GAR KNOW HOW COMMERCIAL ARBITRATION

Romania

Alina Popescu and Alexandra Ichim
MPR Partners | Maravela, Popescu & Roman

MAY 2019

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Infrastructure

1 The New York Convention
ntion? Are there any noteworthy declarations or reservations?

Yes. The reservations made upon accession are as follows:

- the Convention applies only to differences considered commercial under Romanian legislation; interestingly, the term ”commercial” is no longer used under existing legislation, being replaced by the concept of “relationships between professionals”; the new concept does not entirely correspond to the former scope of “commercial” matters as previously defined, but recent court decisions concerning arbitration matters equate the two concepts;
- the Convention applies to the recognition and enforcement of awards made in another contracting state; as to awards made in non-contracting states, the Convention applies only on reciprocity basis.

2 Other treaties
Is your state a party to any other bilateral or multilateral treaties regarding the recognition and enforcement of arbitral awards?

Romania is also a party to:

- the European Convention on International Commercial Arbitration adopted in Geneva on 21 April 1961, ratified by Romania in 1963; and
- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Washington, 1965, to which Romania adhered in 1975.

3 National law
Is there an arbitration act or equivalent and, if so, is it based on the UNCITRAL Model Law? Does it apply to all arbitral proceedings with their seat in your jurisdiction?

Romanian provisions regarding arbitration are found in the Civil Procedure Code (CPC), Book IV, articles 541 to 621 regarding domestic arbitration, Book VII, Title IV, articles 1111 to 1122 regarding international arbitration and articles 1123 to 1132 regarding recognition and enforcement of foreign arbitral awards.

The said provisions are not based on the UNCITRAL Model Law, but rather drawing inspiration from the French arbitration law and the international practice, with certain specificities.

The CPC applies to international arbitrations with their seat in Romania only if the parties did not agree otherwise. The CPC allows thus the parties’ choice for a foreign procedural law, provided such law observes the equal treatment and adversarial procedure principles.

4 Arbitration bodies in your jurisdiction
What arbitration bodies relevant to international arbitration are based within your jurisdiction? Do such bodies also act as appointing authorities?

There is a fairly high number of national and regional arbitration bodies that handle international arbitration. The national bodies include:

- the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CCIR);
- Bucharest International Arbitration Court established under the auspices of the American Chamber of Commerce in Romania (AmCham Romania);
- Permanent Court of Arbitration attached to the Romanian-German Chamber of Commerce and Industry (AHK); and
- the Court of Commercial Arbitration attached to the Chamber of Commerce and Industry of Bucharest (launched on 29 January 2018).

The CPC allows such bodies to act as appointing authorities.

5 Foreign institutions
Can foreign arbitral providers operate in your jurisdiction?

Yes, foreign arbitral providers are permitted to operate in Romania.

6 Courts

Is there a specialist arbitration court? Is the judiciary in your jurisdiction generally familiar with, and supportive of, the law and practice of international arbitration?

As per the CPC, the Court of Appeal in whose territorial jurisdiction the arbitration took place will hear an action for annulment of the award.

Therefore, there is no specialist arbitration court in Romania, but there is a juge d'appui (a party may refer to the second degree court with jurisdiction at seat of the arbitration to overcome obstacles that may arise in arbitration) and the relevant courts are generally in favour of arbitration. As there is no specialist arbitration court, how familiar a court is with the practice of international arbitration may differ from a judge to another.

The judiciary is supportive of the law and practice of international arbitration. The procedure for recognition of the international arbitral awards before the Romanian courts is a rather swift one comparing to any other regular civil trial. Also, in accordance with the published case-law of the Romanian courts, the arbitral awards are rarely set aside (in case of national arbitration) or refused recognition (in case of international arbitration) as the limited grounds for setting aside the awards or refusing recognition are in most cases not fulfilled.

Agreement to arbitrate

7 Formalities

What, if any, requirements must be met if an arbitration agreement is to be valid and enforceable under the law of your jurisdiction? Can an arbitration agreement cover future disputes?

In order to be valid, the arbitration agreement has to be in written form and it also has to be notarised if the dispute is related to the transfer of immovable property or to establishing other real estate rights on an immovable property. The condition of the written form is fulfilled if the arbitration agreement is contained in a document signed by the parties or in letters, faxes, emails or other forms of communications that prove the existence of the agreement.

