Complex Commercial Litigation 2021

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LEXOLOGY
Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the fourth edition of *Complex Commercial Litigation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Australia, Bermuda, China, Mexico, Portugal and Thailand.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Simon Bushell of Seladore Legal, for his continued assistance with this volume.

LEXOLOGY
Getting The Deal Through

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Romania

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BACKGROUND

Frequency of use

1 | How common is commercial litigation as a method of resolving high-value, complex disputes?

Commercial litigation is the most common method for resolving high-value, complex disputes in Romania.

Other means, such as commercial arbitration and mediation, are also used. Unfortunately, the mediation procedure, is rather seen as a loss of precious time before receivables can be recovered.

Arbitration, on the other hand, is used more commonly as a viable alternative to commercial litigation because it tends to shorten the amount of time before a dispute is decided. International Federation of Consulting Engineers contracts and other public acquisition contracts in the construction field are often subject to arbitration.

Litigation market

2 | Please describe the culture and 'market' for litigation. Do international parties regularly participate in disputes in the court system in your jurisdiction, or do the disputes typically tend to be regional?

Commercial litigation is commonly used to recover debts and terminate or amend agreements between parties. A prior attempt at amiable resolution is not imposed by law, and most parties submit claims after failed discussions, without seeking alternate dispute resolution beforehand.

The majority of disputes are regional. A tribunal in a major Romanian city (Bucharest aside) may register 10,000 new claims during a year. Out of these, the majority will be commercial in nature, and the vast majority will involve Romanian-based companies. It is, however, also common to see international parties and Romanian companies owned by foreign entities involved in litigation.

It is, however, common for international parties to contract regional legal representation and choose litigation before the courts for reasons of cost-efficiency.

Legal framework

3 | What is the legal framework governing commercial litigation? Is your jurisdiction subject to civil code or common law? What practical implications does this have?

Commercial litigation is generally governed by the Civil Code and the Civil Procedure Code, as well as certain special legislative norms (such as those regarding banking and finance, insolvency, insurance and others, depending on the field of activity of the involved parties).

The Romanian jurisdiction is subject to civil code law, which leads to a thorough regulation of the conditions to be met for submitting a claim, as well as for the object of a claim.

Judicial precedent can only serve as an additional argument to persuade judges to interpret the applicable legislation or the facts of a case in a certain manner, but essentially the court rules in the letter and spirit of the law.

BRINGING A CLAIM - INITIAL CONSIDERATIONS

Key issues to consider

4 | What key issues should a party consider before bringing a claim?

The most important issues to be considered by the parties are as follows:

- whether the claim has met the statute of limitations;
- whether the object of the claim can be attained by means of litigation;
- whether the available evidence supports the claim and if there is a chance that the opposing party might disprove said evidence;
- whether, should the claim be admitted, the object of the claim is enforceable; and
- whether the claim is cost-efficient.

Establishing jurisdiction

5 | How is jurisdiction established?

Jurisdiction is established expressly by the Civil Procedure Code as well as international legislation such as Regulation (EU) No. 1215/2012 of the European Parliament and the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Territorial as well as hierarchical jurisdiction is based on a few key elements, such as:

- the parties; as a rule, in commercial litigation territorial jurisdiction is determined according to the headquarters of the defendant; the parties can, however, agree on a distinct jurisdiction, in which case the competent court will be the one chosen by the parties;
- the value of the claim; claims with a value of over approximately €41,000 are judged by the tribunal (the relevant county court) as a first instance court; and
- the object of the claim; claims concerning immovable property, insolvency, corporate matters or consumer rights are subject to special jurisdictional norms.

Parties may agree upon jurisdiction outside Romania, but they would have to prove before the Romanian judge that there is a sufficient link between the object of the case and the parties on one side, and the foreign country where the desired court is located on the other.

Jurisdiction is verified by the court, ex officio, at the first hearing. Parties may also raise procedural pleas regarding jurisdiction via the memorials that they submit before the first hearing or directly in the oral debates of the first hearing.

Preclusion

6 | Res judicata: is preclusion applicable, and if so how?

Yes, preclusion is applicable in the sense that a claim concerning the same parties, object and cause as a previously judged claim will be rejected by the courts on the grounds of res judicata.

