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The International Comparative Legal Guide to:

International Arbitration 2009

A practical insight to cross-border International Arbitration work

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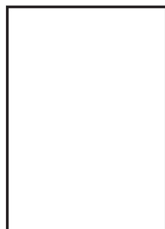

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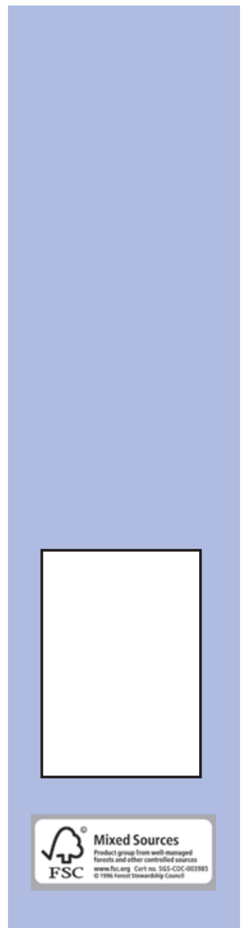

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Chapter

Romania

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of Romania?

Under Romanian law, the arbitration agreement is defined as the written agreement of the parties under which they decide to settle by way of arbitration any present or future disputes arising from their legal relationship, except for disputes implying rights upon which the law allows no settlement. An arbitration agreement may be concluded either in the form of an arbitration clause, provided in a master agreement, or in the form of a separate understanding called an arbitration agreement. The severability principle, according to which the validity of the arbitration clause does not depend on the validity of the master agreement, is applicable under Romanian law. The Court of International Commercial Arbitration of the Chamber of Commerce and Industry of Romania, which is the most representative court of arbitration in Romania (the Court of Arbitration), has frequently stated that the arbitral tribunal is competent to solve a dispute even in the absence of an arbitration clause or agreement, if both parties performed procedural acts by which they expressly or implicitly recognised the arbitral tribunal's jurisdiction (e.g. the registration of an arbitral claim by the claimant, followed by an indisputable acquiescence of the respondent).

1.2 Are there any special requirements or formalities required if an individual person is a party to a commercial transaction which includes an arbitration agreement?

Under the Romanian law, no special requirements or formalities apply to an individual person as party to a commercial transaction which includes an arbitration agreement. An individual person may enter into a commercial transaction provided that it has the capacity to enter into any form of contract and provided that the legal requirements regarding an arbitration agreement are met (see question 3.1 below).

1.3 What other elements ought to be incorporated in an arbitration agreement?

Distinct rules apply to *ad hoc* arbitration and institutional arbitration, such as the Court of Arbitration.

***Ad hoc* arbitral tribunal**

For ad hoc arbitration, the following must be incorporated:

- a clear statement that the arbitration shall be *ad hoc*;
- a choice of law or an express choice of arbitration in equity;
- in the absence of such choices, the arbitrators shall determine the applicable law;
- the designation of the seat of arbitration; in the absence of such election, the arbitral tribunal shall establish the seat of arbitration;
- the designation of the number of arbitrators. In the absence of such indication, a number of three arbitrators shall be appointed; each party shall appoint one arbitrator, who, together, shall afterwards appoint the chairman. Whenever the parties fail to mention the arbitrators' number or method of appointment, and no agreement can be reached, the claimant is entitled to request Romanian courts to appoint the arbitrators or the chairman;
- a clause in the arbitration agreement providing for the right of one party to appoint an arbitrator for the other party or to have more arbitrators than the other party is null and void; and
- the Court of Arbitration may provide assistance to the parties of an *ad hoc* arbitration, upon their joint request and payment of the due fees. Such assistance may consist of appointment of arbitrators, evaluation of the arbitrators' fees, providing appropriate locations for arbitration, and access to the secretarial services of the Court of Arbitration (summoning of the parties, notifications etc.).

Institutional arbitration (the Court of Arbitration)

The parties must indicate the arbitral institution of their choice and must appoint the arbitrators or indicate the method for their appointment. Whenever the parties choose to submit the dispute to a permanent arbitral institution, without specifying what rules of procedure shall be applied, the arbitration rules of such institution shall apply. Although under the Civil Procedure Code an arbitration clause must contain the arbitrator's name or method of appointment, there is case-law under which the simple indication of a permanent arbitral institution was considered sufficient for the validity of the arbitration clause.

1.4 What has been the approach of the national courts to the enforcement of arbitration agreements?

With the arbitral award being final and binding, it has the same effects as any final decision rendered by a court of law. The party against whom the award was rendered is bound to enforce it on a free will basis, either immediately or by the deadline set therein. Upon the request of the winning party, the arbitral award shall be invested with a writ of execution and may thereafter be enforced by a court marshal as any final court decision. The writ of execution is granted by the competent court at the seat of the Court of

Arbitration, in case of institutional arbitration, or the court that would have been competent to settle the dispute in the absence of an arbitral agreement, in case of *ad hoc* arbitration. In case the arbitral award was challenged with a claim for cancellation, the court may order the adjournment of the enforcement subject to payment of a bail bond by the claimant.

1.5 What has been the approach of the national courts to the enforcement of ADR agreements?

The Romanian Law provides for two forms of alternative dispute resolution: (i) the mandatory conciliation procedure pertaining to commercial disputes; and (ii) the mediation procedure.

According to Article 720[1] of the Romanian Civil Procedure Code, a direct conciliation procedure must be followed in any dispute arising out of commercial relationships. Such conciliation is due prior to any procedure in front of a court of law, as it is a mandatory condition precedent to any such procedure. The result of the conciliation must be recorded on a minute and such deed attached to the potential claim addressed to the competent court of law. The competent court may render no decision without this prior conciliation procedure.

The case-law of the Court of Arbitration as well as the legal doctrine have stated the fact that the mandatory direct conciliation procedure does not apply to arbitral litigations, except for the case that the parties have provided for such procedure in the arbitration agreement.

The second form of ADR is provided in Law No. 192/2006 regarding mediation and the organisation of the mediator profession (**Mediation Law**). Under such law, the mediation is an optional method of amiable dispute settlement, under the auspices of a third person which is a specialised mediator. The mediator must ensure neutral, impartial and confidential conditions for such procedure. The role of the mediator is to facilitate the negotiations between parties and to attempt for a mutual convenient, efficient and durable solution. The mediator must be authorised to perform such activities by the competent authority, the Mediation Council.