In addition, the arbitration agreement referring to a contract (whether inserted in the very contract or closed separately) should theoretically contain the arbitrators appointing method or, in case of institutional arbitration, at least a reference to the relevant arbitration institution and/or to the rules thereof.

The agreement regarding a dispute that has already arisen between the parties must contain the object of the dispute and the names of the arbitrators or the appointment method or a reference to the relevant arbitral institution or rules thereof, in case of institutional arbitration.

8 Arbitrability

Are any types of dispute non-arbitrable? If so, which?

Disputes concerning marital status, capacity of persons, inheritance and distribution of estate, family relations, and rights that cannot be disposed of are non-arbitrable. In addition, under Romanian law there are several claims and procedures that can be granted only by the courts, such as: small value claims procedure, payment injunction, evacuation procedure, usucapio procedure, challenges against the forced execution, insolvency procedures, contravention complaints, disputes regarding competition or consumers protection, etc.

In domestic arbitration, the state and the public authorities may conclude arbitration agreements only if they are authorised by law or by international conventions to which Romania is a party. Public legal persons with economic activities may conclude arbitration agreements, unless the law or their articles of incorporation provide otherwise.

Nonetheless, that does not apply in international arbitration, where the state, a state-owned company or a state-controlled organisation may not invoke its own law in order to challenge the arbitrability of the dispute or its capacity to stand in arbitration.

9 Third parties

Can a third party be bound by an arbitration clause and, if so, in what circumstances? Can third parties participate in the arbitration process through joinder or a third-party notice?

Third parties may participate in arbitration proceedings through joinder or a third-party notice, but only with their consent and with the consent of all parties (the latter not being required if the third-party only supports one party's defence without claiming the disputed right or a related right).

A third party can also be bound by an arbitration clause in case of the assignment of contract comprising the arbitration agreement or as a party's successor.

10 Consolidation

Would an arbitral tribunal with its seat in your jurisdiction be able to consolidate separate arbitral proceedings under one or more contracts and, if so, in what circumstances?

Romanian arbitration law does not contain any provisions regarding the consolidation of separate arbitral proceedings under one or more contracts. Theoretically, the consolidation of separate arbitral proceedings is possible with the consent of all parties, of the tribunal and of the relevant arbitration institution.

11 Groups of companies

Is the "group of companies doctrine" recognised in your jurisdiction?

When the substantive law of the dispute is the Romanian law, certain legal provisions could be substantive basis for piercing the corporate veil, as in certain cases expressly set out by law the members of shareholders of an entity can be held liable with/for the entity's acts. Nonetheless, there is no procedural provision allowing one to force the shareholder to stand arbitration.

12 Separability

Are arbitration clauses considered separable from the main contract?

Yes, arbitration clauses are considered separable from the main contract.

As per the CPC, the validity of the arbitration clause is independent of the validity of the contract containing such clause.

13 Competence-competence

Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunal's jurisdiction and competence?

Yes. As per the CPC, the arbitral tribunal is to decide on its jurisdiction. As a matter of principle, a party must raise a jurisdiction plea before any defence on the merits. The jurisdiction plea may be raised in court either where a party brings the matter to court (instead of arbitration) or after the arbitral tribunal renders the award, through the proceedings to set aside the arbitral award. Otherwise, it is for the tribunal to rule on matters of jurisdiction.

14 Drafting

Are there particular issues to note when drafting an arbitration clause where your jurisdiction will be the seat of arbitration or the place where enforcement of an award will be sought?

The arbitration clause must set out a clear and workable arbitrators appointment method, as well as to clearly specify the relevant arbitration institution where applicable. The parties' obligation to ensure confidentiality of the arbitration should equally be stipulated. The parties may also wish to waive the application of certain CPC provisions, such as: (i) the power of the court to diminish the arbitrators' fees; (ii) the rule whereby the losing party bears the costs; (iii) the "orality" principle which requires all matters to be discussed in hearings; (iv) document production and other rules on the taking of evidence, etc. In ad hoc arbitration, that is not to be governed by a specific set of rules, parties would have to consider the arbitration procedure in more details; in particular as regards any important aspects that are not regulated by the CPC, eg how to initiate the arbitration before the arbitral tribunal is constituted.

15 Institutional arbitration

Is institutional international arbitration more or less common than ad hoc international arbitration? Are the UNCITRAL Rules commonly used in ad hoc international arbitrations in your jurisdiction?

Institutional international arbitration is more common than ad hoc international arbitration. UNCITRAL Rules are commonly used in ad hoc international arbitrations.

