

## Chapter 19

# Litigation and arbitration

## 1. General

The legal provisions concerning the settlement of civil and commercial litigation in Romania, included in the Civil Procedure Code, were recently amended by Emergency Government Ordinance No. 51 of April 21<sup>st</sup>, 2008, in view of transposing the Directive 2003/8/CE of the European Union Council regarding the improvement of access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

The main objectives targeted by the latest amendments were as follows: continuing reform of the judicial system, harmonization of the regulations in the field with those of the EU member states (especially the Roman-Germanic legal system), increased efficiency in lawsuits settlement, saving time and money for the citizens addressing justice, simplifying and accelerating the forced execution procedure.

Notwithstanding the efforts and accomplishments mentioned above, the Romanian legal system still encounters some difficulties in managing an impressive number of cases, which often impedes their settlement in an expedite and efficient manner.

Under these circumstances, in Romania, as well as internationally, arbitration appears as a viable alternative to State justice, particularly adapted to disputes between corporate entities, and often preferred by the business environment, considering the remarkable advantages it offers: arbitrators' experience in business law and international economic relations; confidentiality - the sessions are not open to public, nobody has access to information related to the Court's and arbitral tribunal's activity in solving the dispute; efficiency - the procedures should be finalized in 5 months after the set up of the arbitral tribunal, only 2 months extension being allowed at the initiative of the arbitral tribunal. In commercial litigation, these terms are doubled; the arbitral award may be enforced in the same conditions as a court decision.

## 2. Main regulations

- The Constitution of Romania of 1991 as revised by Law no. 429 of October 29, 2003;
- The Civil Procedure Code, as amended and supplemented to date;
- Law no. 304/2004 on judicial organization, as subsequently amended and supplemented;
- Law no. 554/2004 on administrative litigation, as subsequently amended and supplemented;
- Law no. 146/1997, as republished, concerning judicial stamp duties;
- Government Ordinance no. 5/2001 regarding the payment summons;

- Emergency Government Ordinance no. 119/2007 regarding the measures for combating the late payment in commercial contracts;
- Law no. 188/2000 concerning the court bailiff, as subsequently amended and supplemented;
- Law no. 335/2007 concerning the chambers of commerce and industry of Romania;
- Law no. 105/1992 on private international law relationships;
- Emergency Government Ordinance no. 119/2006 regarding necessary measures for applying certain community regulations as of the date of Romania's accession to the European Union;
- Regulation (CE) no. 1393/2007 of the European Parliament and Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000 – applicable starting to November 13, 2008;
- Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure;
- Regulation of arbitral procedures approved by the College of the International Commercial Arbitration Court attached to the Chamber of Commerce and Industry of Romania on January 15, 2008 as amended on February 27, 2008.

Rules on arbitral procedure approved by the College of the Arbitration Court on April 18, 2008.

### **3. Organization and Functioning of the Judicial System**

#### **3.1. Structure, Composition of the Panels of Judges and Competence of the Courts of Law**

##### **3.1.1. Structure of the Courts of Law**

The Romanian judicial system is structured on local courts (*judecatorii*), county courts (*tribunale*), appeal courts/regional courts (*curti de apel*) and the High Court of Cassation and Justice.

For criminal matters there are also military courts. The local courts function in several towns in each county, the county courts in the county capital, and the existing 15 courts of appeal have jurisdiction over regions including 2 to 4 tribunals, except for the Bucharest Court of Appeal which has 5 county courts in its jurisdiction.

Although, according to law, the Ilfov Tribunal should have jurisdiction over Ilfov County, such tribunal has not been formed yet, the lawsuits in its competence being currently judged by Bucharest Tribunal.

### 3.1.2. Composition of the panel of judges

The present system concerning the composition of the panel of judges is a mixed one, adopted since 1997, namely a sole judge for files heard in the first instance, two judges in the causes judged in first appeal and three judges in last appeal.

There are two exceptions to the rule that in the first instance the cases are heard by only one judge, i.e. lawsuits concerning labor conflicts and those concerning social insurance, when the panel consists of two judges.

Mention should be made that, in case of labor conflicts, the panel of judges also contains, beside the two judges, two so-called consultant-magistrates, representing the trade unions and the employers. Such consultant-magistrates enjoy mere consulting role in the lawsuit.

In the near future it is contemplated to revert to the collegial system before 1997, namely two judges in the first instance and three judges in appeal and second appeal. The arguments in favor of this system refer to a better judgment, due to the exchange of ideas between judges at the time of deliberation, and thus ensuring judges impartiality to a higher extent.

At the High Court of Cassation and Justice level, besides the panel of judges of the sections, composed of three judges, at the level of the whole Court a panel of nine judges may be formed. Also, in certain cases, the Court may judge in United Sections.

There is no jury, neither in civil, nor in criminal cases.

Each of the courts in the courts of law system act as courts of first instance in certain criminal matters, depending on their jurisdiction.

### 3.1.3. Jurisdiction

Court jurisdiction concerns the separation of the power to settle various causes, on one hand between courts of different ranks, and on the other hand between courts of same rank.

In the first case, the issue is about the jurisdiction on the case substance, while in the second case, about territorial jurisdiction.