Such procedure is available to the parties in the process of the prior conciliation procedure described above. The parties may enter voluntarily in such procedure even if there is a jurisdictional procedure pertaining to their dispute. In such cases the jurisdictional procedure shall be stayed, for a maximum of three months, within which the parties may mediate the dispute. If the parties to such jurisdictional procedure are settling their dispute subsequent to the mediation procedure, the competent jurisdictional body shall render a ruling acknowledging such settlement.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in Romania?

The procedure for enforcement of an arbitral award rendered in Romania in *ad hoc* or institutional arbitration shall be governed by the general provisions of the Civil Procedure Code on enforcement of court decisions and other enforcement titles. Foreign arbitral awards cannot be enforced unless they have obtained recognition by way of an exequatur procedure, in accordance with the provisions of Law No. 105/1992 on private international law (**Law No. 105/1992**).

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do the laws differ?

Domestic arbitration proceedings

The legislation governing the arbitration agreements and *ad hoc* arbitral proceedings in Romania is the Civil Procedure Code - Book IV "On Arbitration" (the **Civil Procedure Code**). Such specific provisions and rules shall be complemented with the ordinary procedural rules of the Romanian Civil Procedure Code insofar as the same are compatible with arbitration and, as the case may be, with the commercial character of the disputes.

In addition to these legal provisions, the proceedings before institutional arbitral tribunals are governed by "Rules of Arbitration". The Court of Arbitration was expressly authorised by Law No. 335/2007 regarding the chambers of Romania to adopt its own rules of procedure (the **Rules of Arbitration**).

International arbitration proceedings

- international *ad hoc* arbitration is governed by the provisions of the Romanian Civil Procedure Code, if the seat of arbitration is in Romania or the parties have chosen the Romanian law as the arbitration law; several specific rules are provided for international arbitration by the Civil Procedure Code; and
- institutional arbitration: in case of international arbitration with the Court of Arbitration, the parties are free to decide either for the Rules of Arbitration, or the UNCITRAL Arbitration Rules.

Both the Civil Procedure Code and the Rules of Arbitration provide for the following specific rules to be applicable to international arbitral proceedings:

- an odd number of arbitrators is required to form an arbitral tribunal, each party having the right to appoint an even number of arbitrators; the foreign party is entitled to appoint foreign citizens as arbitrators;
- the parties may agree for the sole arbitrator or the chairman to be a citizen of a third country;
- the five-month term for finalisation of domestic arbitral proceedings is double in the case of international arbitration; and
- the arbitration language is an international language determined by the arbitral tribunal, unless otherwise agreed by the parties; the parties may attend the hearings with their own translator or the arbitral tribunal may provide a translator upon the request and at the expense of that party.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the governing law and the Model Law?

The Rules of Arbitration are partially based on the United Nation Commission of International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration. The Rules of Arbitration apply both to international and domestic commercial arbitration.

The following issues need to be underlined:

- under the Rules of Arbitration, the restriction provided by the Model Law regarding the number of arbitrators (either one or three) is not applicable; in international arbitration proceedings the parties may choose any number of arbitrators, provided that such number be odd;
- under the Rules of Arbitration, whenever the parties fail to reach an agreement for the appointment of arbitrators or, the arbitrators fail to appoint a chairman, within certain time limits, it shall be the president of the Court of Arbitration who is entitled to make such appointments;

- under the Rules of Arbitration, if there is a situation on which a challenge of the arbitrators may be grounded, the parties may agree, in writing, to waive the right to file the challenge;
- the Rules of Arbitration provide for several circumstances in which the arbitrators may be held liable for indemnification;
- the Rules of Arbitration provide for certain specific conditions and terms for submitting evidence during arbitration;
- according to the Rules of Arbitration, the arbitration award must indicate its motives;
- under the Rules of Arbitration, the petition for arbitration must have attached the evidence sustaining the claim and must bear the claimant's signature;
- according to the Rules of Arbitration, the award shall mention the separate opinion of one of the arbitrators, if any; and
- under the Rules of Arbitration, the existence of an arbitration agreement excludes the competence of the courts.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in Romania?

There are no special mandatory provisions applicable to the international arbitration proceedings sited in Romania. The arbitration proceedings will be governed by the procedural and substantive law as chosen by the parties. Basically, for as long the international arbitration proceedings do not run counter to the Romanian public order provisions, no mandatory rules apply in such respect.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of Romania? What is the general approach used in determining whether or not a dispute is "arbitrable"?

Under the Civil Procedure Code a dispute may be brought before an arbitral tribunal provided that:

- the dispute is economic in nature; and
- the dispute implies rights upon which the law allows the parties to conclude a settlement.

The above-mentioned conditions are applicable to disputes arising in almost all fields of law. The tendency of the Court of Arbitration's recent case-law is to qualify disputes as arbitrable even in "sensitive" economic areas of law or areas governed by special laws as long as such special laws do not expressly provide that disputes should not be deferred to an arbitral tribunal (e.g. disputes related to competition law, consumer protection law, inventions patents etc.).

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

Under Romanian Law, the arbitral tribunal, either *ad hoc* or institutional, is compelled to rule on its own jurisdiction prior to any debate on the merits of the case. The arbitral tribunal must render a preliminary ruling stating whether it is competent or not to rule on the specific dispute.

3.3 What is the approach of the national courts in Romania towards a party who commences court proceedings in apparent breach of an arbitration agreement?

As a principle, the conclusion of an arbitration agreement excludes the competence of national courts. Consequently, if a party commences court proceedings in apparent breach of an arbitration agreement, the court shall rule on its lack of competence if it acknowledges the existence of an arbitration agreement, unless:

- the respondent has submitted its defence on the merits, without filing a defence grounded on the arbitration agreement;
- the arbitration agreement is null and void or unenforceable; or
- the arbitral tribunal cannot not be established due to the respondent's misconduct.

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal?

The court may not analyse the arbitral tribunal's competence *ex officio* but only upon request of either party (please see question 3.3 above). The obligation of the court to verify its own competence only upon notification by the respondent or by the arbitration tribunal, excludes application of the procedural exceptions of *litis pendentis* or the connection between the two categories of courts.