16 Multi-party agreements

What, if any, are the particular points to note when drafting a multi-party arbitration agreement with your jurisdiction in mind? In relation to, for example, the appointment of arbitrators.

For a multi-party arbitration agreement to be valid, all parties have to give their consent. As per the CPC, if there are several plaintiffs or more defendants, the parties having common interests shall appoint a single arbitrator. Since it may be difficult to determine to which extent parties have common interests, the arbitrator's appointment may have to be regulated in the relevant arbitration agreement.

Commencing the arbitration

17 Request for arbitration

How are arbitral proceedings commenced in your jurisdiction? Are there any key provisions under the arbitration laws of your jurisdiction relating to limitation periods of which the parties should be aware?

The first step is to advise the relevant arbitral tribunal institution or the other party of the dispute and intention to solve same in arbitration, so that proceedings for the constitution of the arbitral tribunal can commence. Such first step is to be dealt with in accordance with the applicable rules of arbitration or the parties' agreement. The CPC does not contain any provisions for this stage, other than as regards the actual procedure for appointment of the arbitrators.

As per the CPC, after the arbitral tribunal is constituted the claimant submits a written request for arbitration before the arbitral tribunal or the parties/the claimant and the arbitrators execute arbitration minutes before the arbitral tribunal. At this time, the relevant statutes of limitations of the substantive claims are interrupted if the governing law of the merits is Romanian.

The applicable statute of limitations is that of the law governing the merits of the case.

In 30 days (domestic arbitration) or 60 days (international arbitration) after receipt of the request for arbitration, the respondent shall submit his statement of defence and any counterclaim. Pleas, evidence and other means of defence not shown in the statement of defence, must be raised the latest at the first hearings when the party is duly summoned. Otherwise the respondent's right to raise them is forfeited.

As a novelty, the new Rules of Arbitration of CCIR (in force as of 2018) provide a "case management" phase at the beginning of the procedure. During such phase the arbitral tribunal is to set the timeline of the procedure.

Choice of law

18 Choice of law

How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?

As per the CPC, the arbitral tribunal shall apply the law determined by the parties. If the parties have not designated the applicable law, the arbitral tribunal designates the law that it deems appropriate taking into account the common practice and professional rules.

If the parties agree, the arbitral tribunal may also decide the case in equity.

Appointing the tribunal

19 Choice of arbitrators

Does the law of your jurisdiction place any limitations in respect of a party's choice of arbitrator?

The parties are free to choose their arbitrator provided that the relevant person (i) has full legal capacity; (ii) is not under a situation that would render a judge conflicted due to personal interest or a relative's interest, as set out by law; (iii) meets the qualifying conditions or other requirements provided in the arbitration agreement; (iv) is not in a situation that would question his or her impartiality and independence out of those set out by the law; (v) is not a judge, prosecutor, court or prosecutor's office clerk or member of the Romanian Court of Accounts.

20 Foreign arbitrators

Can non-nationals act as arbitrators where the seat is in your jurisdiction or hearings are held there? Is this subject to any immigration or other requirements?

Non-nationals may act as arbitrators in arbitrations seated in Romania or where hearings are held in Romania. For non-EU citizens, visa and other work-related immigration requirements may apply.

21 Default appointment of arbitrators

How are arbitrators appointed where no nomination is made by a party or parties or the selection mechanism fails for any reason? Do the courts have any role to play?

The arbitration agreement may designate the arbitrators, provide for the conditions of their designation, or if a party does not appoint an arbitrator, the arbitrator may be designated by the court that has territorial jurisdiction where the arbitration is seated.

22 Immunity

Are arbitrators afforded immunity from suit under the law of your jurisdiction and, if so, in what terms?

There are no express provisions establishing the arbitrators' immunity. It is generally deemed however that they are not to be held liable for their decisions as long as they are independent and impartial. Similarly to judges, bad faith or gross negligence has to be proven in order to entail their responsibility in such cases.

In addition, arbitrators may be held liable for damages caused to the parties if:

- they unduly abandon their mission after acceptance;
- they do not participate in the arbitral proceedings or do not render the award within the due term and fail to provide legitimate reasons for the same;
- they breach the confidentiality of the arbitration;
- they violate in bad faith or with gross negligence other duties assigned.

Arbitrators may also be held liable in case of corruption crimes as set out in the Criminal Code.

23 Securing payment of fees

Can arbitrators secure payment of their fees in your jurisdiction? Are there fundholding services provided by relevant institutions?