### 3.1.4. Material Jurisdiction of the Local Courts

As first instance courts, the local courts have full jurisdiction over civil and criminal matters, namely they hear all disputes that are not given by law in the jurisdiction of other courts. However, the investigation of the major crimes is assigned to higher courts, while the local courts deal with offences considered less serious.

Also, the local courts settle the complaints against decisions of public authorities having jurisdictional activities and against other institutions with such activities. For example, this category includes complaints against misdemeanor minutes or complaints against the decisions of the committees applying the Land Law.

Local courts settle also commercial cases involving claims up to RON 100,000 and civil claims up to RON 500,000.

### 3.1.5. Material Jurisdiction of the County Courts / Tribunals

The county courts are divided in specialized sections, dealing with civil, commercial, criminal, administrative and labor and social security matters. There is also a specialized section for bankruptcy cases.

The following categories of cases are the most important in the jurisdiction of the county courts, to be heard in the first instance:

- (i) commercial lawsuits which object is not financially assessable or have a value over RON 100,000, including bankruptcy applications;
- (ii) civil lawsuits having a value over RON 500,000, except for petitions whose object is not financially assessable, petitions regarding inheritances, property right over the lands, etc;
- (iii) copyright, trademarks and industrial property disputes;
- (iv) labor conflicts and social insurance disputes;
- (v) administrative litigation, except for those given by law to the jurisdiction of other courts;
- (vi) lawsuits regarding the expropriation;
- (vii) requests regarding the approval, nullity or cancelation of the adoption;
- (viii) requests regarding the damages caused by judicial errors in criminal lawsuits;
- (ix) requests of recognition and enforcement in Romania of the judicial or arbitral decisions given in other countries.

As courts of judicial control, county courts settle appeals filed against the awards passed by the local courts in the first instance, as well as the second appeals filed against the awards of the local courts and that are not subject to appeal.

In maritime matters a special jurisdiction is given by law to the County courts of Galati and Constanta, as well as to the Tribunal of Bucharest concerning certain industrial property disputes.

As first instance courts in criminal matters, the county courts settle several important crimes. As courts of judicial control, the county courts judge the appeals filed against the awards passed by the local courts (except the crimes indicated by the Criminal Code and for which the criminal proceedings are initiated further to a prior criminal complaint filed by the relevant person. The county courts also judges the second appeal filed against the awards passed by the local courts in cases where the criminal proceedings are not initiated further to a prior criminal complaint.

Additionally, the county courts solve the competence conflicts occurred between the local courts.

### **3.1.6. Material jurisdiction of appeal courts/regional courts**

In the first instance, the appeal courts/regional courts settle the administrative lawsuits regarding the acts issued by the State's central authorities and institutions.

As courts of judicial control, the courts of appeal settle the appeals filed against the decisions rendered by county courts in the first instance, the second appeals filed against the decisions rendered by the county courts in appeal, the second appeals against those decisions of the county courts not appealable as well as in other cases indicated by law.

In criminal matters, the regional courts settle, as first instance court, the offences to the security of state, crimes against peace and humanity and offences committed by high officials such as judges at the local and county courts. The regional courts settle the first-degree and the second appeals against the decisions given by the county courts. Also, such courts settle

the conflicts of competence between the county courts and petitions regarding the extradition.

### 3.1.7. High Court of Cassation and Justice

The High Court of Cassation and Justice is divided in four sections, i.e. criminal, civil, commercial and administrative.

According to the regulations of the Civil Procedure Code, the High Court judges the second appeals filed against the decisions given by the regional courts/courts of appeal and against other decisions specifically provided by the law the second appeals in the interest of the law and other cases indicated by law.

Judges at the High Court of Justice sit in panels of three. For some cases of exceptional importance, the judges sit in a panel of nine and for other important cases they sit *en banc*.

In criminal matters, the High Court of Cassation and Justice acts as first instance court in case of offences committed by high officials such as members of the Parliament and of the Government. As court of judicial control, the High Court judges the second appeals against the awards passed by the regional courts as first instance and first – degree appeal court. In addition, the High Court judges the second appeals passed by the High Court as first instance court, competence conflicts and relocation petitions.

### 3.1.8. Territorial Jurisdiction

The territorial jurisdiction principle is that the application is filed before the court located in the area of defendant's domicile, in case of individuals, and before the court in the area of its head office, in case of legal entities.

In order to establish the territorial jurisdiction, the only location of interest is that where the defendant actually lives at the time the application is filed, regardless of his or her address of "domicile", as mentioned in the identity documents.

In certain cases, beside the courts whose jurisdiction is established according to the above-mentioned principle, the plaintiff also has the possibility to approach other courts, such as:

- a) the court competent over the location where the defendant - private entity - has a subsidiary, for the obligations to be performed in the respective location or originating from documents concluded through the subsidiary or from its acts or deeds;
- b) the courts from the capital of the country or the county where the plaintiff's domicile is located, for the requests filed against the State, Government or State-owned companies;
- c) in requests concerning performance, cancellation or termination of a contract, the court of the location specified in the contract for the full/partial performance of the obligation;
- d) in requests deriving from a cheque, or promissory note, the court located on the place where the payment is made.

As a rule, the legal provisions that regulate territorial jurisdiction - as opposed to those concerning material jurisdiction - are not imperative, meaning that derogations are allowed, by agreement between the parties.