The court may also address the issue of the jurisdiction of a national arbitral tribunal in case it was legally invested to rule upon a claim for cancellation of the arbitration award, and only if the claimant grounds such claim on the arbitral tribunal's lack of jurisdiction.

3.5 Under what, if any, circumstances does the national law of Romania allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

Notwithstanding if an arbitral tribunal is vested by either an arbitration clause provided in a master agreement or a separate arbitration agreement, such can only assume jurisdiction over the parties of the master/separate arbitration agreement. In compliance with the principle of *law res inter alios acta aliis neque nocere neque prodesse potest*, it follows that an arbitral award neither directly confers rights nor imposes obligations upon individuals or entities who are not a party to an arbitration agreement.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in Romania and what is the typical length of such periods? Do the national courts of Romania consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

The limitation periods are treated by the Romanian courts as a substantive law issue, and therefore it depends on the law elected by the parties to govern the agreements which generated the dispute needing settlement. Under the Romanian Law, the statute of limitation, i.e. the term within which a party may request from the other party the performance of its obligation, is governed by the provisions of Decree No. 167/1958 ("**Decree No. 167/1958**"), which provides that the general limitation period for payment obligations is 3 (three) years as of the date when the payment obligation became due for patrimonial claims and of 30 (thirty) years for claims on real property subject to limitation. However, the law expressly provides for certain exceptions, such as certain claims on real property, which are not subject to statutes of limitation.

Under the general rule, the limitation periods are calculated beginning with the date when the right to claim arises. The

limitation periods are established by law and, therefore, such periods may not be modified by the parties, under the sanction of absolute nullity of such arrangements.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

Generally, the law applicable to a contractual relationship concluded between two or more Romanian entities is Romanian law. Derogation is allowed if there is an extraneous element pertaining to the said relationship. The law applicable to the substance of the dispute is the law designated by the party to govern the contractual relationship which gave rise to the dispute. Such choice of law must be expressly made or must undoubtedly result from the contractual content or circumstances.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

The law elected by the parties will be applicable to the extent that its effects do not run counter to the Romanian international public order. Romanian law does not provide for a definition of public order of private international law. There are limited instances when law considers a circumstance as being contrary to the public order of private international law (such as, non-observance of the exclusive competence of Romanian courts or breach of fundamental rights and liberties or principles provide for by the Romanian Constitution). The public order of private international law is considered by courts on a case by case basis and according to circumstances at the time of dispute and not when the law of a contract was chosen as governing law.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

Generally, the persons which agree for their disputes to be settled by an arbitral procedure must have full legal capacity.

The rules governing the formation, validity and the legality of the arbitration agreements is the procedural law elected by the parties to govern the arbitration. In case no such rules were previously elected, the rules of the indicated arbitration institute will apply.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

Only natural persons, who are Romanian citizens and have full capacity to exercise their rights, may be appointed as arbitrators. In case of international arbitration, the foreign party may appoint foreign citizens as arbitrators, and both parties may agree for the sole arbitrator or the chairman to be a citizen of a third country.

In the case of arbitration before the Court of Arbitration, the parties may choose from the arbitrators enlisted with the Court of Arbitration or other persons who are not enlisted and who, due to their skills and uprightness, enjoy their trust.

The only limits to the parties' autonomy to select arbitrators are the following:

- Neither party is allowed to appoint an arbitrator on behalf of the other party or to have more arbitrators than the other party.
- If the parties did not determine the number of arbitrators, the dispute shall be settled by three arbitrators, one appointed by each party and the third arbitrator - the presiding arbitrator - appointed by the other two arbitrators.
- If there are several claimants or respondents, the parties having joint interests shall appoint a sole arbitrator. In case of disagreement, the arbitrator shall be appointed by the president of the Court of Arbitration.
- In case of international arbitration, an odd number of arbitrators is required to form an arbitral tribunal, each party having the right to appoint an even number of arbitrators.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

If the parties do not select the arbitrators or do not provide the method to appoint the arbitrators, the law provides for two distinct default procedures, depending on whether the arbitration is *ad hoc* or institutional:

***Ad hoc* arbitration:**

In case of disagreement between the parties as regards the appointment of the sole arbitrator or if a party fails to appoint an arbitrator or if the two party-appointed arbitrators fail to agree on the appointment of a presiding arbitrator, the party intending to resort to arbitration may request a court of law to appoint the arbitrator/presiding arbitrator. The ruling shall be rendered within ten days as of filing the request and it is not subject to remedies.

Institutional arbitration:

- In case the parties did not determine the number of arbitrators, the dispute shall be settled by three arbitrators, one appointed by each party and the third arbitrator, the presiding arbitrator, appointed by the other two arbitrators.
- If there are several claimants or respondents, the parties having joint interests appoint a sole arbitrator and, in case of disagreement, the arbitrator shall be appointed by the president of the Court of Arbitration.
- Upon a party's request, the arbitrator shall be appointed by the president of the Court of Arbitration. Should the respondent fail to appoint its arbitrator, should the parties disagree on the appointment of the sole arbitrator, or should the two arbitrators disagree on the person of the presiding arbitrator, the president of the Court of Arbitration shall make the necessary appointments.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

Under the Civil Procedure Code, the court may intervene in the selection of arbitrators in the following situations:

- in the absence of any indication by the parties regarding the number of arbitrators or their method of appointment, and if they cannot reach an agreement regarding the number of arbitrators or the presiding arbitrator, the claimant is entitled to request the courts to appoint the arbitrators or the presiding arbitrator;
- in case of disagreement between the parties as regards the appointment of the sole arbitrator or if a party fails to appoint an arbitrator or if the two arbitrators fail to agree on the appointment of a presiding arbitrator, the party intending to resort to arbitration may request the court to appoint the arbitrator/presiding arbitrator; and
- courts rule on challenges raised against an arbitrator for

reasons of doubt over its independence or impartiality or for failure to meet the qualification criteria or other conditions inserted by the parties in the arbitration agreement.

In case of institutional arbitration, all powers of the court under the Civil Procedure Code are exercised by the appointed arbitration institution, in compliance with its rules, except if such rules provide otherwise.

5.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality?