Applicability of foreign laws

7 | In what circumstances will the courts apply foreign laws to determine issues being litigated before them?

According to the Romanian Constitution, EU regulations and the provisions of international treaties to which Romania is party are considered national law and applied directly by the courts.

The Romanian courts can apply foreign law should the object of the case or the parties have strong ties with another country and the parties have agreed such in their contract. In cases where the judgment is to be rendered in accordance with foreign law, the party invoking the said law must prove its content by presenting relevant documents (translated and apostilled) from the authorities of the respective country.

Foreign law may be invoked only when it is applicable according to the provisions of the Civil Code.

Initial steps

8 | What initial steps should a claimant consider to ensure that any eventual judgment is satisfied? Can a defendant take steps to make themselves 'judgment proof'?

The first and most important step to ensure that any claim will be satisfied is a well-drafted agreement that states all the rights and obligations of the parties as well as the guarantees set forth in cases of non-compliance. Unclear clauses may lead to faulty judgments.

Another important step is to retain firm evidence of documents and correspondence circulated between the parties to ensure that, should there be the case for litigation, evidence will be readily available. It is also advisable that the claimant seek guarantees from the defendant debtor (mortgages or pledges over the debtor's assets) that will be registered in public records and thus become opposable to any future buyer of the assets.

To ensure that the goods are not sold during the litigation and can be later liquidated to cover the debt, the claimant can also require the freezing of the defendant's assets. The freezing order is issued by the court and may also be applied to the object of the litigation, should it be immovable property or wares.

To reduce the potential grounds for litigation, parties are also free to limit their accountability, but such clauses cannot alleviate their liability in the case of fraud or malicious intent.

Freezing assets

9 | When is it appropriate for a claimant to consider obtaining an order freezing a defendant's assets? What are the preconditions and other considerations?

The claimant can request the freezing of the defendant's assets whenever there is a reasonable risk for the debtor's assets to be sold before the judgment is finalised.

For the court to freeze the defendant's assets, a claim regarding the merits must already be registered with the court and, in general, a security deposit is necessary. In some cases, this deposit may reach half of the amount sought via the claim on the merits.

Pre-action conduct requirements

10 | Are there requirements for pre-action conduct and what are the consequences of non-compliance?

No pre-action conduct is necessary in the case of complex commercial litigation. Should the parties try debt recovery through special procedures (such as a fast-track claim), a prior notification is mandatory. Should the notification not be sent out prior to initiating the fast-track claim, the claim will be rejected as inadmissible.

In other words, the fast-track procedure is used when commercial litigation lacks elements of complexity that require the administration of multiple evidence such as witness testimony and technical expertise.

Other interim relief

11 | What other forms of interim relief can be sought?

The parties can try to reach a settlement prior to filing claims before the courts.

Depending on the object of the case, the claimant might also obtain various interim measures from the court via the special procedure of an injunction. For instance, the judge may issue an injunction stating that the defendant will refrain for a period of time from actions allegedly hurting the claimant's business.

Alternative dispute resolution

12 | Does the court require or expect parties to engage in ADR at the pre-action stage or later in the case? What are the consequences of failing to engage in ADR at these stages?

The current legislation does not provide an obligation to engage in ADR before or during litigation.

Claims against natural persons versus corporations

13 | Are there different considerations for claims against natural persons as opposed to corporations?

There are no special procedural regulations tailored specifically for natural persons or for corporations. In a commercial litigation, the natural persons receive the same rights and protection as the corporation. There are of course small differences deriving from the nature of the two. For instance, in the case of cross examination, the natural person will be present before the judge to answer questions, while a corporation will reply in writing (considering it has various executives that together make corporate decisions and know the full facts).

Class actions

14 | Are any of the considerations different for class actions, multiparty or group litigations?

No, there are no different considerations for class actions, multi-party or group litigations. The same norms apply regardless of the number of parties or their shared interest. If the number of parties is considered high enough to negatively influence the proceedings, the court can ask all parties who share the same interest to agree upon common representatives.

Third-party funding

15 | What restrictions are there on third parties funding the costs of the litigation or agreeing to pay adverse costs?