However, there are categories of lawsuits where the territorial jurisdiction is exclusive, being expressly specified by law, such as the requests concerning immovable property, that must

be filed only before the court having jurisdiction of such immovable asset or on corporate matters, that fall in the jurisdiction of the court where the entity has its head office.

### 3.1.9. Relocating Lawsuits

When there are certain circumstances that justify an assumption that the court entitled to solve the litigation is not impartial or when one of the parties has two relatives among the judges or consultant magistrates of that court, the other party may file a petition before the High Court of Cassation and Justice for the relocation of that case to another court of the same rank.

The Prosecution of the High Court of Cassation and Justice may also request the transfer of the lawsuit for reasons of public safety.

## 3.2. Judging Procedure

### 3.2.1. Civil Lawsuit Features

The civil lawsuit is characterized, among other things, by:

- a) the active role of the judge - expressed through the judge's possibility to invoke on his own initiative the violation of certain imperative legal norms, to qualify a request according to its content and not by its title and to order the administration of any evidence necessary to appropriately settle the case. In practice, the active role played by the judge is highly contested, especially concerning the possibility to order the administration of some evidence, even without the parties requesting it. It is considered that the active role of the judge is incompatible with the parties' right to conduct the procedure in the manner they consider appropriate, which is one of the main principles of the civil trial.
- b) the debates are open to public – the court may declare the debates secret only when this is required for the protection of parties' interests, public order and morals;
- c) the lawsuit should be settled during a reasonable period – this requirement was not specified in the legislation until Romania's accession to the European Convention of Human Rights. Adopting this principle and its constant upholding has recently led to a substantial reduction in the timing required for lawsuits settlement.

### 3.2.2. Preliminary Proceedings

In certain cases, it is compulsory, before addressing the court, to fulfill certain preliminary procedures, under the sanction of rejecting the request as premature/inadmissible. Such mandatory preliminary procedure exists in the matter of administrative litigation and in commercial matters.

- a) According to Law no. 554/2004, any person whose rights are breached or damaged through an act of an administrative authority, whose petitions are not solved within the legal term, may challenge such act by means of a complaint addressed to the authority that issued the act or to the authority hierarchically superior to the issuing one, who are compelled to respond in 30 days. The negative response of the authority or its refusal to respond may be challenged in court by the plaintiff within 30 days from the communication thereof, or from the expiring of the 30-days term while the response of the administrative authority was due, as the case may be. However, the court must be approached within a period of six months from the issuance date of the damaging act.

- b) However, Law no. 554/2004 provided an exception to such rule, stipulating that, for solid grounds, the petition against the administrative act may be filed after the six months period has elapsed, but not later than one year from the issuance date of such act.
- c) According to art. 720<sup>1</sup> par. 1 of the Civil Procedure Code, in commercial lawsuits regarding a matter financially assessable, before filing the legal actions, the plaintiff must attempt to settle the litigation by means of direct conciliation procedure.
- d) In this respect, the plaintiff will summon the opposite party, communicating its claims and their legal basis in writing, as well as all related evidences. The result of the conciliation is recorded in minutes attached to the summons. In case the defendant did not follow the convocation, the evidence of such convocation must be attached.

### 3.2.3. Stamp duties due for legal actions

Legal actions filed before the courts are subject to different judicial stamp duties depending whether their object is financially assessable or not.

Petitions having a financially assessable object are taxed by applying a percentage to such value. For example, if the object of the request is assessed at RON 20,000, the duty owed is RON 1,247 + 4% the amount exceeding RON 19,395.

Petitions that are not financially assessable, are stamped with a fixed stamp duty specified by law, according to the petition type.

The law also provides certain legal actions exempted from judicial stamp duty, such as those related to labor, social security, and administrative complaints, etc. Beside the exemptions specified by law, the Ministry of Public Finance may also grant exemptions if the requesting party proves that he/she lacks the funds for paying the stamp duty.

If the winning party is the one who paid the stamp duty, it may request it from the opposite party, along with other judicial expenses.

### 3.2.4. Evidence

The court settling the case administers directly the evidence, except for the cases when it is necessary to exceed the court's territorial jurisdiction (usually the city or town borders), when a local court may be delegated for this purpose.

According to Chapter III, Section III of the Civil Procedure Code, as amended by Law no. 219/2005, lawyers may also administrate the evidences. According to art. 241<sup>6</sup> of the Civil Procedure Code, the evidences may be administrated at the office of the lawyer or in any other place agreed by the parties. Lawyers will administrate the evidences in accordance with a schedule approved by the court.

If there is a risk that the evidence may be lost in the future, the solution is to resort to a procedure of preserving or examining that particular evidence even before the competent court is called to settle a particular case in relation thereto. In this case, the request of preserving the evidence is addressed to the court in whose territorial area such evidence is located.

The requests of the parties may be proven by documents, interrogatory, witnesses, technical expert reports and on-site investigations. In addition, the law also provides that the claims of the parties may also be proved through their recognition made by the parties or through presumptions inferred by the judge.

In civil matters, witness evidence is not admissible to prove the existence and/or content of an agreement, unless the parties agree otherwise.