Notwithstanding the applicable Romanian laws (either Civil Procedure Code or the Rules of Arbitration), the arbitrators shall be independent, unbiased in fulfilling their duties and they may not be the representatives of the parties. As a guarantee of the independence, neutrality and impartiality of the arbitrators, the Romanian laws provide that:

- an arbitrator must have full exercise of his/her rights, should be held in high esteem and must have adequate qualification;
- the arbitrators shall sign a statement by which they consent to the appointment and undertake the obligation to fulfil their duties as arbitrators impartially and in strict compliance with the law; and
- arbitrators may be challenged as regards their independence and impartiality, in the same way as judges. Non-compliance with the qualification requirements or with other requirements regarding arbitrators, provided by the arbitral agreement, may also be a reason for challenge.

In addition, in case of institutional arbitration, the arbitrators must have expertise in the field of commercial law or international economic relations.

5.5 Are there rules or guidelines for disclosure of potential conflicts of interest for arbitrators imposed by law or issued by arbitration institutions within Romania?

According to the Romanian Code of Civil Procedure, an arbitrator can be denied by a party for reasons throwing doubt upon an arbitrator's independence and impartiality. The causes for which an arbitrator may be removed by a party are the same as for the Romanian judges, mostly for situations able to give rise to conflicts of interests.

Also, a professional qualification not meeting the standards required under the arbitration agreement may serve as ground for the removal of an arbitrator.

A person appointed as an arbitrator having knowledge of a denying cause in his regard, has the obligation to inform the other arbitrators and parties accordingly.

The request for an arbitrator to be removed from his position must be filled within 10 days as of its appointment and is solved, according to the Romanian Code of Civil Procedure, by a Romanian Court. According to the Rules of Arbitration, such request is solved by the other arbitrators and the President of the institution or an arbitrator appointed by the latter.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in Romania? If so, do those laws or rules apply to all arbitral proceedings sited in Romania?

The *ad hoc* arbitration procedure is governed by the provisions of the Civil Procedure Code. Where the Court of Arbitration is entrusted with the organisation of arbitration, the parties agree *ipso facto* to the Rules of Arbitration, unless, upon requesting the organisation of the arbitration, the parties have already agreed, in writing, to other arbitration rules and the same have been accepted by the arbitral tribunal.

Any set of procedural rules agreed to by the parties or chosen by the arbitrators, as well as institutional rules, shall be applied in arbitration proceedings in Romania only in so far as such comply with public order, good morals and mandatory rules of Romanian procedural law. As a general rule, the arbitral award shall be null and void if the arbitration procedural rules do not ensure equal treatment of the parties, the right to a proper defence and the principle of contradictoriality.

6.2 In arbitration proceedings conducted in Romania, are there any particular procedural steps that are required by law?

The petition for arbitration must be addressed to the Court of Arbitration and shall be filed together with the supporting documents. The respondent must be notified of the petition and subpoenaed for the first hearing established by the arbitral tribunal.

In addition:

- the arbitral tribunal must attempt to reach a settlement, subject to the parties' agreement at any stage of the dispute; and
- the arbitral proceedings must be recorded in minutes of the hearings and any decision of the arbitral tribunal and the grounds thereof has to be written in the minutes of which the parties are entitled to take knowledge.

6.3 Are there any rules that govern the conduct of an arbitration hearing?

The Civil Procedure Code expressly provides for rules regarding:

- the participation of the parties to the arbitral hearing; the parties may attend hearings either in person or through representatives and may be assisted by attorneys, advisers, interpreters etc. The party having attended or having been represented at a hearing shall not be summoned for any other subsequent hearings, being deemed to have knowledge of the next hearing dates, unless otherwise provided by the Rules of Arbitration;
- failure of one party, although duly summoned, to attend the hearing; such failure shall not prevent the progress of the proceedings;
- adjournment of the hearing; only one adjournment may be granted upon either party's request and for justified reasons, provided the notification of such request is made both to the arbitral tribunal and to the other party at least one day prior to the hearing;
- the participation of third parties to the arbitral hearing; unlike court hearings, arbitral hearings are not public, the participation of third parties being possible only with the consent of both parties and the approval of the arbitral tribunal; and
- the obligation of the arbitral tribunal to issue a minute after each hearing; the minute must refer to the attendants to the hearing, the claims made by the parties during the hearing and the motives of such claims, any measures decided by the arbitral tribunal and the signatures of the arbitrators and of the clerk.

These rules ought to be complemented with the general provisions of the Civil Procedure Code regarding the conduct of court

hearings. Such general rules provide for the authority of the judge to impose fines and resort to the assistance of the police force to maintain order in court. While the presiding arbitrator of the arbitral tribunal is responsible for maintaining the order during the arbitral hearing, such measures are not available to him/her.

6.4 What powers and duties does the national law of Romania impose upon arbitrators?

As soon as it is established, the arbitral tribunal shall be entitled and shall also have the obligation to rule upon the request for arbitration, and the other claims and requests concerning the arbitral procedure, in accordance with the powers granted to them by the arbitration agreement, save for the requests which, in accordance with mandatory provisions of law, are in the exclusive jurisdiction of the national courts. The arbitral tribunal shall render the award within the time limits provided under the arbitration agreement or under the Rules of Arbitration.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in Romania and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in Romania?

According to Law No. 51/1995 regarding the lawyer profession and organisation, a foreign lawyer is not allowed to appear in front of Romania national courts.

However, according to the same law, the above cited restriction does not apply to disputes settled in international arbitration proceedings sited in Romania.

6.6 To what extent are there laws or rules in Romania providing for arbitrator immunity?

There are no specific rules pertaining to arbitrators' immunity. According to the Romanian Code of Civil Procedure and Arbitration Rules, the arbitrators may be kept liable for the damages they cause in the following circumstances:

- after accepting the arbitrator position, if they unjustifiably drop such position;
- if by not participating in the settlement of the dispute, other unjustified delays of such settlement are caused or if they do not render the arbitral resolution within the time limits established by the arbitral agreements or the applicable arbitration rules;
- if they do not observe the confidential nature of the arbitration by publishing or disclosing data, without having the parties' consent;
- if they materially breach the arbitrators' duties.