The arbitral tribunal might secure payment by asking the parties to pay in advance the arbitrators' fees and other costs by staying the arbitration until such payment is made. If the respondent does not pay, the claimant normally has to pay the full amount so that the arbitration can continue. Fundholding services are generally not available.

Challenges to arbitrators

24 Grounds of challenge

On what grounds may a party challenge an arbitrator? How are challenges dealt with in the courts or (as applicable) the main arbitration institutions in your jurisdiction? Will the IBA Guidelines on Conflicts of Interest in International Arbitration generally be taken into account?

Where the CPC applies, a party may challenge an arbitrator for the cases of incompatibility questioning the independence and impartiality of the arbitrator, as expressly set out by the CPC. The motion to challenge must be submitted within 10 days (in domestic arbitration) or 20 days (in international arbitration) from the date when the party became aware of the appointment of the arbitrator or from the occurrence of the challenging reason.

The second degree court that has territorial jurisdiction where the arbitration is seated shall decide (after summoning the parties and the arbitrator) within 10 days (in domestic arbitration) or 20 days (in international arbitration) since the date of the motion. The court's decision may not be appealed.

In case of institutional arbitration, the motion to challenge is usually decided by another arbitral tribunal. For instance, the current Rules of Arbitration of CCIR provide that the challenge of any member of an arbitral tribunal constituted by several arbitrators shall be settled by another arbitral tribunal consisting of three arbitrators appointed by the president of the court, all without the parties being present. Where the challenge concerns the sole arbitrator, it shall be settled by the president of the court or by an arbitrator appointed by him. If the request is admitted, the new arbitrator(s) is(are) appointed by the same procedure as for appointing the initial arbitrator(s).

The IBA Guidelines on Conflicts of Interest in International Arbitration could be taken into account by the arbitrators, but this is not mandatory unless referred to in the arbitration clause or the rules of the relevant arbitration institution. This highly depends on the constitution of the arbitral tribunal as arbitrators with extensive experience in international arbitration usually follow this set of rules.

Interim relief

25 Types of relief

What main types of interim relief are available in respect of international arbitration and from whom (the tribunal or the courts)? Are anti-suit injunctions available where proceedings are brought elsewhere in breach of an arbitration agreement?

The arbitral tribunal may order provisional or conservatory measures at the request of either party, unless otherwise stipulated in the arbitration agreement. However, the interim relief may not establish obligations for third parties. The new Rules of Arbitration of CCIR expressly provides that requests for provisional or precautionary measures can be filed also prior to the commencement of the arbitration procedure or before the case file is submitted to the arbitral tribunal. Such requests shall be settled by an emergency arbitrator who is appointed by the president of the court.

If the party concerned does not voluntarily obey the measures ordered by the arbitral tribunal, the latter may request for the competent court's support, which will apply its own procedural and substantive law. The arbitral tribunal or the court may ask for a collateral deposit in order to issue provisional or conservatory measures.

Under Romanian law there are no anti-suit injunctions.

26 Security for costs

Does the law of your jurisdiction allow a court or tribunal to order a party to provide security for costs?

The law does not expressly provide for the court's or arbitral tribunal's capacity to issue such order. Nonetheless, this might be ordered by the arbitral tribunal and enforced by the court as described at questions 23 and 25. However, at a party's request, the costs ordered by the arbitral tribunal can be censored by the court if considered unjustified.

Procedure

27 Procedural rules

Are there any mandatory rules in your jurisdiction that govern the conduct of the arbitration (eg, general duties of the tribunal and/or the parties)?

Notwithstanding the private nature of arbitration and the parties' right to establish the arbitration rules, in domestic arbitration public order and mandatory rules still govern the conduct of the arbitration. Such mandatory rules concern the following:

- the written form of the arbitration agreement;
- the nullity of the clause conferring one of the parties a privilege with regard to the appointment of arbitrators;
- the odd number of arbitrators (for domestic arbitration);
- the grounds for setting aside the award (described at question 42);
- the prohibition of waiving the right to set aside the arbitral award before it is rendered;
- the competence of the court regarding certain interim relief, and
- the fundamental principles of the civil trial set out in the CPC: (i) prohibition of denial of justice; (ii) equal treatment; (iii) the right to an adversarial trial; (iv) right of defence, (v) the principle of party-led conduct of litigation; (vi) good-faith; (vii) orality of the procedure, which requires all matters to be discussed in actual hearings (unless the parties expressly choose an entirely written procedure) and (viii) continuity of the tribunal.