In commercial matters, commercial obligations may generally be proven by authentic or private acts, acknowledged invoices, correspondence, accounting books of the parties or witnesses.

### 3.2.5. Means of Contesting a Judicial Trial

- a) *Appeal* - in civil matters, most decisions given in the first instance may be challenged by appeal. However, there are exceptions, when the decision of the first instance may be challenged only by second appeal, such as the case of litigations having an object of a lower value or importance (alimony for financial support of the child, claims or properties up to RON 100,000 etc.).

In administrative litigation or in labor conflicts, the decisions of the first instance may be contested only by means of second appeal.

In principle, the term for filing the appeal is of 15 days from the date of communication of the court decision to be challenged.

However, the grounds for appeal may be submitted with the appeal court up to the first hearing when the parties, duly summoned, may debate on the merits. In case the grounds for appeal are not properly filed with the court, the appeal shall be settled based on the claims and evidences produced before the first court.

In civil matters, the awards given in appeal are final and may be enforced even if second appeal is filed. The court hearing the second appeal may suspend the enforcement upon request, if a security established by the court is paid.

However, in commercial matters, the decisions rendered by the first instance court may be enforced even if against these decisions a first appeal was filed. Thus, in commercial litigations, the first appeal does not suspend the enforcement of the challenged decision (art. 7208 of the Civil Procedure Code).

- b) *Second appeal* - may be filed against awards rendered in appeal, as well as against awards given by the first court and which are not subject to appeal.

The second appeal must also be filed within 15 days from the date of communication of the challenged decision and must be reasoned in the same period, under sanction of its cancellation. The grounds for second appeal are limited and expressly specified by law and they address questions of law and not questions of facts. The decisions passed within second-degree appeal are irrevocable.

- c) *Contestation in Annulment and Revision* - are extraordinary means of challenge that may be filed against irrevocable or definitive decisions and are solved by the court that issued the challenged decision, unlike the appeal and the second appeal that are settled by the hierarchically superior court. The grounds for which these two means of legal challenge may be filed are also limited and expressly provided by law.

- d) *Second appeal in the Interest of the Law* is a procedure under the jurisdiction of the High Court of Cassation and Justice and may be filed by the General Prosecutor, on its own initiative or at the request of the Minister of Justice.

Even if regulated as a legal redress, the second appeal in the interest of the law is not filed against a particular court decision, but its main purpose is the pronouncing

by the High Court of Cassation and Justice over some legal matters that were construed differently by the courts of law. Therefore, the purpose of this legal redress is to ensure a consistent and unitary interpretation of the law. For the same purpose, the managing colleges of the regional courts have also the right to ask to the High Court to give a unitary interpretation over the legal matters that were solved in different ways by the courts of law.

### 3.2.6. Special Procedures

#### a) *Injunction*

The Civil Procedure Code regulates a special procedure that may be used to request the court to order interim measures in case of emergencies, in order to save a right that might be damaged in case of delay, to prevent an imminent irreparable damage, as well as to remove any obstacles that might appear during the forced execution procedure.

Injunctions may be issued even without summoning the parties, they have temporary effects – until the case is settled – and are enforceable right away.

#### b) *Payment Summons*

This procedure allows faster recovery of receivables which are certain, expressed in a currency and due, originating either from acts/deeds proven by documents or from the law.

Under Government Ordinance no. 5/2001, the requests are solved only based on the documents filed by the parties. If, after their review, the creditor's claims are considered justified, the judge will issue an injunction summoning the debtor to pay, as well as the deadline for such payment (10-30 days). However, the Emergency Government Ordinance no. 119/2007, which also provides for similar payment summons procedure, allows also other evidences to be produced in view of proving the claim/defenses.

The award whereby the judge rejects the creditor's request is irrevocable, irrespective whether the request is filed based on Government Ordinance no. 5/2001 or in accordance with Government Ordinance no. 119/2007. In that case, as well as in case the request was partially awarded, the creditor may file legal action based on the general provisions of the Civil Code regulating the contractual performance.

Against the injunction, the debtor may file a request in annulment, within 10 days from the date of its communication. Based on Government Ordinance no. 5/2001, filing of the request in annulment triggers the suspension the enforcement of the award, unlike in case where the initial request was grounded on the Emergency Government Ordinance no. 119/2007, where suspension may only be granted upon request and payment of a security established by the court.

The award whereby full or partial admission of the creditor's request was granted, against which no request in annulment was filed or such request was rejected, is irrevocable and may be enforced.

#### c) *Conservatory Measures*

The Romanian Civil procedure Code provided three categories of conservatory measure, i.e., judicial seizure, conservatory seizure and attachment.

The judicial seizure implies the entrusting by the court of movable or immovable assets object of a litigation to a person chosen by the parties or the court, in case of disagreement, in order to prevent its loss or damaging during the settlement of the trial. The person to whom the movable / immovable asset is entrusted may even be one of the parties.

The conservatory seizure and attachment are meant to prevent the diminishing of debtor's assets until finally obliged by the court to pay the debt. In this respect, the law allows such conservatory measures taken on debtor's property or the attachment of the amounts owed to the latter by a third party, including bank accounts, up to the value of the amount in dispute attachment.

