headquarters is outside Romania, from the creditor's headquarters or, if this is outside of Romania, from the bailiff's headquarters). In this procedure, the parties are not summoned to appear in before the court, this procedure taking place without oral hearings.

Only the creditor can appeal the decision denying leave for enforcement, no later than fifteen days from the date the court's decision rejecting the request is communicated. Also, the creditor has the option to submit a new request for leave for enforcement, observing the applicable statutes of limitation.

The decision granting leave for enforcement is not subject to any appeal, but the losing party has the option of contesting it by formulating a challenge against enforcement as per the provisions of Arts. 612 to 620 of the RCPC (it should be noted that this procedure deals with irregularities of the enforcement itself).

On the other hand, foreign arbitral awards are subject to a separate procedure of recognition and enforcement presented below governed by Arts. 1124 to 1133 of the RCPC. In this case there is no need for a separate application other than the application for enforcement of foreign arbitral awards.

For a foreign arbitral award to be recognised and enforced in Romania the application will be submitted to the competent county court (seated where the losing party is located or, otherwise, to the Bucharest Tribunal), accompanied by the original of the arbitration award and of the arbitration agreement or by authenticated copies thereof, which need to be legalised for use abroad (and also translated into Romanian).

The court summons the parties to present their position, unless it stems from an award by consent. The court is prohibited from examining the arbitral award on the merits of the case.

The RCPC also provides the cases when recognition and enforcement are denied (for example when the parties did not have the capacity to conclude the arbitration convention according to the law applicable to each of them).

Enforcement of foreign arbitral awards will be refused if they violate public policy under Romanian private international law. Similarly, violation of rules of public policy will substantiate actions for annulment filed against arbitral awards.

The court may suspend the proceeding for recognition and enforcement in case an annulment request or a request to suspend the award were filed in the state where the award was issued or in the state whose substantive law was applied.

The decision issued by the county court on the enforcement of a foreign award is subject to appeal no later than thirty days from the communication of the decision.

No leave for enforcement is required in the case of foreign awards.

(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?

Once a foreign arbitral award is recognised, in order to enforce the award, the same procedure as enforcing a national award applies.

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

The law does not have a specific provision thereto, but conservatory measures pending enforcement of the foreign award are available.

(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 in Romania have a positive approach to recognition and enforcement of arbitration awards and rarely refuse recognition and enforcement requests – in these cases, refusal is generally caused by procedural non-compliances rather than substantial law infringement, such as public policy grounds. The RCPC refers to public policy in Article 1124, which sets out the legal ground for the public policy exception as follows. The Romanian legislator explicitly adopted the concept of international public policy, which is addressed as the ‘public order of the Romanian private international law’. As regard to the notion of public order of private international law, the Romanian courts overtly approach it as part of the Romanian legal order.

Romanian case law is divided with respect to the recognition of partial awards enforcing DAB decisions in FIDIC disputes.

In case the foreign award was set aside by the courts at the place of arbitration, the Romanian court will deny recognition and enforcement.

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

The time it takes to enforce an award will vary depending on the particularities of the award rendered and it depends on whether the award is challenged or not.

It should be noted that foreign arbitral awards may be enforced in Romania up to three years after their issuance, with the notable exception of in rem rights (property-related rights) that are subject to a statute of limitation of ten years.

XV. Sovereign Immunity

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

There are no specific regulations issued by the Romanian state on foreign sovereign immunity. Consequently, the applicable framework is provided by international instruments to which Romania is a party, in particular the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2 December 2004, which Romania signed in 2005 and ratified in 2006.

Although Romania ratified the Convention, it has not yet entered into force at international level. The Convention will become effective only once it has been ratified by at least 30 states, a threshold that has not yet been reached as of February 2026

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

There might be certain delays when enforcing the award against a state entity due to the provisions of Government Ordinance No. 22/2002. In case the state entity is unable to pay the amounts due, such entity is obliged to initiate the proceedings to be granted funds in order to fulfil its obligation within six months. The creditor and the state entity are free to agree on another deadline for the fulfilment of the obligation. In the absence of such an agreement and in case the state entity fails to pay its debt within the six months, the creditor might request the enforcement of the writ of execution. The reasoning behind such a legal provision is that state entities have annual pre-approved budgets, and any debt that has not been included therein requires additional funds and additional approvals.

(iii) Are there any requirements for arbitrations involving sovereign entities?

The status of a sovereign entity, in itself, does not entail any alteration of the applicable arbitration rules.

According to the RCPC, sovereign institutions in Romania (namely the state and public authorities) may enter into arbitration agreements and participate as parties in arbitration proceedings only if permitted by law or by international conventions to which Romania is a signatory.

For example, disputes concerning licenses or permits related to mining (Article 61 of Mining Law no. 85/2003), disputes between providers of medical services, medicines and medical devices or pharmaceuticals and insurance companies (Arts. 307-309 of Law no. 95/2006), investment disputes between the state and a foreign investor (Romania has concluded numerous bilateral conventions on the mutual protection of investments) or disputes arising from the interpretation, conclusion, performance, amendment and termination of public procurement or works and services concession contracts can be settled by arbitration.

As a matter of principle, unless the law expressly mentions this possibility, the administrative disputes are governed by Law no. 554/2004 and cannot be subjected to arbitration.

As for foreign sovereign entities, Romanian law imposes no restrictions on their ability to participate in arbitration proceedings. By entering into an arbitration agreement, a sovereign entity is deemed to have implicitly waived the immunity that arises from its sovereign status.

XVI. 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?

Romania became a party to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States since 1975.