In international arbitration, the parties may choose to waive the application of the CPC entirely or choose a foreign procedural law. In these cases, the arbitral tribunal is nonetheless held to assure an adversarial procedure and equal treatment of the parties.

28 Refusal to participate

What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration?

If the respondent who is duly summoned (15 days prior to the hearing as per the CPC) fails to attend the tribunal may nonetheless proceed with the arbitration. The court may set aside the award only if the party not in attendance is not duly summoned.

The arbitral tribunal may however adjourn the proceedings in case of the respondent's failure to submit the statement of defense. Also, the adjournment of a hearing may be granted in case the respondent presents grounded reasons as the arbitral institutions pay a particular attention to the respect of the adversarial principle and of the parties' right to defence.

29 Admissible evidence

What types of evidence are usually admitted, and how is evidence usually taken? Will the IBA Rules on the Taking of Evidence in International Arbitration generally be taken into account?

If the parties do not designate other rules of arbitration (by reference to the rules of an institution or otherwise) and unless the tribunal designates such rules (where given this capacity by the parties), the CPC provisions on the taking of evidence in arbitration would apply.

The types of evidence set forth by the CPC are: documents, witnesses, expert reports, information held by the public authorities and other types of evidence presented by the parties and admitted by the arbitral tribunal. Evidence is evaluated by the arbitrators according to their beliefs; there is no hierarchy of evidence.

Pursuant to the CPC, the arbitral tribunal has exclusive jurisdiction to decide on the usefulness, relevance and conclusiveness of the evidence proposed by the parties.

The evidence admitted by the arbitral tribunal shall be presented to the arbitral tribunal during hearings. The arbitral tribunal can order a party to produce the evidence it holds.

The IBA Rules on the Taking of Evidence in International Commercial Arbitration would apply if expressly agreed by the parties decided by the arbitral tribunal or referred to in the applicable rules of arbitration.

For instance, the current Rules of Arbitration of CCIR merely provide for the arbitral tribunal's right to apply the IBA Rules in international arbitrations provide the parties agree.

The Prague Rules enshrine a rather active role of the arbitrators in the administration of evidence, which may be unusual for Romanian parties and arbitrators.

Although the court's duty to (actively) find out the truth is equally part of Romanian rules governing civil trials procedure (for example the court's right to ask for additional explanations and to propose the evidence it finds necessary), this active role remains highly balanced by the parties' responsibility to submit evidence to the court and to prove their claims. It is in fact rare that a Romanian court proposes evidence on its own initiative, as a party might challenge its impartiality where the evidence benefits the other party.

In addition, article 2.4. paragraph e) of the Prague Rules regarding the arbitrators' possibility to indicate to the parties their preliminary views on relief sought, the disputed issues and the weight and relevance of evidence submitted by the parties is uncommon for the Romanian civil trial.

Although the arbitrators are not bound by the rules governing Romanian civil court trials, the fact remains that many arbitrations carried out by Romanian arbitrators and/or under the auspices of Romanian arbitration institutions are accustomed to such rules and remain prone thereto. This aspect is quite obvious in the practice of the main Romanian international arbitration institution.

For these reasons, it may be unlikely at this stage for the Prague Rules to be used by Romanian parties or arbitrators or to be referred to in the rules of Romanian arbitration courts.

30 Court assistance

Will the courts in your jurisdiction play any role in the obtaining of evidence?

The arbitral tribunal cannot use coercive measures or apply sanctions to witnesses or experts and cannot compel public authorities to present relevant documents. Such measures can be taken by the courts acting in accordance with the CPC upon request of a party or of the arbitral tribunal.

31 Document production

What is the relevant law and prevailing practice relating to document production in international arbitration in your jurisdiction?

Document production under Romanian law is rather restrictive. The only document production related provisions within the CPC allow a party claiming that the opposing side has written evidence that is relevant to the case to obtain a court order compelling the opposing side to produce it. However, the court is to deny the order under the following circumstances (which the court is to verify by excluding the evidence):

- the document relates to strictly personal matters about dignity or privacy of a person;
- the document production would violate a legal duty of confidentiality;
- the document production would determine the prosecution of the party, spouse or relatives or in-laws up to the third degree.

The party failing to produce the document as per the court's order may be fined and also be obliged to pay damages to the other party.