## **4. Forced Execution**

### **4.1. General**

The forced execution activity was strongly affected by changes in relevant legislation in 2001. Thus, on the one hand, this activity became independent, through the establishing of independent court bailiff practitioners that were functioning until that time within auxiliary compartments of the courts.

On the other hand, important amendments were brought in the last couple of years to the forced execution procedure regulated by the Civil Procedure Code.

Overall, these legislative changes had a positive effect, namely a substantial cut of the duration of forced execution procedures.

### **4.2. Forced Execution Officers**

The officers that carry the forced execution into effect are:

- (i) court bailiffs, with full execution jurisdiction;
- (ii) officers of financial bodies, for forced execution of budgetary debts;
- (iii) bank executors, for forced execution of obligations established by writs of execution issued by banks;
- (iv) executors from the Authority for State Assets Recovery.

### **4.3. Writs of execution**

Writs of execution are the written deeds/acts based on which forced execution may be initiated. Among the deeds in this category are the following:

- (i) final or irrevocable court decisions, arbitral decisions communicated to the parties;
- (ii) deeds authenticated by notary public, certifying certain liquidated and payable receivables;
- (iii) drafts, promissory notes and checks;
- (iv) banking loan contracts;
- (v) titles concerning budgetary debts and detailed customs declarations;
- (vi) movable security interests contracts concluded in written;
- (vii) leasing agreements.

In addition, foreign arbitral decisions and decisions given by foreign law courts may be enforced, after preliminary completion of a judicial procedure for the recognition of these decisions on the territory of Romania.

## 4.4. Challenging the Forced Execution

The forced execution acts or the refusal of the forced execution officer to accomplish any execution act may be challenged before the court by any of the parties, as well as by third parties damaged by such execution.

Until the contestation of the execution is settled, the competent court may suspend the execution if a security is paid in the amount specified by the court, except for the cases when the law provides otherwise.

## 4.5. Restoration of the Execution Object

In all cases where the writ of execution or even the forced execution is set aside/revoked, the interested party has the right to reverse the effects of such execution by reimbursement of the amounts/assets subject to such procedure.

# 5. Other Authorities with Judicial Activities

## 5.1. Overview

Beside courts of law, there are other authorities performing judicial activities, settling certain disputes with a highly technical character, their decisions being usually subjected to the control of the courts of law, based on the constitutional principle of free access to justice.

Such authorities settle disputes for example in the matter of industrial patents, drawings and designs, geographical marks and indications, constitutional law, taxation and customs, competition and other matters.

## 5.2. The Constitutional Court

Through the Constitution of 1991, as it was revised by Law 429 of October 29, 2003, this specialized judicial body started acting in Romania, in the area of constitutional disputes.

The constitutionality control examines the laws before their endorsement by the President of Romania (prior control), the initiatives of revising the Constitution, the international treaties, the regulations of the Parliament, the laws and ordinances in force (subsequent control) and the constitution of political parties.

The constitutionality control of the laws and Government ordinances, after their coming in effect, is accomplished through the settling of the unconstitutionality pleas by the Constitutional Court, pleas raised before the courts of law during a trial.

If the settlement of a case depends on certain legal provisions the unconstitutionality of which it is claimed, the court must suspend the case and notify the Constitutional Court for the settlement of the unconstitutionality plea.

Whenever the Constitutional Court declares unconstitutional a provision of a law, of a Government ordinance or of Parliament's regulations, such provision ceases to have effect in 45 days after publication of the Constitutional Court decision if, during this period, the Parliament or the Government do not amend such provision in accordance with the Constitution.

During this period, the provisions declared unconstitutional are suspended de jure.

## 6. Arbitration in Romania

### 6.1. General

The Code of Civil Procedure (CCP) (*Codul de procedură civilă*) is the main enactment dealing with arbitration. Certain additional rules, with respect to international arbitration, are contained in Law 105/1992 on Private International Law Relationships (Private International Law) and in the international conventions ratified by Romania. Other regulations dealing with arbitration concerns the organization of arbitral bodies and their arbitration rules. In this respect, the most important body enacting such rules is the Court of International Arbitration affiliated to the Romanian Chamber of Commerce and Industry.

### 6.2. The International Commercial Arbitration Court of the Chamber of Commerce and Industry of Romania

The International Commercial Arbitration Court of the Chamber of Commerce and Industry of Romania (“the Court”) is a permanent, nongovernmental arbitration body, without legal status, which exercises independently the judicial powers vested in it as per the law.

The Court, whose head office is in Bucharest, functions according to this Regulation as updated on February 27, 2008. The Court adopted on April 18, 2008 a new set of Rules on arbitral procedure (“the Rules”) based on which the arbitral tribunals may settle internal and international trade disputes.

The list of arbitrators may be consulted at the Secretariat of the Court. Foreigners qualified according to the Rules of the Court may also be appointed as arbitrators. The parties are free to appoint as arbitrators, by arbitral clause/convention, persons that are not on the list of arbitrators, but who are of renown, by competence and morals.

### 6.3. Categories of Disputes Subject to Arbitration

Disputes are settled by arbitration provided that a written arbitral clause/separate convention between was entered into by the parties.