In accordance with Romanian law, payment of the cost of litigation made by a third party in the interest of one of the parties in a trial is accepted as long as the destination of the amounts and the intent are clear.

Contingency fee arrangements

16 Can lawyers act on a contingency fee basis? What options are available? What issues should be considered before entering into an arrangement of this nature?

Contingency fees are not allowed if the entire payment of the legal services is based on a favourable outcome of the litigation (quota litis pact).

Success fees are, however, allowed as long as they are agreed upon between the parties as a supplement to hourly fees or cap fees. The lawyer and the client are free to settle on any combination of hourly fees, cap fees and success fees, except for exclusive contingency fees.

THE CLAIM

Launching claims

17 How are claims launched? How are the written pleadings structured, and how long do they tend to be? What documents need to be appended to the pleading?

Claims are launched by submitting the written document before the court either before the register or by post, email or fax. There is no mandatory structure or length for the initial claim, but the document must include the following elements:

- the parties (names and all available data, especially the addresses and identification numbers for both companies as well as natural persons);
- the object of the claim (what the claimant aims to obtain by means of litigation);
- the grounds (in fact and in law) on which the claim should be admitted;
- evidence that is to be administered to prove the allegations of the claimant; and
- the signature of the claimant.

There is no limit to how long or short the pleadings are, but in general, depending on the complexity of the claim, the most common length is around six to eight pages.

In the event the amount in dispute is very low, there is a special procedure whereby the court provides a particular form for the claimant to fill in.

Serving claims on foreign parties

18 How are claims served on foreign parties?

The courts use the postal service to serve claims on the parties. The same method is used for foreign parties. Depending on the country the foreign party is headquartered in, the claim may be sent to the foreign court from the domicile or headquarters of the party and served in accordance with local procedure. Eventually a court may decide to appoint a curator for a defendant that is domiciled abroad and serve the defendant via media coverage and publicity at the courthouse in order to carry on with the proceeding.

Key causes of action

19 What are the key causes of action that typically arise in commercial litigation?

The most common causes of action that typically arise in commercial litigation are failure to execute the main obligation under the agreement (usually payment); other breaches of the agreement between the parties; or annulment of the agreement (in whole or certain clauses).

Claim amendments

20 Under what circumstances can amendments to claims be made?

Any amendments to the claim can be made before the first hearing when all parties are legally summoned. If such is the case, the court will serve the amended claim on the defendant so that it may defend itself against the new arguments.

After the first hearing, the claimant can amend its claim with the consent of the defendant, or if the amendment concerns aspects that do not modify the core of the claim, the amendment will be discussed by the parties. Amendments regarding the quantum of the amount in dispute can be made at any time during the trial.

Remedies

21 What remedies are available to a claimant in your jurisdiction?

A ruling issued by a court in a complex commercial litigation is subject to appeal and second appeal. The appeal can subject any and all arguments before a higher court, as it triggers a retrial under all aspects (provided that the appellants want that).

The second appeal focuses on matters of procedure or wrongful interpretation of the law.

Under certain very special conditions, a ruling issued in the second appeal may be subject to further revision (but only for limited reasons).

Recoverable damages

22 What damages are recoverable? Are there any particular rules on damages that might make this jurisdiction more favourable than others?

The courts will award any damages requested by the claimant through the claim such as delay penalties, damages for loss or reasonably expected profits or damages for lack of usage.

If requested expressly, the court will also award judicial expenses. These expenses, however, can be reduced by the court as it deems fit. Judicial stamp fees cannot be reduced and will be awarded in full.

RESPONDING TO THE CLAIM

Early steps available

23 What steps are open to a defendant in the early part of a case?

Once the court verifies the claim and considers all legal provisions are met, the document will be served on the defendant, who then has 25 days to draft and submit a statement of defence.

The statement of defence must include all arguments in favour of the defendant, such as:

- procedural incidents (lack of jurisdiction, lack of legal standing, inadmissibility);
- the legal and factual reasons for which the claim is ungrounded;
- possible third parties that should be part of the litigation; and
- evidence in support of the counterarguments.