The court may refuse to order the document production to the opposing party also in either of the following cases: (i) if the document does not refer to both parties; (ii) if the opposing party itself did not refer to that document before the court or (iii) if the opposing party is not bound by law to present the document.

In any case, the above-referenced provisions of the CPC would not apply when the parties or the arbitral tribunal or the rules of arbitration of the relevant arbitration institution depart therefrom. In such cases, the document production would be handled as set out in the relevant arbitration rules established or adhered to by the parties or the tribunal, as the case may be.

32 Hearings

Is it mandatory to have a final hearing on the merits?

There are no legal provisions regarding a mandatory final hearing on the merits. Nonetheless, the arbitral tribunal must normally assure that the principles of orality (unless waived by the parties) and adversarial proceedings are fully observed. It is thus common practice to have a final hearing on the merits.

However, the new set of rules of CCIR for instance, expressly provide that hearings may be held by videoconference, telephone or any other similar communication means.

33 Seat or place of arbitration

If your jurisdiction is selected as the seat of arbitration, may hearings and procedural meetings be conducted elsewhere?

Yes, hearings and procedural meetings may be conducted elsewhere.

Award

34 Majority decisions

Can the tribunal decide by majority?

As per the CPC, the tribunal decides by majority.

In international arbitration, where the number of arbitrators is not always odd, if there is a tie, the opinion of the chairperson prevails.

35 Limitations to awards and relief

Are there any particular types of remedies or relief that an arbitral tribunal may not grant?

The arbitral tribunal may grant the same types of remedies or relief as a court of justice.

If the dispute is related to the transfer of immovable property or to establishing other real estate rights on immovable property, the award must be presented to the public notary or to the court in view of obtaining a notarised deed or a court decision authenticating the award.

36 Dissenting arbitrators

Are dissenting opinions permitted under the law of your jurisdiction? If so, are they common in practice?

Dissenting opinions are both permitted and common practice under Romanian law.

37 Formalities

What, if any, are the legal and formal requirements for a valid and enforceable award?

As per the CPC, the award must be in writing form and contain the following:

- the names of the arbitrators, the place and the date of the award;
- the name and address of the parties, the name of their counsels and other persons having attended the hearings;
- an indication of the relevant arbitration agreement;
- the object of the dispute and a summary of the parties' arguments;
- the factual and the legal grounds of the award; if the arbitration was decided in equity, the award should equally comprise the reasoning of the decision;
- the operative part of the award;
- the signatures of all arbitrators and the signature of the assistant arbitrator.

In addition, if the dispute is related to the transfer of immoveable property or to establishing other real estate rights on the immovable property, the award has to be presented before the public notary or before the court of justice who will render a notarised deed or a court decision authenticating the award.

After the award is sent to the parties, the award becomes final and enforceable.

38 Time frames

What time limits, if any, should parties be aware of in respect of an award? In particular, do any time limits govern the interpretation and correction of an award?

As per the CPC, the time limit to challenge the award is one month from receipt of the award, whilst the time limit to apply for the interpretation, correction or supplementation of the award is 10 days from the same date. The operative part of the award must be issued within 21 days from the closing of the debate, provided that the overall arbitration term (the six months set out by law

or other term agreed by the parties) is not exceeded (where a party has stated the intention to keep up with such term). The full award has to be issued within a month from issuing the operative part.

In international arbitration, the time limits mentioned above are double.

Costs and interest

39 Costs

Are parties able to recover fees paid and costs incurred? Does the "loser pays" rule generally apply in your jurisdiction?

As per the CPC, the parties are free to agree on allocation of costs.

In the absence of such an agreement, the loser pays rule generally applies in domestic arbitration. If the award only partially recognises one party's claims, the losing party will bear the costs pro rata to its in success.

In international arbitration, each party shall bear the costs for the appointed arbitrator and both parties shall equally bear the costs for the presiding arbitrator. Other costs allocation is not regulated for international arbitration; therefore it will be decided by the arbitral tribunal in accordance with the set of rules of the arbitration institution or with the CPC provisions for domestic arbitration.

40 Interest on the award

Can interest be included on the principal claim and costs? Is there any mandatory or customary rate?

The procedural law does not stipulate interest on the award. Whenever the substantive law is Romanian, interest can accrue (and be awarded if requested) on the principal claim.

Unless the parties have agreed otherwise, statutory interest rate is 6 per cent per year for the receivables arising from legal relationships with a foreign element, when payment is agreed in foreign currency.