In case one of the above mentioned situations occurs, the arbitrator involved may be removed from that dispute or even from the arbitrators' list kept with the institution.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

Under the Civil Procedure Code, before or during the arbitral proceedings, either party may request the competent court to institute temporary measures or grant interim relief with regard to the object of the dispute or to decide on findings of factual circumstances. The arbitral tribunal is not qualified to exert coercion or punish witnesses or experts. To have these measures decided, the parties must apply to the competent courts.

6.8 Are there any special considerations for conducting multiparty arbitrations in Romania (including in the appointment of arbitrators)? Under what circumstances, if any, can multiple arbitrations (either arising under the same agreement or different agreements) be consolidated in one proceeding? Under what circumstances, if any, can third parties intervene in or join an arbitration proceeding?

In compliance with both the Civil Procedure Code and the Rules of Arbitration, there is one special consideration, i.e., the parties having joint interests may appoint a sole arbitrator.

The competent courts of jurisdiction have no power to order the consolidation of the proceedings in any circumstances. However, by means of interpretation of the relevant principles of law, a consolidated arbitration would be possible provided that the parties agreed to arbitration and the parties agreed on the same default procedure, either *ad hoc* or institutional arbitration. The arbitral tribunal, either the *ad hoc* tribunal or the Court of Arbitration, have the power to render a single final award determining all disputes between them, being joined in arbitration with their express consent.

Considering that the arbitration depends on consent, as a general rule, it is not possible for a third party to intervene or join other parties in arbitration without their agreement. According to the Court of Arbitration's case law, a third party was allowed by such to be brought into the same arbitral proceedings, based on an arbitration agreement executed by the third party and a party in arbitration proceedings. In this case the arbitral tribunal did not require the consent of the other party to the arbitration.

6.9 What is the approach of the national courts in Romania towards *ex parte* procedures in the context of international arbitration?

The international as well as domestic arbitration proceedings are governed by the principle of contradictorily debate. Under the Romanian law there are no provisions regarding such *ex parte* procedures.

However, an arbitral tribunal is entitled to render an award if a party did not participate at the debates, provided that such party has been duly summoned as regards the conduct or the arbitral procedure. An award rendered in the absence of proper summoning of a party may be repealed by the competent court.

7 Preliminary Relief and Interim Measures

7.1 Under the governing law, is an arbitrator permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

The arbitral tribunal may grant interim relief during the arbitral proceedings or may take appropriate temporary measures, unless otherwise provided by the parties in the arbitration agreement.

The types of interim relief available under Romanian law are pre-judgment seizure of goods, pre-judgment garnishment and judiciary seizure of goods. Pre-judgment seizure and pre-judgment garnishment may be granted in case the receivable is certified by a written deed or the claimant filed an action in court for recovery of the receivable and paid a bail bond of half the value of the receivable. The deposit of a bail bond is mandatory if the receivable is commercial in nature (Article 908 of the Commercial Code). Judiciary seizure of goods may be granted if the claimant

proves that there is a pending lawsuit regarding the ownership title over such goods.

In case of international arbitral proceedings, Romanian courts have considered that the appointment of the sole arbitrator and notification of the respondent is similar, for the purpose of granting interim relief, to filing an action in a court of law.

Temporary measures may be granted in case a party is imminently threatened with the loss of a right or in case such are necessary for the prevention of other imminent loss. Temporary measures may be granted *ex parte* in case of extreme urgency.

In case the respondent fails to comply with the arbitral tribunal's order granting interim relief of imposing temporary measures, the claimant must resort to the court of law for the enforcement of such order.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

The court's competence to grant interim relief or temporary measures is alternative to the arbitral tribunal's competence in the same respect. In addition, the court may order such measures also in the time period prior to the valid formation of the arbitral tribunal.

The court may grant interim relief only upon request of either party. The claimant must submit to the court, together with the request for interim relief, the copy of the arbitration agreement and proof of initiation of the arbitration proceedings. The party's request for the court to grant interim relief does not impinge on the jurisdiction of the arbitral tribunal.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

National courts have been granting interim relief to parties to an arbitration agreement, and have also ordered temporary measures. Interim relief was granted also in case of international arbitration.

7.4 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

The Romanian law does not provide securities for cost institution. The Civil Procedure Code states that the party which loses the trial shall bear all the judiciary fees/arbitral expenses made by it or by the winning party.

However, in case of granting interim relief measures, the court may rule for the payment of a bail bond (see question 7.1 above).

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in Romania?

If neither the parties under their arbitration agreement, nor the arbitral tribunal choose a set of rules of evidence (see question 5.1 above), the general rules of evidence provided under the Civil Procedure Code shall be applicable, with certain particular features. This is also applicable to arbitration by the Court of Arbitration, whose rules of evidence do not differ from the Civil Procedure Code.

The Romanian procedural law is based on three main principles:

- each party must bring evidence in support of its claims/defences (*onus probandi incumbit actori*);
- both parties must have equal access to the administration of evidence and have the right to counter-evidence; and
- the judge/arbitral tribunal may decide upon the administration of any type of evidence permitted by law.

The main difference regarding administration of evidence by an arbitral tribunal as opposed to administration of evidence by a court of law is that the arbitral tribunal lacks the authority to take coercive or punitive measures against witnesses, experts or third parties. The arbitral tribunal must refer to a court of law for inflicting such measures upon any of the above-mentioned participants to arbitration.

8.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure of discovery (including third party disclosure)?

Under the Romanian general procedural rules, there is no discovery phase preliminary to the trial. If, during the administration of the evidence, a party submits sufficient proof that the other party, a public institution or a third party holds a document which is relevant to the case, the court may order any such person to produce the document in court. A refusal may be grounded only on the personal character of the document, the existence of a legal confidentiality obligation or the possibility for a criminal prosecution to be commenced based on such document. In case a party refuses to produce a document, the court is entitled to consider that such document exists, in the form and substance alleged by the other party.

The Civil Procedure Code acknowledges the arbitrator's authority to administrate any evidence provided for by law, without limitation to its right to order for a document to be presented to the arbitration panel. However, since only a court may take measures against witnesses/experts, the arbitrator will not be able to take measures against third parties who refuse to produce evidence in the arbitration proceedings.

