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The coming into force of the New Civil Procedure Code

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After several delays and deferrals, the Romanian judicial system was finally modified and updated by the entry into force on February 15 2013 of a new Civil Procedure Code. The new enactment maintained many of the traditional institutions regulated by the former code – shaped however in an updated form while new institutions were regulated – meant to ensure enhanced procedural guarantees, as well as efficiency and celerity of judicial process, in light of the principles imposed by the European Court of Human Rights.

Moreover, the new code also aims to align the civil procedure with the civil law institutions and regulations reflected in the new Civil Code, recently entered into force, on October 1 2011.

It is important to underline, in terms of applicability in time of the new enactment, that its provisions became applicable only to trials and enforcement proceedings commenced subsequent to its entry into force, the principle of immediately applying the new law thus being derogated from.

One of the most important changes brought by the new Civil Procedure Code with the view of reducing the duration of trials is the introduction of a new procedural stage prior to the actual trial – the written stage. Such stage involves a preliminary analysis made by the court to identify any deficiencies of the claims and documents submitted by the parties and correct them.

New legal instruments introduced, among others, to ensure the celerity of the judicial process are: (i) the possibility of the parties to file an opposition claim regarding the trial's delay, (ii) a deadline within which the court must establish the date of the first hearing and the court's obligation to ensure that the communication proceedings were fulfilled before establishing such term, (iii) the court's obligation to estimate the trial's duration, (iv) rules and penalties to prevent parties attempts to delay the trial, etc.

In the same line, in order to ensure the promptness and effectiveness of the enforcement procedures, the institution of rendering enforceable the writs of enforcement was eliminated, being, however, replaced by a procedure for the enforcement approval. It is also worth mentioning that, in the enforcement field, the new Civil Procedure Code introduced also the possibility of specific categories of creditors (e.g. those already holding a writ of enforcement, creditors who took precautionary measures related to debtor's assets, etc.) to intervene in enforcement procedures initiated by other creditors.

As the main principle governing the new Civil Procedure Code is the celerity of trials and other procedures, a large number of special procedures were introduced resulted from various solutions proposed by practice and doctrine. The most important ones are: (i) the evacuation from premises held or occupied without legal grounds, (ii) the Land Book registration of real estate acquired under land occupancy, (iii) a special procedure regarding low value claims, etc.

On another hand, the special procedure applicable to disputes between professionals was eliminated, the plaintiff not being obliged any longer to attempt to settle the litigation by means of mediation or direct conciliation procedure. However, starting with August 1 2013, participating to information hearings concerning mediation will become mandatory.

In addition to the above, it is important to underline another major change brought by the new enactment, related to appeals. Thus, as a rule, court decisions may be challenged only by a first (and final) appeal in what the unlawfulness

of the first court judgment is concerned. Accordingly, a second appeal may be filed only in exceptional cases and only for certain grounds, expressly provided by law.

The institution of arbitration suffered some amendments as well, the changes aiming to bring arbitration in line with the new economic environment and the European acquis, without significantly affecting the fundamental concept of arbitration.

Thus, the Civil Procedure Code extended for the first time the object of arbitration, which is no longer restricted to patrimonial obligations. In addition, the application of an enforcement formula on the arbitral decision is no longer necessary.

Furthermore, the State and public authorities have now the express possibility to enter into arbitration conventions, provided that they are authorised by law or by an international convention to which Romania is a party. Public legal persons who carry out economic activities also have this possibility, unless otherwise provided by the law or their articles of incorporation or organisation. This specification is of relevance because, in practice, it had been long argued whether public entities are allowed to conclude such conventions and pursue arbitration as a dispute resolution measure.

The entry into force of the new Civil Procedure Code and its application law had an impact on other regulations, as well, in terms of procedures and terminology, such as, for instance, Companies Law no. 31/1990.

Thus, according to the new provisions, the term 'Commercial Company' used in the names of Romanian companies was to be replaced with the term 'Company', the new terminology being applicable to all types of companies regulated by the said law (e.g. joint stock companies, limited liability companies etc.).

To conclude, the new Civil Procedure Code appears as a real reform aiming to align the system of dispute resolution with the economic realities in Romania today and to render the contentious process more flexible and predictable, the scholars anticipating that it will have a positive impact on the business community.