The defendant could file a counterclaim together with the statement of defence either as part of the document or as a separate document. The counterclaim must respect the legal conditions for a main claim.

The defendant also has the option to make his or her counterclaim a separate claim before the same court.

Defence structure

24 | How are defences structured, and must they be served within any time limits? What documents need to be appended to the defence?

There are no legal provisions regarding the structure of the statement of defence, but the document should:
- be submitted within the 25-day legal limit (the term may vary in cases where a special procedure is chosen);
- evoke all applicable procedural incidents; and
- submit appended all referred-to evidence or, in the event that the evidence must be produced during trial, then the defendant should present in his or her statement of defence the arguments that support the admission of such evidence.

Changing defence

25 | Under what circumstances may a defendant change a defence at a later stage in the proceedings?

Should the claimant amend the claim, the defendant will have the possibility to change its defence accordingly. However, a radical change in arguments could lead to a lack of credibility before the court. Usually, deep changes in defence happen when new documents are discovered during litigation.

Sharing liability

26 | How can a defendant establish the passing on or sharing of liability?

The defendant must raise the issues of passing on or sharing liability in the statement of defence, or if such issues arise during the trial, at the moment they are evoked by other parties.

Avoiding trial

27 | How can a defendant avoid trial?

All defences for avoiding trial, including motions to dismiss, counterclaims and procedural incidents, must be presented within the statement of defence. Once the trial begins, the court will discuss any procedural incidents that may lead to the dismissal of the claim without ruling on the merits.

The parties are free to settle at any time during the litigation.

Case of no defence

28 | What happens in the case of a no-show or if no defence is offered?

Even in the absence of a statement of defence, the court will analyse the available evidence to render a solution. Except for certain special procedures, a lack of defence is not considered a recognition of the claimant's claim. However, in the case of no defence, the court will judge based solely on the evidence provided by the claimant and the applicable legislation.

Claiming security

29 | Can a defendant claim security for costs? If so, what form of security can be provided?

Security can be granted in limited cases and usually in relation to the object of the claim. For instance, a party claiming the insolvency of another may be compelled to provide a security.

Costs will be covered subsequently by the losing party.

PROGRESSING THE CASE

Typical procedural steps

30 | What is the typical sequence of procedural steps in commercial litigation in this country?

The typical sequence of procedural steps in commercial litigation is as follows:
- the claim is submitted;
- the defendant files a statement of defence against the claim;
- the claimant may submit a response to the statement of defence, which is not mandatory;
- during the first hearing, procedural aspects such as jurisdiction are discussed, as well as procedural incidents;
- should all procedural incidents be rejected, or in cases where there are no incidents, the evidence is discussed then administered;
- several hearings can be granted to administer and debate all evidence (documents, expert reports, witnesses or interrogation);
- once all evidence has been administered, the parties will argue on the merits of the case;
- the court will rule after analysing all evidence and the arguments of the parties;
- once the solution is rendered, the parties may appeal the decision.

Bringing in additional parties

31 | Can additional parties be brought into a case after commencement?

Yes, additional parties may be introduced into a pending litigation at the request of the initial parties, third parties' joinder or if the court deems it necessary.

Consolidating proceedings

32 | Can proceedings be consolidated or split?

The Civil Procedure Code allows both the split and the consolidation of claims. Should two different litigation files have the same parties or the same parties together with other parties and hold important ties in terms of object and cause, then the files may be joined.

If there are different claims between the same parties in the initial request filed before the court and one or some of them are delaying the resolution, the court can also split the claims.

Court decision making

33 | How does a court decide if the claims or allegations are proven? What are the elements required to find in favour, and what is the burden of proof?

The court will decide based on the granted evidence after hearing the parties in the debates. Should the evidence be concise and explanatory for the claimant, the court will rule in its favour.

The principle regarding the burden of proof is that the party who makes an allegation must offer proof of the same.

The judge will fix an hour for delivering the ruling in the courtroom. If the ruling cannot be established on the same day, the judges may postpone the same for one or two weeks. In this case, the ruling is available on the court website, or on the touch screens available at the court or at the archive department. Drafting of the reasoning should take 30 days according to the legislation. Due to the courts' workload, it generally takes three to four months. The ruling is sent to the parties via the post office, and rarely, also via email.