8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

The court may intervene upon the arbitral tribunal's request for infliction of coercive measures against witnesses, experts or third parties who refuse to comply with the arbitral tribunal's requests.

The parties may also request the court, at any time during the arbitration proceedings and even prior to the filing of the arbitration petition, to "secure" a piece of evidence which is in danger of being lost should its administration be postponed. This procedure allows the court to hear witnesses, expert opinions, to ascertain a state of fact or to obtain the recognition of a document, fact or right. In case of extreme emergency, the procedure may take place without the notification of the other party ("*ex parte*").

8.4 What is the general practice for disclosure / discovery in international arbitration proceedings?

The general rules of evidence provided under Romanian law are equally applicable in national and international arbitration proceedings.

8.5 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal? Is cross-examination allowed?

Witness testimony is generally allowed under Romanian law. Exceptions are applicable in case of non-commercial transactions exceeding a certain value and in case witness testimony is intended to be brought as counter-evidence to written evidence proving the existence and the terms of a legal transaction. The parties may, however, agree to accept witness testimony in such cases, also.

Relatives up to the 3rd degree, the spouse, persons condemned for perjury or incapable of testimony may only be heard with the consent of both parties. Persons held by a confidentiality obligation and persons who would expose themselves or others to a criminal penalty by testifying, have the right not to testify.

Witnesses and experts are not sworn in before testifying in arbitral proceedings. The other party has the right to cross-examine the witness, as provided under the principle of contradictorily debate which governs any proceedings under Romanian law; breach of such right may lead to the annulment of the proceedings. Questions must be addressed through the chairman of the arbitration panel, who may rule out irrelevant or inappropriate questions. The court clerk takes down the witness testimony by dictation from the chairman.

Only the court of law, upon the arbitral tribunal's request, may take coercive or punitive measures against witnesses or experts for their refusal to testify or for perjury.

8.6 Under what circumstances does the law of Romania treat documents in an arbitral proceeding as being subject to privilege? In what circumstances is privilege deemed to have been waived?

In an arbitral proceeding, either *ad hoc* or institutional, documents could be regarded as subject to privilege only in case special laws and/or regulations expressly provide for specific documents not to be subject to disclosure (e.g. confidential or classified information). A waiver for privilege documents could be acquired if the requirements of the respective special provisions are met.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award?

The arbitral award must be rendered in writing and must contain the following information:

- the name of the arbitrators, the place and date of rendering the award;
- the name, domicile/headquarters of the parties, of the representatives of the parties and of any other participant to the debates;
- the arbitral agreement;
- the object of the dispute and the parties' claims;
- the motives - *de facto* and *de jure* - of the award (also in case of an award rendered in equity);
- the holding; and
- the signatures of the arbitrators.

The award must be rendered within five months after the formation of the arbitral tribunal, unless otherwise agreed by the parties. For justified reasons, the tribunal may prolong such term with an additional period of not more than two months. However, the expiration of such period shall result in the dissolution of the arbitral tribunal only if at least one of the parties notified its intention to request such dissolution, and such notification was made no later than the first hearing.

The five and respectively two-month time periods shall be doubled in case of international arbitral proceedings.

10 Appeal of an Award

10.1 On what bases, if any, are parties entitled to appeal an arbitral award?

The only remedy available against an arbitral award is the claim for cancellation, which may be filed only for one of the following reasons:

- the dispute was not arbitrable;
- the arbitration agreement did not exist, was void or ineffective;
- the arbitral tribunal was not formed in compliance with the arbitral agreement;
- the party absent from a hearing was not legally subpoenaed for the hearing;
- the arbitral award was rendered after the expiration of the arbitration period;
- the arbitral tribunal did not rule on one of several claims, granted more than the parties requested or what was not requested (*minus petita, ultra petita, extra petita*);
- the arbitral award does not include the reasons, the holding, the place and time of rendering the award, or the signatures of the arbitrators;
- the ruling of the arbitral award contains unenforceable measures; or
- the award runs against public order, good morals or against mandatory provisions of the Romanian law.

The parties may not waive in advance their right to request the cancellation of the arbitral award.

In cases of material errors in the award, or in cases where the arbitral tribunal failed to rule on some of the claims, or in cases where the minute of the award contains contradictory provisions or additional clarifications are required with regard to the content of such minute, the parties may ask the arbitral tribunal to rectify or supplement the award, provide additional explanations, or to eliminate the contradictory provisions of the minute of the award.

10.2 Can parties agree to exclude any basis of appeal or challenge against an arbitral award that would otherwise apply as a matter of law?

In compliance with the provisions of Article 3641 of the Civil Procedure Code correspondent to the Article 70 of the Rules of Arbitration, the parties cannot agree to exclude any basis of appeal against an arbitral award until the arbitral award is not yet rendered by the arbitral tribunal.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

The grounds available for appealing against an arbitral award are specifically defined by the Romanian relevant laws, i.e. nine grounds expressly provided by Article 364 of the Civil Procedure

Code correspondent to Article 69 of the Rules of Arbitration. Under no circumstances, can the parties expand the scope of appeal of an arbitral award, notwithstanding if such award was rendered by following the *ad hoc* or institutional proceedings.

10.4 What is the procedure for appealing an arbitral award in Romania?

The jurisdiction for ruling upon claims for cancellation of arbitral awards belongs to the common court immediately superior to the common court which, absent the arbitration agreement, would have been competent to solve the litigation.

The claim for cancellation of the award may be filed within one month as of the date of communication of such award.

Should the court accept the claim for cancellation, it shall repeal the award. In case the court reasons that the circumstances of the case have been clarified, it shall render an award on the merits of the case, within the limits of the arbitration agreement.

The award rendered by the court with regard to the claim for cancellation may be appealed.

11 Enforcement of an Award

11.1 Has Romania signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Romania adhered to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards by Decree No. 186 of July 24, 1961. Romania made two reservations under Article I paragraph 3 of the Convention: the commercial reservation and the reciprocity reservation. Accordingly, the Convention is applied only with regard to arbitral awards settling commercial disputes and only if the arbitral award was rendered on the territory of another contracting state (unless the condition of reciprocity is met).

