

# Romania

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## MAIN DISPUTE RESOLUTION METHODS

### 1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

Large commercial disputes are settled through either litigation before the competent courts or arbitration. Mediation as an alternative means of resolving commercial disputes was codified in 2006 and its use is strongly promoted by the recent amendments to the Code of Civil Procedure (CCP).

#### Litigation

Commercial disputes are generally settled by the courts under the CCP.

The civil court system is mainly adversarial, even if judges have certain powers beyond the parties' pleadings. For example, a judge can:

- Raise any issues related to the violation of public policy.
- Qualify the legal nature of a claim or request.
- Verify the jurisdiction of the court.
- In certain circumstances, order the production of evidence necessary to settle the case.

The judges must decide on any issue only after hearing the parties and giving them the opportunity to present their position on all issues concerned.

#### Arbitration

Arbitration (institutional and ad hoc) is another method of settling complex commercial disputes. The CCP generally regulates arbitration as a means of ADR in Title IV. The CCP provisions, except in relation to the appointment bodies, are broadly based on the UNCITRAL Model Law on International Commercial Arbitration 1985. The parties are increasingly referring their disputes to arbitration and almost all commercial contracts of high value contain arbitration clauses.

#### Mediation

Mediation was codified in 2006 in an attempt to encourage out-of-court settlement and reduce court overload. The first step of a mediation procedure is the conclusion of a mediation contract between the parties and the chosen mediator. The purpose of the mediation is to conclude an agreement where the parties agree on the terms and conditions of the dispute settlement. The role of the mediator is to facilitate discussions between the parties and keep the negotiations on track. The mediator is not entitled

to solve the conflict by deciding the dispute, but can only advise the parties on the legality of the settlement.

## COURT LITIGATION - GENERAL

### 2. What limitation periods apply to bringing a claim and what triggers a limitation period?

Depending on a claim, different limitation periods apply. Certain examples are provided below.

The normal limitation period for an action for breach of contract or in tort is three years from the date when the cause of action accrued. In contract, the limitation period starts from the date of the breach. In tort, time usually runs from when the party knew, or should have known, both that the damage occurred and the identity of the person who caused it.

In principle, claims in relation to immovable property (restitution claims of land and buildings) are not subject to any statute of limitations, the rightful owner being entitled to claim the property at any time. However, the admissibility of such claims in the context of the restitution legislation adopted over the last decade is somewhat controversial.

In cases of misrepresentation or mistake on the conclusion of a deed, the limitation period of three years for the right to request cancellation of the deed does not start until the claimant or its representative has discovered the grounds for cancellation (but no later than 18 months from signing the challenged deed).

The limitation period is interrupted only by filing the civil action with the court or other jurisdictional body (such as an arbitral institution).

### 3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

Large commercial disputes are brought in tribunals (county courts), as first instance courts. The tribunals are organised at the county level and in the Bucharest municipality, and their headquarters are usually located in the county's capital.

The tribunals are competent to settle claims above RON100,000 (as at 1 February 2011, US\$1 was about RON3) and non-monetary commercial matters.



The tribunals are organised in specialised divisions, dealing with civil, commercial, criminal, administrative, and labour and social security matters. There can also be specialised divisions for maritime disputes, as well as specialised panels for IP-related disputes (organised as part of the civil sections) and insolvency cases. Jurisdiction in the maritime field is divided between two maritime divisions (located in Constanta and Galati), each of which covers a certain part of the entire geographical area.

The law regulating the court system envisages the gradual establishment, within the next few years, of specialised tribunals for commercial disputes, IP matters and maritime disputes. These specialised tribunals will replace the current specialised divisions (see *Question 35* for reform proposals). Currently there exist only three specialised commercial tribunals organised instead of court divisions.

The tribunals' decisions can be challenged before the competent court of appeal (first appeal) and then before the High Court of Cassation and Justice (final appeal).

The answers to the following questions relate to procedures that apply in tribunals.

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**4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?**

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All lawyers who are members of the Bar Association and have passed the qualification exam after at least two years spent as trainees can assist or represent a party before tribunals and courts of appeal. These lawyers can gain full rights of audience before the High Court of Cassation and Justice once they have exercised the legal profession continuously for at least five years after passing the qualification exam.

As a rule, foreign lawyers cannot conduct cases before the courts, but only before arbitral tribunals in relation to international arbitrations.

However, foreign lawyers qualified in one of the EU member states or the European Economical Area (EEA) or Switzerland can assist or represent individuals or legal entities before the Romanian courts, under the relevant Romanian procedural rules, in relation to:

- The law of the member states where they are qualified.
- European law.
- International law.
- Romanian law.