34 How does a court decide what judgments, remedies and orders it will issue?

The decision of the court will be based on the administered evidence and on its understanding of the case. The remedies and orders will be issued in accordance with the applicable law and the principles of equity in cases where the legal provisions leave room for interpretation. The judges will have to decide on all aspects, including the amount of damages. However, they can rely on expertise performed during the trial.

Evidence

35 How is witness, documentary and expert evidence dealt with?

As a rule, documentary evidence will be submitted together with the claim and the statement of defence. Additional documentary evidence is allowed if it is conclusive for the case and the party provides convincing arguments that the said evidence could not have been provided earlier.

Witnesses are usually heard in a separate hearing, and their testimony is written in the minutes of the hearing.

In cases where an expert report is necessary, the parties will either agree on an expert, or the same will be appointed randomly by the court. The expert's advice will be compiled in a written report that will be submitted to the case file. Usually, the parties will be convened outside the court to take part in the expertise examination.

Given that all evidence is ultimately recorded in writing, there are no advantages or disadvantages to oral evidence as opposed to documentary evidence.

Parties can, however, create a tactical advantage by requesting that evidence be administered in a certain order.

The Civil Procedure Code does not provide a hierarchy of evidence, so the judge is free to decide which piece of evidence is most convincing. The decision must be well argued in the reasoning of the ruling. In practice, the court tends to put high stock on expert reports as opposed to witness testimony.

36 How does the court deal with large volumes of commercial or technical evidence?

The courts will appoint an expert who will draft a report compiling large volumes of evidence. The court will then take into account the results of the report when ruling on the merits of the case. However, all evidence will also be submitted for direct examination of the judge.

37 Can a witness in your jurisdiction be compelled to give evidence in or to a foreign court? And can a court in your jurisdiction compel a foreign witness to give evidence?

Testimony before a foreign court will be given in accordance with the procedural rules of the foreign country in questions. There are no specific regulations issued in Romania on this aspect.

There are no rules specific for foreign witnesses to give testimony in Romania. The Romanian court cannot compel a foreign witness to give testimony in a commercial litigation.

38 How is witness and documentary evidence tested up to and during trial? Is cross-examination permitted?

All evidence will be analysed by the court directly. The judge is free to assess every piece of evidence and decide its relevance. The evidence submitted by the claimant is analysed in conjunction with the evidence of the defendant.

Cross-examination is permitted as well as testimonies and expert reports. Witnesses may be confronted and heard again if their previous testimonies contradict. With respect to expert reports, in the event that an initial report is objected by the parties or is found inconclusive, the court may order a new report to be provided by a different expert.

Time frame

39 How long do the proceedings typically last, and in what circumstances can they be expedited?

Depending on the complexity of the case and the evidence administered, proceedings can last between six months and several years. In cases where judicial expertise is administered, the duration of the trial is dependent on the timeline of the expertise.

In practice, litigation that involves complex expert reports takes the longest to finalise, while the quickest rely solely on documentary evidence.

The trial can be expedited when a special fast-track procedure is used or if the parties request a swift trial.

The hearings are usually set one month apart.

Normally a complex case can take up to two years to be decided in a first instance court and in the appeal phase (thus providing an enforceable ruling). A second appeal may be filed, but it usually takes a year or one-and-a-half years to be solved, due to the workload of the Supreme Court, which usually settles appeals in commercial litigation.

Gaining an advantage

40 What other steps can a party take during proceedings to achieve tactical advantage in a case?

A tactical advantage in the proceedings can be achieved by selectively disclosing information and surprising the opponent. It is important, especially in complex cases, to submit several written notes to outline key issues.

As the trial progresses, the details of the case can be fine-tuned with simple, comprehensive and powerful conclusions to be submitted in the end stages of the litigation.

Once the claim is submitted, parts of it cannot be subject to separate judgment before a different court unless the claim is split.

Impact of third-party funding

41 If third parties are able to fund the costs of the litigation and pay adverse costs, what impact can this have on the case?

Funding by third parties has no influence on the trial.