The general rules for the recognition and enforcement of foreign arbitral awards are provided by Law No. 105/1992 on private international law. Recognition is granted under the same conditions as for foreign court decisions: the decision must be final, rendered by a competent jurisdictional body, with the exclusion of fraud; the decision does not conflict with public order; the case was not previously settled by a Romanian court of law (*res judicata*); and the reciprocity condition is met.

11.2 Has Romania signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Romania has ratified the Geneva European Convention on International Commercial Arbitration as of 1961 and has also concluded several bilateral conventions, which refer to the recognition and enforcement of foreign awards, including arbitral awards.

11.3 What is the approach of the national courts in Romania towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

Answer Arbitration awards are enforced in practice under the same conditions as court decisions. A particular feature is that, pending the ruling on the claim for cancellation of the award, the enforcement procedure may be suspended only if the party against whom enforcement is sought pays the bail bond established by the court.

Under the provisions of Law No.105/1992, the foreign arbitral awards are recognised in Romania, and therefore regarded as *res judicata*, subject to the fulfilment of following conditions:

a) the award is final, according to the law of the state where it was rendered;

b) the tribunal which rendered the award was, according to the above mentioned law, competent to solve the litigation; and

c) there is reciprocity between Romania and the state of the tribunal which rendered the award, as regards the effects of foreign awards.

The court competent to rule upon the request for recognition of the foreign arbitral award is the tribunal of the seat/domicile of the person which refused the recognition. However, in case the recognition is raised in other litigation, the court competent to solve such litigation shall become also competent to rule upon such plea, in accordance with the principle *accesorium sequitur principale*.

The foreign arbitral awards may be enforced in Romania based on the approval rendered by the county tribunal where the execution must take place. The award must fulfil the requirements for the recognition of a foreign arbitral award and the following additional two conditions:

a) the award is enforceable, under the law of the court which rendered it; and

b) the time bar for the request for enforcement of the award, under the Romanian law, was complied with.

Also be advised that the applicable legislation in the field of enforcement in civil and commercial matters in case of EU Member States is currently represented by Regulation 44/2001.

Within the meaning of the aforementioned regulation, arbitral awards are enforceable titles and shall be enforced in another EU Member State provided that, on the application of any interested party, it has been declared enforceable there.

11.4 What is the effect of an arbitration award in terms of *res judicata* in Romania? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

Arbitration awards rendered in compliance with the arbitration agreement and the applicable laws/rules are regarded as *res judicata*. Under the Romanian laws, the national courts have no jurisdiction on the matters referred to arbitral tribunals by a valid arbitration agreement. National courts may not adjudicate disputes which were finally determined by an arbitral tribunal. No exemption is provided by the law with regard to certain issues which might be addressed to national courts.

The matter of *res judicata* effect of an arbitral award should be considered from different perspectives:

- Effect on the parties in dispute. In case neither party has challenged the arbitral award before a competent court, the court shall dismiss the petition of a party based on the same cause of action in consideration of the fact that the issue has been disposed of and the arbitral award is final and binding upon the parties in respect of the issues with which it dealt. One party may bring a court action against the other only in case the arbitral tribunal failed to dispose of all the issues raised in the new proceedings.
- In case the parties challenge the arbitral award before the competent court and this is set aside by the court of

competent jurisdiction or, in case the award is invalid, such arbitral award does not operate as *res judicata*.

- *Stare decisis* has no effect in arbitration, under the Romanian laws. Whenever same parties are involved in subsequent disputes, the previous arbitral award has no relevance to the subsequent disputes between the same parties.
- Arbitral awards cannot be *res judicata* in respect of claims against a third party in case the third party is affected by the respective arbitral award and such has a significant indirect impact on individuals or entities who were not parties to the arbitration.

One important aspect of res judicata is deciding the validity of an arbitration agreement since such could be inoperative due to the fact that the same dispute between the same parties has already been settled by either arbitral or court proceedings.

12 Confidentiality

12.1 Are arbitral proceedings sited in Romania confidential? What, if any, law governs confidentiality?

The Civil Procedure Code provides that the arbitrators are liable for indemnification in case of breach of the confidentiality related to the arbitral proceedings. There are no express provisions regarding a confidentiality obligation for the other participants to the proceedings (clerks, experts, other representatives of the parties etc.).

The Rules of Arbitration clearly state that the Court of Arbitration, the arbitral tribunal, and the entire personnel of the Chambers of Commerce are subject to the obligation to respect the confidentiality of the arbitration proceedings. Third parties may have access to the file only with the written permission of both parties and the approval of the arbitral tribunal. The publication of the arbitral award is subject to the parties' permission. However, it is allowed for such awards to be briefly commented in specialised publications, without the indication of the parties' names or of any other information that may harm their interests.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

In case the information was disclosed by way of witness testimony, it is not possible for it to be directly used in front of a court of law. As a rule, the judge may only admit direct, oral witness testimony. The witness may change its deposition in front of the court, however this may affect its credibility and it may be charged with perjury based on its testimony before the arbitration tribunal. If the witness becomes unable to testify in front of the court, other participants to the arbitration proceedings may be called to testify as to what they directly heard from such witness.

In case the disclosed information originates in documents attached to the arbitration file, the general rules regarding the obligation to produce documents in court shall apply (see question 7.2).

12.3 In what circumstances, if any, are proceedings not protected by confidentiality?

The Civil Procedure Code provides only for the arbitrators' obligation of confidentiality. As a result, if other participants to the arbitration proceedings are summoned to testify in other proceedings before a court of law, they may not be able to invoke the confidentiality obligation as grounds for their refusal to testify.

It must be noted that the proceedings in the court of law pending the claim for cancellation of the arbitral award are not protected by confidentiality, being governed by the principle of publicity of the hearings. The parties may request the judge to hold the hearing in his chambers if the publicity of the debates would harm their interests or good morals, but even if such request is granted, the judge is not bound by an obligation of confidentiality.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Under Romanian substantive law, damages are granted if the claimant proves that the breach of contract/law by the respondent is the direct cause of the damage incurred. As a rule, the arbitrator can only grant compensation for damage actually incurred, and not for damage that may occur at some point in the future. It is possible for the parties to establish, prior to the dispute, the amount of damages by means of a "penal clause". The judge or the arbitrators may not modify the amount of "liquidated" damages established in such clause.