For example, a lawyer qualified in France can conduct litigation in relation to the performance of a services agreement subject to French law. Such lawyers qualify for obtaining a local licence to practice in Romania regularly. The law also enables the lawyers originating from EU member states or the EEA to occasionally perform legal services, such as participation at a mediation procedure in Romania.

## FEES AND FUNDING

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### 5. What legal fee structures can be used? Are fees fixed by law?

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Lawyers can bill based on hourly rates or task-based fees. Contingency fee agreements are also allowed, provided the contingency fee is set in addition to a retainer fee. Fee structures based exclusively on contingency are prohibited.

In commercial litigation task-based fees are generally used, to which a success fee (depending on the favourable settlement of the dispute) can be added.

Legal fees are not fixed by law in relation to commercial litigation.

See *Question 22*.

### 6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

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#### Funding

Commercial litigation is generally funded from a party's own resources. If a party is successful in the litigation he can recover legal costs, including court fee and lawyers' fees, entirely or partially, from his opponent (see *Question 22*).

Third-party funding agreements are allowed if the litigating parties expressly agree.

#### Insurance

Insurance is available for litigation costs, although it is rarely used. In principle, these insurance policies only cover the costs incurred by the counterparty, if the insured person loses the case.

## COURT PROCEEDINGS

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### 7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

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Court proceedings are generally held in public. However, the court can decide to hold the hearings in private where it deems this to be in the best interest of the parties, or to protect public order or morality. Certain corporate procedures provided by law, such as the opposition of the creditors to the modification of the by-laws of the company, are held *in camera*, in non-public hearings. Although not frequently applied in practice, the law provides that the judgment should be always made in a public hearing.

Parties and their representatives have unrestricted access to the record. Documents in the court files can also be accessed by any interested person or journalists, with prior approval of the court. The court is supposed to verify the interest in accessing a certain file by such persons.




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**8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?**

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Romanian law provides for mediation or a mandatory conciliation procedure to be completed before starting a commercial action. This applies to monetary commercial disputes.

If a party fails to undertake the mediation or the conciliation procedure, on the other party's request the court will dismiss the action as inadmissible, provided this request is made in the statement of defence prior to the first hearing. In addition, in certain circumstances the party can be compelled to pay damages to the other party on the grounds of having exercised the procedural rights in bad faith.

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**9. What are the main stages of typical court proceedings? In particular:**

- **How is a claim started?**
  - **How is the defendant given notice of the claim and when must the defence be served?**
  - **What are the subsequent stages?**
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**Starting proceedings**

A claim starts by filing a complaint with the relevant court and paying the required stamp fee, which in monetary disputes is based on the amount in dispute.

A complaint must contain:

- The name of the parties and their addresses.
- Contact details of the parties, for example, fax and email.
- Details of the subject matter of the case, as well as a description of the facts and the legal grounds for bringing the claim.

The reasons for the action and supporting evidence to be brought can be also stated to the court during the first hearing when the service of process is completed.

**Notice to the defendant and defence**

The claim is served on the defendant by the court. The date set by the court for the first hearing must allow the defendant at least 15 days to prepare the defence, or at least five days in urgent cases. During the proceedings, the judge can order the communication of summons and other documents by fax, email or commercial courier, as well as by paper communications.

**Subsequent stages**

The defendant must file the statement of defence at least five days before the first hearing. If at the first hearing the claimant modifies its initial claim, the defendant is entitled to submit a new statement of defence to the amended statement of claim.

The court settles the case based on the evidence brought by the parties, having the power to order the production of any evidence required to resolve the dispute.

The court has a general duty to encourage the parties to reach an amicable settlement and to settle the case within a short period of time.

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**INTERIM REMEDIES**

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**10. What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?**

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To obtain the dismissal of a claim before a full trial, or to strike-out the claim, the defendant can raise, by way of motions (procedural objections), the following defences:

- Claimant's failure to pay the requisite stamp fee (see *Question 9*).
- Claimant's failure to prove that it has duly empowered the signatory of the statement of claim to start the legal action.
- *Res judicata* authority of the claim (that the same claim has been already irrevocably settled by a court of law).
- Claimant's failure to comply with the limitation period.
- Lack of general jurisdiction of the courts to adjudicate the matter, or lack of jurisdiction of the Romanian courts (in international litigation) to adjudicate a specific claim.

If the court accepts a defence, it orders the claim to be annulled or dismissed before the settlement of the case on the merits. Raising some of these defences can delay the settlement, as the court may postpone the hearing to hear evidence to the contrary (for example, that a payment was made or that a mandate was granted).

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**11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?**

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There are no procedural provisions enabling the defendant to ask for a security for its legal costs from the claimant.