In case of receivables arising from purely domestic relationships the statutory interest rate is equal to: (i) the National Bank of Romania reference interest rate plus 4 percentage points in cases where one of the party acts as a professional; (ii) the interest from point (i) is decreased by 20 per cent if no professional is party to the legal relationship; (iii) the National Bank of Romania reference interest rate plus 8 percentage points for relationships between professionals. The parties can agree different rates.

Challenging awards

41 Grounds for appeal

Are there any grounds on which an award may be appealed before the courts of your jurisdiction?

An award may not be appealed on the merits; but may be set aside for procedural grounds as observed at question 42.

42 Other grounds for challenge

Are there any other bases on which an award may be challenged, and if so what?

As per the CPC, an award may be set aside on the following grounds:

- the dispute was not arbitrable;
- the arbitral tribunal settled the dispute in lack of an arbitration agreement or based on a void or ineffective arbitral agreement;
- the arbitral tribunal was not constituted in accordance with the arbitration agreement;
- the party who absented the hearings has not been duly summoned;
- the award was rendered after the relevant time limit for the issuance thereof, where at least one party declared that it intended to make use of such time limit and the parties have not agreed otherwise;
- the arbitral tribunal ruled on what was not asked or awarded more than it was asked;
- the award does not contain the decision or the reasoning, the date and place of the award or the arbitrators' signatures;
- the arbitration award violates public order, morals or mandatory provisions of law;

- if, after the date of the award, the Constitutional Court ruled in favour of the unconstitutionality plea raised in the arbitration with respect to a law or a government ordinance relevant to the case.

43 Modifying an award

Is it open to the parties to exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

As per the CPC, the parties can waive their right to set aside the arbitral award only after the arbitral award is rendered.

Enforcement in your jurisdiction

44 Enforcement of set-aside awards

Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?

As per the CPC, the award is not to be enforced if the arbitral award is not binding on the parties or if it has been annulled or suspended by a competent authority of the state or under the law of the state that rendered the award.

45 Trends

What trends, if any, are suggested by recent enforcement decisions? What is the prevailing approach of the courts in this regard?

Romanian courts usually have a friendly arbitration approach that, in recognition and enforcement cases, translates into these being swiftly granted when legal conditions are met. At the same time however courts pay particular attention to statutory grounds requiring them to deny the recognition and enforcement and are very sensitive to the observance of the adversarial procedure and the protection of the right to defence.

Once the award has been delivered to the parties, it becomes binding and the parties can ask for its enforcement in the same conditions as for the enforcement of court of law decisions:

- when the award is issued by a national arbitral tribunal, the enforcement officer shall ask the court of law to endorse the forced execution through a fast non-contentious procedure;
- when the award is issued by a foreign arbitral tribunal, prior to notifying the enforcement officer, the party is to submit to the court of law a request for the recognition of the foreign award; the court shall analyse if the award meets the relevant condition for recognition, either based on the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or, where this is not applicable, based on the relevant provisions of the Civil Procedure Code (which contain similar conditions to those of the New York Convention).

Nonetheless, there have been isolated cases where the courts have wrongfully made use of provisions that only regulate the enforcement of court of law decisions and are not applicable to the enforcement of arbitral awards.

46 State immunity

To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

In international arbitration, a state or state entity cannot successfully raise a defence of state or sovereign immunity at the enforcement stage of an arbitral award after previously agreeing to arbitration.

In domestic arbitration, however, such defences may be successfully raised if CPC provisions regulating state entities capacity to stand arbitration are not observed.

Further considerations

47 Confidentiality

To what extent are arbitral proceedings in your jurisdiction confidential?

As per the CPC, arbitrators can be held liable for infringing the confidentiality obligation by disclosing or publishing arbitration information without the parties' permission. However, the CPC does not also stipulate the parties' confidentiality obligation.

The new Rules of CCIR expressly stipulate the confidentiality of the arbitration file, the confidentiality of the arbitral tribunal and of the CCIR staff and the obligation of obtaining the parties' agreement for publishing the entire award, and also stipulate that the parties are bound by confidentiality obligations

More detailed confidentiality wording could be inserted in the arbitration agreement.

48 Evidence and pleadings

What is the position relating to evidence produced and pleadings filed in the arbitration? Are these confidential? Is there any way that they might be relied on in other proceedings (whether arbitral or court proceedings)?

As mentioned above, the CPC is silent on the matter of the parties' confidentiality obligation and the extent thereof.