Impact of technology

42 What impact is technology having on complex commercial litigation in your jurisdiction?

As a rule, all evidence is administered in court before the judge. Technology is used to record the debates and analyse evidence when necessary. Video testimonies or interviews are not permitted, and all relevant communications, including telephone calls, are recorded on paper. Video conferencing might be used in cases of a rogatory commission.

Case materials are available electronically exclusively to the parties, but only in certain counties, on a password basis. The electronic programme is being expanded nationwide.

Parallel proceedings

43 | How are parallel proceedings dealt with? What steps can a party take to gain a tactical advantage in these circumstances, and may a party bring private prosecutions?

All litigation that does not have a criminal basis is judged, in general, according to the Civil Procedure Code. In some areas such as insolvency, administrative litigation, felonies or consumer rights, special procedural rules apply.

The same matter cannot be settled in parallel procedures, since only one court is competent to rule.

Criminal proceedings follow the Criminal Procedure Code. Should a criminal proceeding and a commercial one overlap, the commercial litigation will be stayed until the criminal litigation is finalised.

Private prosecutions before the court are not permitted. The parties can, however, file criminal claims before the public prosecutor, who will investigate the case.

TRIAL

Trial conduct

44 | How is the trial conducted for common types of commercial litigation? How long does the trial typically last?

The trial is conducted before the court with the parties discussing every aspect of the case. Once all evidence has been administered, the parties debate on the merits. In major cities, there are about 20 to 30 cases per hearing in the same courtroom. Any interested person may assist to the hearing. Phones must be put on silent, no pictures or videos are permitted, and parties and lawyers are obliged to stand and approach a designated desk to argue.

The duration of a case is reliant upon the complexity of the evidence and can vary between six months and several years. Normally a complex case can take up to two years to be decided in a first instance court and in the appeal phase (thus providing an enforceable ruling). The second appeal may be filed, but it usually takes a year or a-year-and-a-half to be solved due to the workload of the Supreme Court, competent to role second appeals.

Use of juries

45 | Are jury trials the norm, and can they be denied?

Juries are not involved in our jurisdiction, embracing the Romano-Germanic legal system. The court rules exclusively on the applicable legal provisions and the granted evidence.

Confidentiality

46 | How is confidentiality treated? Can all evidence be publicly accessed? How can sensitive commercial information be protected? Is public access granted to the courts?

The documents in the case file are only available to the parties and their representatives. Even if a hearing is public and anyone can attend the debates, foreign persons are not allowed to view the file. Should issues of commercial secrecy be involved, the parties can request that the hearing be held in the council room, privately.

Media interest

47 | How is media interest dealt with? Is the media ever ordered not to report on certain information?

The media are typically not allowed in courtrooms. All information is obtained outside the courtroom by means of declarations. The media have no access to the files. The judge may rarely authorise the press to record inside the courtroom.

Proving claims

48 | How are monetary claims valued and proved?

Monetary claims are initially valued by the parties. Should there be an inconsistency, the court can appoint an expert to determine the value of the claim.

The damages are also preliminary valued by the parties. If the valuation is not expressly mentioned or easily determined, an expert can be appointed by the court.

POST-TRIAL

Costs

49 | How does the court deal with costs? What is the typical structure and length of judgments in complex commercial cases, and are they publicly accessible?

If so requested, the court will order that the losing side pay the judicial expenses of the winning side. The amount of the expenses granted is, however, proportionally with the amount of the granted claim (for instance, if only half the claim is won, the legal expenses will be cut accordingly).

The value of the judicial expenses will be determined using the documents submitted by the parties, the complexity of the case and the percentage that each party has gained (or lost).

The court has the right to reduce certain unreasonably high judicial costs, such as lawyers' fees, expert fees and travel expenses, which is also a trend. Judicial stamp fees, travel costs, translation costs and so forth are awarded in full.

Given that a judicial stamp fee is required for the submission of a claim, the courts themselves have their costs covered.

Judgments have a predefined structure provided by law:

- an introductory part focusing on the facts and the allegations of the parties;
- the reasoning, which shows the arguments retained by the court; the reasoning is the basis for the solution; and
- the ruling, which contains the court's solution.