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**12. In relation to interim injunctions granted before a full trial:**

- **Are they available and on what grounds are they granted?**
  - **Can they be obtained without prior notice to the defendant and on the same day in urgent cases?**
  - **Are mandatory interim injunctions to compel a party to do something available in addition to prohibitory interim injunctions to stop a party from doing something?**
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**Availability and grounds**

Interim injunctions principally take the form of provisional orders, which can compel temporary measures in urgent cases with the aim of:

- Preventing imminent damage which could not otherwise be remedied.



- Preserving a right which would otherwise be prejudiced.
- Avoiding difficulties which would be likely to occur during enforcement proceedings.

#### Prior notice/same-day

Interim injunctions can be obtained *ex parte*, but they are rarely granted. Interim injunctions can be granted on the same day, at the court's discretion, though same-day injunctions are also extremely rare. Even where a request for an interim injunction is allowed *ex parte*, the court usually takes several days, or up to two weeks, to grant them.

#### Mandatory injunctions

Mandatory injunctions to compel or prevent certain acts are granted provided they neither:

- Interfere with the settlement of the case on its merits.
- Have a permanent nature.

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#### 13. In relation to interim attachment orders to preserve assets pending judgment or a final order (or equivalent):

- Are they available and on what grounds must they be brought?
  - Can they be obtained without prior notice to the defendant and on the same day in urgent cases?
  - Do the main proceedings have to be in the same jurisdiction?
  - Does attachment create any preferential right or lien in favour of the claimant over the seized assets?
  - Is the claimant liable for damages suffered as a result of the attachment?
  - Does the claimant have to provide security?
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#### Availability and grounds

Interim attachment orders are available, aimed at preserving the funds and assets of the debtor until the settlement of the case on the merits and commencement of enforcement.

Interim attachments are ordered if the creditor requesting them holds a receivable which is both:

- Outstanding or, if not outstanding, the debtor has:
  - diminished the guarantees offered to the creditor or has not provided the agreed securities; or
  - tried to elude enforcement, or hide or squander his assets.
- Evidenced by a written deed or, if no such writ is available, the creditor proves that it has filed a claim with the court and pays a bond of half of the amount of the claim. If a written document is held by the creditor, the value of the bond cannot exceed, at the court's discretion, 20% of the claim.

Interim attachments are also available pending trial in cases concerning a right held in relation to a movable or immovable asset, if they are necessary to preserve the right in question.

#### Prior notice/same-day

Interim attachment orders can be obtained without prior notice to the defendant, but they are rarely granted on the same day. The order is usually issued by the court in a matter of days, or (in the most overloaded courts) one to two weeks.

#### Main proceedings

Interim attachment orders can be obtained in relation to trials pending in foreign jurisdictions.

#### Preferential right or lien

Interim attachment orders by themselves create no preferential rights or liens over the seized assets in favour of the creditor.

#### Damages as a result

The claimant may be liable for damages resulting from the interim attachment order. This is the why the claimant is required to post a security to obtain and maintain the attachment order.

#### Security

Security in the form of a bond is mandatory (*see above, Availability and grounds*).

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#### 14. Are any other interim remedies commonly available and obtained?

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The injunctions and attachment orders referred to in *Questions 12 and 13* are the only commonly used interim remedies under the civil procedure regulations.

### FINAL REMEDIES

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#### 15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

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The usual remedies are damages and injunctive relief. Damages can be compensatory (aiming to cover the loss suffered due to the other party's failure to perform its obligations) or moratory (covering the loss incurred due to the defendant's delay in performing its obligations).

Punitive damages can be awarded in the form of comminatory damages (due to the claimant for each day of the defendant's delay in fulfilling its obligations until the court's final order) or by applying a civil fine (to be paid to the state budget for each day of delay until the obligation provided by the writ of execution is fulfilled). These comminatory damages cannot be directly enforced; rather, they revert to compensatory damages if the obligation is not fulfilled.



## EVIDENCE

### 16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

A party must generally disclose to its opponent and to the court the documents on which it relies for its arguments and defences.

A party can request the court to order the other party to disclose a certain document which is claimed and proved to be held by that party. This request cannot be denied in any of the following cases:

- The required document emanates from both parties.
- The party to the request to disclose itself referred to the document during the proceedings.
- There is a legal provision to disclose the document.

If a party fails to disclose the document upon the court's request, the court will consider the allegations of the requesting party regarding the content of that document as proved. A civil fine can also be imposed against the defaulting party.

### 17. Are any documents privileged? In particular:

- Would documents written by an in-house lawyer (local or foreign) be privileged in any circumstances?
- If privilege is not recognised, are there any other rules allowing a party not to disclose a document (for example, confidentiality)?