#### 6.3.1. Disputes arisen from internal and international trade relations

These disputes will be settled by the arbitral tribunal organized within the Court, according to the rules agreed by the parties/established by the arbitral tribunal, the mandatory provision of the Romanian arbitration law (in case the seat of arbitration is in Romania) and the international treaties to which Romania is a part of. In case the parties revert to institutional arbitration, they are free to choose either the Rules of the Court or other procedural rules. In case the parties chose the arbitration rules of the United Nation Commission on International Trade Law - UNCITRAL to apply to their dispute, the arbitrator appointing authority is the Chairman of the Court.

#### 6.3.2. Disputes arisen from internal or international patrimonial legal relationships, other than the commercial ones

In this respect, provided that public order and morals, as well as the imperative provisions of the law are observed, the parties may establish through the arbitral clause or through a written act subsequently concluded, the rules concerning the constitution of the arbitral tribunal, the appointment, revocation and replacement of the arbitrators, the term and place of the arbitration, the procedural rules that the tribunal must follow when hearing the dispute, including the procedure of a potential preliminary conciliation, the split among the parties of

the arbitral expenses, the content and form of the arbitral decision, and generally any other issue concerning an efficient arbitration.

In the absence of such qualifications by the parties, the arbitral tribunal will be entitled to regulate the procedure as it considers appropriate.

In case the arbitral tribunal does not make these qualifications itself, the rules contained in the Civil Procedure Code, as Romanian arbitration law, will be applicable.

### 6.3.3. Disputes that may not be subject to arbitration

- (i) those concerning the civil status of individuals;
- (ii) those concerning assets that are not freely transferable or disposable;
- (iii) disputes in the exclusive jurisdiction of the courts of law (e.g.: those concerning judicial liquidation, certain disputes in the intellectual property field, etc).

## 6.4. Ad-Hoc Arbitration

Ad-hoc arbitration is the arbitration organized by the parties based on the procedural rules tailored by them or the rules of a certain arbitration institution but which is not administered by an arbitration institution.

The Chamber of Commerce and Industry of Romania may offer assistance in *ad hoc* arbitration aiming to settle internal and international disputes, provided that the parties so agreed before or after the dispute was born.

Ad hoc arbitration may be assisted through the International Commercial Arbitration Court and it may include the following activities, according to the agreement of the parties.

- (i) appointing, according to the arbitral convention and the Rules of the Court, of the arbitrators and the chairman;
- (ii) establishing and providing the Rules of the Court to the parties, as well as a list of arbitrators, both having an optional character to the parties;
- (iii) ensuring, at the request of the arbitrators, data, information and documentation regarding the solutions offered by the doctrine and jurisprudence with concern to a specific matter;
- (iv) ensuring the secretarial assistance within the arbitration;
- (v) ensuring an appropriate location for the arbitral body and its works.

The Court may refuse to organize an institutional arbitration or to assist an ad-hoc arbitration if there are doubts or contestations concerning the existence of the arbitral clause/convention or if it seems that the latter is obsolete, ineffective or inapplicable.

## 6.5. Institutional Arbitration

Institutional arbitration is the one organized by an arbitration institution such as the International Commercial Arbitration Court attached to the Romanian Chamber of Commerce.

Its main feature is that is organized by an arbitration institutions, in exchange of an administrative tax, usually at its headquarters. The arbitration institution deal with appointment of the arbitrators in case the parties fail to do so, establish the fee of the arbitrators, ensure the logistics and secretarial assistance during the procedure, etc.

## 6.6. International Arbitration

According to the Regulations agreed by the parties the arbitral tribunal settles, either under law or in equity, disputes related to international trade.

### 6.6.1. Arbitration clause

The parties to an agreement can decide, either in the same agreement or in a separate one, to submit any dispute arising out of or in connection with that agreement to arbitration. Usually the arbitral clause is stipulated in the underlying agreement, when the parties agree that all the disputes that would arise from the performance of that agreement would be settled through arbitration (*clauză compromisorie*). In such case, the arbitration clause is deemed to be severable from the underlying agreement, *i.e.*, if the agreement is invalid or otherwise unenforceable, the arbitration clause shall not automatically become void or unenforceable (CPC, Art. 343<sup>1</sup>). The parties may also enter into an arbitral clause subsequent to the dispute, by a separate agreement referred to as compromise.

The arbitration clause must be in writing, must contain the name of the arbitrators or the modality of appointment, and in case of a compromise, it must mention the subject-matter of the dispute. Failure to comply with these requirements renders the arbitral clause void (CPC, Art.343 and 343<sup>2</sup>).

The parties to an arbitral clause may detail all the provisions required for the arbitration (constitution of the arbitral tribunal, appointment and revocation of arbitrators, procedural rules to be followed by the arbitral tribunal, etc.) or may settle all these issues by referring to other arbitration rules or the rules of arbitration of a permanent arbitral body (CPC, Art. 341).

The existence of an arbitration clause compels the parties to settle the dispute by arbitration. The courts lack jurisdiction to adjudicate the claim if a valid arbitration clause was executed (CPC, Art.343<sup>3</sup>). However, the court shall not raise itself the issue of lack of jurisdiction, the onus is with the defendant to invoke the arbitral clause should the plaintiff files a claim with a customary court.