The institution of punitive damages does not exist under Romanian law. Somewhat similar is the institution of "comminatory damages", however with essential differences. In case the respondent fails to comply with its obligations and such are personal in nature, it may be condemned to pay a certain amount of compensation per day until actual performance of its obligations occurs. After the obligations are complied with, the amount of "comminatory damages" received by the claimant shall be reduced to the actual value of damage incurred due to the delay in performance of respondent's obligations.

13.2 What, if any, interest is available, and how is the rate of interest determined?

The calculation of interest is subject to the substantive law applicable to the dispute. Under Romanian commercial law, interest starts to accrue on monies as of the date when payment becomes due. Unless the parties agree to a different interest rate, the legal interest rate shall apply. The arbitral tribunal may decide that interest continues to accrue on the principal amount until actual payment of such amount by the debtor.

In certain cases where the receivable represents the price of purchased goods, it was decided that the seller was entitled to be compensated for the difference between the current market value of delivered goods and the contract price, instead of calculating interest to such unpaid price.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

The general rule under Romanian law is that the losing party shall bear all the costs of the winning party (including but not limited to arbitration fees, evidence expenses, travelling expenses for the parties, witnesses, experts and arbitrators, etc.). This rule is also applicable to arbitral procedures, unless the parties agree to a different allocation of costs. The assignment of arbitration costs is different for international arbitration. Unless the parties agree otherwise, each arbitrator's fee and travelling expenses are borne by the appointing party; in case of a sole arbitrator, such fee and

expenses are borne equally by both parties. This particularity in the assignment of costs in international arbitration was not accepted under the Rules of Arbitration, under which the general rule of losing party is paying party continues to apply.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Amounts recovered from the debtors based on arbitral awards are not subject to special taxation rules. The tax obligations of the winning party shall be the same as if the amount was paid on the debtor's free will.

The Romanian fiscal law provides that amounts representing penalties, damages and any other type of compensation for breach of contract, granted by way of final court decision, are not taken into consideration for computation of VAT. Such amounts are, however, not excluded from income/profit tax.

14 Investor State Arbitrations

14.1 Has Romania signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965)?

Romania adhered to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States by Decree No. 62 as of May 30, 1975.

14.2 Is Romania party to a significant number of Bilateral Investment Treaties (BITs) or Multilateral Investment treaties (such as the Energy Charter Treaty) that allow for recourse to arbitration under the auspices of the International Centre for the Settlement of Investment Disputes ('ICSID')?

Romania is party to over seventy Bilateral Investment Treaties and is also a party to the Energy Charter Treaty which allow for recourse to arbitration under the auspices of ICSID.

14.3 Does Romania have standard terms or model language that it uses in its investment treaties and, if so, what is the intended significance of that language?

The investment treaties concluded so far by Romania do not display standard terms or model language. Although these treaties are not homogenous from a linguistic point of view, there is a developing unitary pattern as the majority of these investment treaties are defining certain terms, such as "investment", "investor", "national", "income", "company", etc., in a similar approach.

14.4 In practice, have disputes involving Romania been resolved by means of ICSID arbitration and, if so, what has the approach of national courts in your country been to the enforcement of ICSID awards and how has the government of Romania responded to any adverse awards?

On October 12, 2005, the Romanian State has been rendered a favourable ICSID arbitral award (Noble Ventures vs. the Romanian State). Apart from this, there is no national court case on the enforcement of ICSID.

14.5 What is the approach of the national courts in Romania towards the defence of state immunity regarding jurisdiction and execution?

In accordance with the provisions of the Rules of Arbitration, the State, the administrative-territorial units and other public law legal entities are only entitled to conclude a valid arbitration agreement in the international commercial arbitration, unless otherwise provided by law.

15 General

15.1 Are there noteworthy trends in the use of arbitration or arbitration institutions in Romania? Are certain disputes commonly being referred to arbitration?

Romania follows the general world-wide trend in favour of institutional arbitration vs. ad hoc arbitration, as well as the tendency of arbitration institution to specialise in solving disputes arising in particular fields. Over the past few years several arbitral bodies were established, many of which are adopting their own specialised rules of procedure (i.e. capital markets, intellectual property, insurance etc.). Arbitration was organised by including matters previously excluded from arbitration (i.e. conflicts of interests in labour law).

15.2 Are there any other noteworthy current issues affecting the use of arbitration in Romania, such as pending or proposed legislation that may substantially change the law applicable to arbitration?

An important impediment to the development of arbitration in Romania is the lack of familiarity of the parties with such proceedings. Often, the parties insert arbitration clauses in their agreements, but when the dispute arises they prefer to settle it in court.

One possible reason is the availability of the "payment notice" procedure which may only be granted by courts of law. This is a speedy procedure, very often used in practice, available to parties who ground their claims on written deeds which evidence a payable debt, the amount of which is clearly established.

Other impediments that may negatively affect arbitration proceedings is the insufficient specialisation of certain arbitrators enlisted with arbitration institutions.

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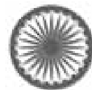

Pachiu & Associates is a Bucharest based business law firm established by Romanian attorneys. The firm currently consists of 22 lawyers plus additional staff comprising paralegals, authorised translators and supportive staff. The lawyers of the firm are all graduates of leading universities in Romania or abroad. More than half of the lawyers are senior members of the Bucharest Bar Association. All lawyers are fluent in Romanian and English, and some are fluent in German, French or Spanish. The firm provides for a full range of commercial and corporate legal advice from its main office in Bucharest and its secondary office in Cluj-Napoca (west of Romania).

The firm has extensive expertise in matters related to corporate governance, corporate disputes, securities, mergers and acquisitions, insolvency, commercial contracts, offshore and tax structures, labour law, real estate, anti-trust law, intellectual property, banking and project financing, secured transactions, cross-border transactions, public acquisitions, procurement, and strong arbitration and litigation department. Apart from its consistent mergers & acquisitions and cross-border transactions practice, the firm has developed a sound practice in tax, securitisation and real estate, construction, labour and intellectual property. Also the firm has provided assistance to various clients on arbitration and other ADR proceedings.

The firm maintains a close relationship with some leading multinational law firms and other small and medium-sized law firms from abroad, so as to ensure efficient liaison with important foreign business centres and jurisdictions.