Judgments are available in their entirety, with certain aspects redacted, on specialised websites or legislation software.

A ruling in a complex commercial case generally runs to between 10 and 15 pages.

Appeals

50 | When can judgments be appealed? How many stages of appeal are there and how long do appeals tend to last?

Judgments can be appealed within 30 days as of decision's communication date. Judgments are usually subject to appeal and second appeal. The duration of each stage depends on the granted evidence.

Generally, the appeal and second appeal will last approximately one year each, depending on the court and the evidence. As a rule, no additional evidence besides additional documentary evidence is allowed in the second appeal.

Enforceability

51 | How enforceable internationally are judgments from the courts in your jurisdiction?

Romania is a party to multiple international treaties and conventions such as:

- the Lugano Convention on Jurisdiction and the Recognition of Enforcement of Judgments in Civil and Commercial Matters of 1 January 2010;
- the Hague Convention on Civil Procedure concluded on 1 March 1954;
- the Hague Convention on the Choice of Courts Agreements, concluded on 30 June 2005; and
- the Geneva Convention on the Contract of International Carriage of Goods by Road, concluded on 19 May 1956.

In addition, Romania has concluded approximately 17 bilateral treaties on the recognition and enforcement of judgments with other countries, including Albania, Algeria, Russia, China and Cuba.

As a result, the Romanian courts' decisions are easily enforceable internationally.

52 | How do the courts in your jurisdiction support the process of enforcing foreign judgments?

For a foreign judgment to be enforced in Romania, recognition of the same is necessary. Once recognition is attained, the court will allow the enforcement and the foreign judgment becomes an enforceable title.

The recognition of a foreign judgment as well as the request for enforcement will be granted by the court.

Mention should be made that the recognition procedure for foreign judgments is rather complex if there is no treaty signed with the state where the ruling is issued. This happens because the parties are summoned, and the ruling of a first instance court is subject to an appeal. Normally, even if there is no treaty, the Romanian legislation states that reciprocity in terms of mutual recognition of a ruling is presumed. Debtors, however, can argue that such reciprocity is not met.

Once the enforceable title is obtained, the forced execution will proceed in accordance with Romanian law. The courts will also rule on any challenges against the enforcement.

OTHER CONSIDERATIONS

Interesting features

53 | Are there any particularly interesting features or tactical advantages of litigating in this country not addressed in any of the previous questions?

No, commercial litigation is subjected to the common procedure. Special procedures are not often used in complex litigation due to their limitation of the evidence that can be administered.

In the case of easy debt recovery relying solely on documentary evidence, parties may opt for the fast-track procedure, which is a swifter procedure and has a capped judicial stamp fee.

Jurisdictional disadvantages

54 | Are there any particular disadvantages of litigating in your jurisdiction, whether procedural or pragmatic?

The general disadvantages of the procedure are as follows:

- it is lengthy due to the courts' workload;
- modern means of administering evidence are not used as much as the already-existing technology.

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Special considerations

55 | Are there special considerations to be taken into account when defending a claim in your jurisdiction, that have not been addressed in the previous questions?

Defendants must make sure to include all their arguments and claims in their statement of defence to ensure their procedural rights are preserved.

UPDATES AND TRENDS

Key developments of the past year

56 | What were the key cases, decisions, judgments and policy and legislative developments of the past year?

The Supreme Court issued the Decision No. 9/30.03.2020, allowing news means of evidence to be proposed by the parties directly in the appeal, namely means of evidence that have not been proposed and granted by the first instance court or which have been tardily proposed.

Coronavirus

57 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The emergency legislative provisions relevant for commercial litigation, implemented to address the pandemic, were included in Decree No. 195/2020 on the declaration of the state of emergency on the territory of Romania, Decree No. 240/2020 on the extension of the state of emergency on the territory of Romania and Law 55/2020 regarding measures to prevent and combat the effects of the COVID-19 pandemic.

During the state of emergency, the ongoing and not urgent commercial cases were suspended. Appeal terms running during the state of emergency were interrupted.

After the state of emergency ended, the judgement of the cases was resumed. The courts instituted several safety and social distancing measures, to ensure that their activity is carried out in a safe and sanitary environment.

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