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

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

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

Given that the two major developments regarding investment arbitration (namely the Achmea decision issued by the CJEU (Case C-284/16 issued on 6 March 2018) and through which Romania terminated 22 BITs) are relatively recent, national case law on the issue of investment arbitration in Romania has not yet fully developed. The first milestone in intra-EU investment arbitration was the Achmea decision issued by the CJEU (Case C-284/16 issued on 6 March 2018) which established that arbitration clauses within intra-EU bilateral investment treaties (BITs) are incompatible with EU law. The second milestone, which came as the natural consequence of the Achmea Decision, was the enactment of Law no. 18/2017, by which Romania, as of 24 March 2017, committed to terminating 22 BITs with EU member states, either through mutual agreement or unilateral termination.

However, in light of the Declaration of the Member States on the legal consequences of the Achmea judgment and on the protection of investments, dated 15 January 2019, requiring all EU member states to terminate their intra-EU BITs, there is at least an expectation that the approach to investment arbitration will be highly cautious.

Investment relations with foreign entities that are not EU members should, in principle, remain unaffected.

XVII. Resources

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

Key publications:

- *Arbitration in Romania. A Practitioner's Guide*, Crenguța Leaua & Flavius A. Baias (eds.), Wolters Kluwer, 2016.
- *Domestic and international commercial arbitration Doctrine and jurisprudence*, Marian Voicu, Universul Juridic, 2020.

(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?

Various conferences on arbitration are held regularly by the Romanian Arbitration Institute, CICA and Wolters Kluwer. The Bucharest Arbitration Days are a major educational event held annually in June which is expected to become a tradition in Romania.

XVIII. Trends and Developments

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

Though arbitration is steadily growing in Romania, and the outlook seems really promising, it has not entirely developed as a real alternative to court proceedings.

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

The use of other ADR procedures in Romania is growing.

The 1985 UNCITRAL Model Law on International Commercial Conciliation has not been adopted by Romania. In this context, alternative dispute resolution, in the form of conciliation and mediation, is not commonly used in Romania and has rather gained popularity only in recent years.

In the past couple of years, after the enactment of the new RCPC in 2013, mediation has been intensely lobbied for but still has not gained usage in a significant share of disputes.

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

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

In mid-2024, a landmark decision clarified the establishment and organisation of arbitral institutions in Romania. This followed a legal appeal initiated by the Prosecutor General of the High Court of Cassation and Justice at the request of the Minister of Justice, aimed at addressing inconsistent interpretations of relevant legal provisions. The appeal focused on arbitral institutions created by associations and foundations in Romania. Prior to this landmark decision in June 2024, Romanian courts had differing views on whether such entities could form arbitral institutions. The High Court ruled that only associations and foundations classified as 'organisations of public interest' may establish arbitral institutions, and they can do so only with explicit legal authorisation. Importantly, this ruling pertains solely to organisations established under Romanian law, allowing international arbitral institutions (such as the ICC, LCIA, VIAC, and SCC) to continue conducting arbitrations in Romania without interruption.

For practitioners in the field of arbitration and beyond, The Bucharest Arbitration Days (BARd) are held in Bucharest – an event dedicated to international arbitration and the necessary reforms in this field – first organised by CICA in 2019. The fifth iteration in 2024 explored the theme of ‘Critical Developments in International Arbitration’, attracting over 200 delegates and more than 40 speakers from 12 countries across three continents. Participants included representatives from arbitration institutions, arbitrators, in-house and external counsel, as well as legal practitioners.

The Bucharest Arbitration Days 2024 emphasised significant advancements in international arbitration, particularly addressing ongoing concerns regarding legitimacy within the sector. Key topics of discussion included ethics and conflicts in international arbitration, underscored by recent revisions to the IBA Guidelines on Conflicts of Interest; the evolving dynamics between arbitration and the courts; diversity in arbitration, considering various venues and institutions; and the impact of technology on evidence.

The BARd 2025 edition has already been announced and will take place in early June 2025.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

As applicable legislation is relatively recent – the new Code of Civil Procedure was enacted on 15 February 2013 – no significant changes have been implemented in regard to international arbitration law and no reforms are expected in the near future. Discussions are ongoing around the need to broaden the scope of arbitrability of disputes. Similarly, the new CICA Rules – which align with the rules of ICC and other similar institutions such as the LCIA – entered into force starting from 1 January 2018, being applicable to disputes started after this date under the purview of CICA.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

Third-party funding is not expressly regulated under Romanian law. Therefore, in the absence of any provision to interdict such procedure, third-party funding of the proceedings is permitted.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

The Romanian state did not adopt an autonomous system of economic sanctions or any other type of sanctions; instead, as a member of the United Nations and the European Union, it implements the system of international sanctions adopted at a supra-national level. Romania does not hold a list of sanctioned individuals and entities but refers only to the EU and UN lists.

While there is no established jurisprudence concerning the regime of international sanctions, their regulatory framework suggests that they pertain to international public order. Under Article 3 of GEO no. 202/2008, national legal provisions cannot be invoked to justify the non-application of international sanctions.

Moreover, their legitimacy is grounded in the international treaties to which Romania is a signatory, specifically the UN Convention and the EU Treaties. As stipulated in Arts. 148 and 149 of the Romanian Constitution, these treaties have supra-legal authority, thereby superseding national public order.

As far as the EU sanctions are concerned, the courts must enforce them as they are generally adopted through EU Regulations which, according to Article 288 of the Treaty on the Functioning of the European Union, have general application – they are binding in their entirety and directly applicable in all Member States. Also, sanctions can be the object of Council Decisions that are also binding (unless they specify those to whom it is addressed, when it is binding only on them).