Therefore, unless agreed otherwise or bound by confidentiality obligations from other sources, parties might potentially disclose evidence produced and pleadings filed in the arbitration and they may also use the evidence thus obtained in other proceedings.

Moreover, the CPC provides that, in case the arbitration becomes obsolete (where the time limitation for issuing the award was exceeded and a party had declared from the outset the intention to stick to the limitation), the evidence may be used in a second arbitration.

49 Ethical codes

What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your jurisdiction?

Counsel's general ethics rules are thoroughly regulated under European and national statutes and by-laws regulating the legal profession, although not specifically for arbitration cases.

Arbitrators can be liable for certain matters of ethics, for gross negligence and for violating in bad faith their obligations as described in question 22, but there are no ethical codes specifically designed for arbitrators.

The IBA rules and guidelines may be occasionally referred to and enforced by parties or arbitrators acquainted with international arbitration practice.

50 Procedural expectations

Are there any particular procedural expectations or assumptions of which counsel or arbitrators participating in an international arbitration with its seat in your jurisdiction should be aware?

There are no significant procedural expectations or assumptions that cannot be found in the CPC. Hence, arbitrators and counsel should become acquainted with the arbitration related provisions of the CPC and specifics thereof.

51 Third-party funding

Is third-party funding permitted in your jurisdiction? If so, are there any rules governing its use?

The third-party funding is not expressly regulated under Romanian law, therefore there are no rules governing its use. There are, however, no obvious reasons or impediments to being permitted.

Alina Popescu

MPR Partners |
Maravela, Popescu & Roman

Founding partner of Maravela & Asociaţii and previously member of top-tier Romanian law firms, Alina has been at the forefront of some of the largest projects and transactions unfolded in Romania as well as of some of the most significant commercial and investment arbitrations involving Romanian counsels. She is highly experienced in commercial and contract law, competition and corporate matters as well as in mergers & acquisitions, having advised a broad range of high-profile private clients and multinational corporations in connection with the structuring and implementation of high-value investment projects in various sectors, as well as with respect to the successful closing and enforcement of intricate commercial and M&A transactions. In addition, she has significant expertise in international commercial and investment arbitration proceedings as well as enforcement and setting aside of arbitral awards. Alina holds an LLM degree in EU law awarded with distinction by Montesquieu Bordeaux IV University, France.

Alexandra Ichim

MPR Partners |
Maravela, Popescu & Roman

Alexandra is a specialist in dispute resolution related to commercial and contract law, intellectual property and corporate-related matters, including international and local arbitration and enforcement of arbitration awards. She holds an LLM in European and International Business Law and an LLB (Licence, DEUG), both awarded by French–Romanian Law College of European Studies, Paris I Pantheon–Sorbonne, France.

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Founded in 2013 by leading lawyers, Maravela & Asociații is an internationally recognised and repeatedly awarded Romanian law firm offering full services in legal, tax advisory and insolvency matters.

Maravela & Asociații was highly commended for European Law firm of the year Award and winner of the Law firm of the year: Eastern Europe and the Balkans Award during The Lawyer European Awards 2018, whilst winning, during The Lawyer European Awards 2017 the Law firm of the year: Romania Award. The firm owes its rapid development to several key features, such as flexible and user-friendly services of the firm coupled with an outstanding quality of service (as openly acknowledged by clients), its multidisciplinary approach and international reach, which enables it to handle the most complex projects, be they local or international.

Maravela & Asociații has been acknowledged as a leading law firm and its founding partners have been prompted as leading lawyers by many significant international legal directories and publications, including *Benchmark Litigation, Best Lawyers International, Chambers and Partners, IFLR 1000, The Legal 500, The Lawyer,* etc.

The firm's clients (among which are large multinational corporations, sound Romanian companies, private investors, public authorities and state companies) have consistently endorsed the quality of services provided, the flexible approach, responsiveness as well as a friendly working climate.

The firm's lawyers are contributing to international and national publications edited by prestigious organisations and publishing houses, such as the International Bar Association, World Bank and the IFC, Sweet & Maxwell, Global Legal Group, etc, and are constantly invited to speak at various professional conferences and events.

6A Barbu Delavrancea Street,
Building C,
Ground Floor,
1st District,
011355 Bucharest,
Romania
Phone: (40-21) 310 17 17
Fax: (40-21) 310 17 18

www.mprpartners.com

Alina Popescu
alina.popescu@mprpartners.com

Alexandra Ichim
alexandra.ichim@mprpartners.com