In principle, it is advisable that this clause should have the content of the standard clause for vesting the arbitral court, as provided by the Rules of Arbitral Procedure of the International Commercial Arbitration Court of attached to the Chamber of Commerce and Industry of Romania, as follows:

“Any dispute originating from or related to this contract, including disputes concerning its formation, performance or termination, will be settled by arbitration by the International Commercial Arbitration Court attached to the Chamber of Commerce and Industry of Romania according with the Rules of Arbitral Procedures of this Court. The arbitral award is final and binding.

### 6.6.2. The arbitral tribunal – choosing the arbitrators

Parties may appoint as arbitrator any individual with Romanian citizenship who has full legal capacity (CPC, Art.344). The arbitration clause establishes whether there would be only one arbitrator or more arbitrators. If there is no specific provision in the arbitration clause on the number of arbitrators, the arbitration shall take place with three arbitrators, one appointed by each party and the chairman appointed by the two chosen arbitrators (CPC, Art.345). Any provision in the arbitral clause allowing one party to appoint more arbitrators than the other party, is void (CPC, Art. 346). When the parties disagree on the sole arbitrator or the two

arbitrators cannot agree on the person of the chairman, the party requesting the arbitration may ask the competent court to appoint the sole arbitrator or chairman (CPC, Art.351).

An arbitrator must explicitly accept the appointment. An arbitrator may be disqualified for the same reasons calling for the disqualification of a judge (CPC, Art.351<sup>1</sup>), such as family relationship with one of the parties (up to a certain degree), when it has an interest in the settlement of the case, etc. When an arbitrator knows of any reason of disqualification, he must inform the parties and the other arbitrators, before appointment or as soon as the reasons for disqualification arise. If the parties do not request that the arbitrator steps down, the arbitrator shall carry out his appointment (CPC, Art.351<sup>1</sup>). When a party is knowledgeable of any reason for disqualification but the arbitrator did not inform the parties or withdraw himself, the party may challenge the appointment before the competent court within 10 days as of the appointment of the arbitrator or as of the date when the party became aware of a ground for challenge. The decision of the court on the grounds or disqualification is final (CPC, Art.351<sup>2</sup>).

When the arbitration is organized by a permanent arbitral body, then the arbitral institution decides upon all the matters related to the appointment, removal or disqualification of the arbitrators (CPC, Art. 353<sup>1</sup>).

### 6.6.3. Proceedings

Arbitral proceedings are carried on in accordance with the rules agreed by the parties, the rules of the arbitral body chosen by the parties, the rules established by the arbitral tribunal or the rules detailed in the CPC. In any case, the arbitral proceedings must comply with the fundamental norms of fairness and substantial justice as the right to be heard, equality between the parties and the adversarial nature of the trial (CPC, Art.358).

Arbitrators adjudicate the dispute according to the contract between the parties, the applicable rules of law and the trade usages. The parties may confer to the arbitrators the power to render and award *ex aequo et bono* (CPC, Art.360). The place of arbitration is the place set by the parties or, failing such agreement between the parties, the place decided by the arbitral tribunal after its constitution.

Evidence is usually heard before all arbitrators, during the arbitral hearings. Witnesses and experts need not testify under oath. The interested party may apply for interim and conservatory measures before the competent court (CPC, Art.358<sup>8</sup>). The arbitral tribunal, however, has the power to order attachments or other relief measures. However, the competent court must carry out the actual enforcement of such measures.

The arbitrators must issue the award within five months from the date of acceptance of appointment by the last arbitrator, period that may be extended with 2 additional months (art. 353<sup>3</sup> CPC). The rules of certain permanent arbitral bodies stipulate longer periods, especially in international arbitration.

### 6.6.4. Arbitral award

The award must be passed by the sole arbitrator or by a majority of the tribunal consisting of several arbitrators (CPC, Art.360<sup>2</sup>). In case there is an even number of arbitrators, and the vote is split, an additional arbitrator (chairman) must be appointed according to the rules for appointment of arbitrators and the newly appointed arbitrator shall make his decision.

The award must be in writing and must set forth: (i) names of the arbitrators; (ii) place and the date of the award; (iii) name and legal residence of the parties, as well as the name of the attorneys, representatives and other persons who participated in the proceedings; (iv) arbitral

clause; (v) subject-matter of the dispute; (vi) grounds on which the award is based; (vii) order of the tribunal; (viii) the signatories thereto (CPC, Art. 361)

Once the award is rendered, it has the effect of *res judicata* on the dispute submitted to the arbitration and ends the authority of the arbitrators. However, the arbitrators may correct, interpret or supplement the award at the request of the parties (art. 362 CPC).

The award and the entire file must to be submitted to the competent court of law in 20 days after the service of the award to the parties. In case a permanent arbitral body organized the arbitration, the file is deposited with that institution.

### 6.6.5. Challenges of the arbitral award

An arbitral award may be challenged only by an action for annulment (*açțiune în anulare*), based on one of the following grounds: (i) the dispute was not capable of being settled by arbitration; (ii) the arbitral tribunal rendered the decision in the absence of an arbitration clause or agreement to arbitrate or pursuant to an arbitration clause or agreement to arbitrate that was void or ineffective; (iii) the arbitral tribunal was not constituted in accordance with the arbitral agreement; (iv) the party that was absent at the time of the closing pleadings had not been properly summoned for the day when such pleadings took place; (v) the award was passed after the expiry of the term set by law or the agreement of the parties for the conclusion of the arbitration proceedings; (vi) the arbitral tribunal exceeded its authority; (vii) the arbitral award does not contain the grounds, the order of the tribunal, does not mention the date and place where it was made or is not signed by the arbitrators; (viii) the arbitral award contains orders that cannot be implemented; (ix) the arbitral award is against the public policy.

The action for annulment can be brought before the court of law hierarchically superior to the court that would have been competent to settle the dispute had not an arbitration clause been agreed by the parties (usually, the court of appeal). The decision of the court may be appealed to the higher court (usually, the High Court).

### 6.6.6. Enforcement of the arbitral award

An arbitral award is mandatory and must be executed by the parties according to its content. No formalities are necessary in case of voluntary compliance with the award. If the party against which the award was rendered does not comply with the award, the award must be submitted to the court in order to issue an order for compulsory enforcement.

The interested party must file together with the original award a request for an order of compulsory enforcement. The court will decide upon such request by *ex parte* motion, without summoning the parties. No review on the merits is made in the proceedings for issuing the order for compulsory enforcement. If the judge has doubts regarding the regularity of the award, he may order a hearing and the summoning of the parties involved in the arbitration (CPC, Art.367<sup>1</sup>).

Once the order for enforcement has been issued, the award operates in every respect as a judgment, and is enforced in the same manner, by forced execution.

### 6.6.7. Enforcement of foreign arbitral award

The enforcement of foreign arbitral awards is generally based on the conditions of the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, as well as on the provisions of the Romanian internal law, mainly the Private International Law.

The party seeking to enforce a foreign award in Romania must file a complaint requesting the recognition and enforcement of the award. The complaint must be accompanied by the original foreign award and by the arbitral clause agreed by the parties. A certified (official) translation must be produced together with these documents.

The grounds allowing the Romanian court to refuse the enforcement of a foreign arbitral awards are the grounds mentioned in Article V of the New York Convention.

In addition to these grounds, the Romanian law requests that the statutes of limitation of the right to request the enforcement should not have expired (the Romanian law provides for a general statutes of limitation of 3 years from the day when the judgment remained final and binding).

The decision of the county court can be appealed to the Court of Appeal and then to the High Court, according to the customary civil procedure rules.

### **6.6.8. Arbitral taxes and expenses**

The arbitral taxes represent the fees of the Romanian arbitrators and, in case of institutionalized arbitration they are calculated pro-rata as a fixed amount plus a percentage from the difference between the dispute value and a certain threshold.

Beside arbitral taxes, the parties owe arbitral expenses, such as those for evidences administration, translation/recording of documents/debates, foreign arbitrators fees, travel and accommodation expenses of arbitrators, fees of experts and expenses made by the witnesses.

The arbitral taxes and expenses are usually incurred according to the parties agreement; in case such agreement does not exist, the expenses are incurred by the party that has lost the case.

## **6.7. Other Romanian Arbitration Institutions**

### **6.7.1. The Arbitral Bodies of the market operators on the financial investment regulated market**

According to the Romanian law, disputes between intermediaries and/or companies issuing securities may be submitted for resolution to the arbitral bodies established and functioning based on regulations approved by National Securities Commission.

Such regulations existed under previous legislation but they were repealed by enactments which came into force in the recent years, enactments concerning the regulated market and alternative transaction systems. However, such arbitration bodies are entitles to operate under Romanian law, provided that the regulation thereof is adopted by the competent institutions.

### **6.7.2. Arbitration Commission settling the disputes between suppliers of medicines/medical products/services and the Health Insurance Entities**

The main attribution of the Arbitration Commission resides in organizing and administering the settling by arbitration of certain disputes between, on the one hand, the suppliers of medical services, medicines and medical devices and, on the other hand, the Health Insurance Entities provided that the parties concluded an arbitral convention in writing.

Such a Commission is also the one attached to the National Health Insurance Entity.

The procedural rules for solving the arbitration are established by the Regulation for settling the arbitral disputes of the Commission.

The Commission renders a final decision.

### **6.7.3. Arbitration of the interest conflicts in the matter of labor conflicts**

The conflicts between the employees and employers, concerning the employees' professional, social or economic interests or rights, are deemed as labor conflicts, which may be settled by mutual understanding or by the procedures stipulated by law.

During the entire conflict of interests, the parties in conflict may mutually decide to submit their claims to the arbitration of a commission composed of 3 arbitrators appointed by each party and by the Ministry of Labor, the Family and Equal Opportunities.

The list including the persons that may be appointed as arbitrators is established once a year, by order of the Ministry of Labor, the Family and Equal Opportunities, from among the specialists in the economic, technical and legal field, as well as from other professions, with the agreement of the Economic and Social Council.

The functioning procedure of the arbitration commission is established through a regulation approved by joint order of the Minister of Labor, the Family and Equal Opportunities and Minister of Justice.

The decision issued by the arbitration commission are binding for the parties and becomes part of the collective labor contracts. The labor conflict ends from date of issuance of the decision by the arbitration commission.

For the activity performed during the solving of a conflict of interests, the members of the arbitration commission receive a fee evenly established and paid by the parties in conflict.