#### Privileged documents

Since in-house lawyers qualified as such under Romanian law are bound to preserve the secrecy and confidentiality of their activity, documents prepared by in-house lawyers throughout the exercise of their functions cannot be disclosed to the other party. The same applies to documents written by in-house lawyers who are bound by confidentiality obligations by law or agreements concluded with their respective employers. No specific rules exist for foreign in-house counsel working outside Romania, and the court decides whether the production of the documents is permitted.

The privileged character of a document under Romanian law principally concerns its non-disclosure to the other party. The court can still request to see the allegedly privileged document to ascertain if it fulfils the requisite conditions for non-disclosure.

#### Other non-disclosure situations

The court has the authority to dismiss a request for disclosure of a document in the following circumstances:

- The content of the document concerns strictly personal matters.
- Disclosure of the document would infringe a confidentiality obligation.

- Disclosure of the document would trigger the criminal prosecution of the party disclosing the document or another person, or could expose either to public contempt.

### 18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

Witnesses testify orally before the court. A witness deposition is recorded in writing and signed by the witness. Written depositions submitted to the court instead of oral testimony do not have evidentiary value. Witnesses are generally cross-examined. The parties do not question the witnesses directly, but refer their queries to the judge, who then questions the witness.

### 19. In relation to third party experts:

- How are they appointed?
- Do they represent the interests of one party or provide independent advice to the court?
- Is there a right to cross-examine (or reply to) expert evidence?
- Who pays the experts' fees?

#### Appointment procedure

Experts are appointed from a list of licensed experts in a given field. If the parties do not agree on the identity of the expert, the court will appoint an expert from the list, by drawing from the list of licensed court experts.

In addition, each party has the right to appoint its own counsel expert. Counsel experts and court-appointed experts are usually appointed from the same list of licensed court experts. However, if there are no licensed court experts in any specific field, both the court expert and counsel expert can be appointed from other available specialists in the required field, provided they comply with certain requirements.

#### Role of experts

A court-appointed expert provides independent advice to the court concerning various issues of fact on which the court seeks specialised opinions.

Counsel experts appointed by the parties are entitled to participate in the execution of the expert report, to review the report made by the court-appointed expert and issue an opinion on the findings of the court-appointed expert.

#### Right of reply

Each party is entitled to submit objections to the report prepared by the court-appointed expert, at the hearing following submission of the report. If objections are found to be grounded, the court may either order a new completion of the expert report or its redrafting by another court-appointed expert.





## Fees

The fees of the court-appointed expert are set by the court. The fee is advanced by the requesting party and, if requested by two or more parties, it is advanced jointly by the parties. If the report is requested by the court on its own initiative, the claimant must usually bear the expert fees. The fees of a counsel expert are advanced by the party who benefits from the advice of the counsel expert. All such fees are considered as legal costs at the end of the proceedings.

## APPEALS

### 20. In relation to appeals of first instance judgments in large commercial disputes:

- To which courts can appeals be made?
- What are the grounds for appeal?
- What is the time limit for bringing an appeal?

## Which courts

First instance judgments made in disputes exceeding RON100,000 or which are of a non-pecuniary nature can be subject to first appeal and second (final) appeal. The competent court to settle the first appeal is the court of appeal, whose judgment can be further appealed to the High Court of Cassation and Justice.

However, in a number of circumstances in commercial disputes of a non-monetary nature, only the first appeal is allowed, which is settled by the court of appeal.

First instance judgments made in disputes below RON100,000, such as a claim for the unpaid price of delivered goods, can only be subject to one appeal, which is not limited to matters of law adjudicated by the tribunal.

## Grounds for appeal

A first appeal concerns the unlawfulness of the first court judgment and seeks a re-examination of the case on the merits in relation to both findings of law and fact.

The second appeal can only be filed on the following grounds:

- The composition of the court breached the law.
- The judgment has been made by judges other than those who have participated in the debates of the case on the merits.
- The court was not competent to settle the case.
- The court has exceeded judicial powers.
- The court has not complied with the procedural rules stipulated under the sanction of nullity.
- The court has ruled on more than what was requested or on what has not been requested.
- The judgment does not give reasons, or the reasoning is contradictory or has no connection with the nature of the case.

- The judgment has wrongfully construed the legal document brought before the court, or has changed the nature of it or the clear and obvious meaning of the legal issue which was the subject matter of the trial.
- The judgment lacks legal grounds or has been made by wrongfully enforcing or construing the law.

In the situations where only one appeal is available against a judgment of the first court, the appeal can be brought on points of fact and law.

## Time limit

The first appeal and second appeal statements can be filed before the court making the challenged judgment, within 15 days of the date when the judgment is communicated to the party. The notice of grounds for a first appeal can be filed until and during the first hearing when the parties have been duly served, while in a second appeal the notice of grounds must be filed within the above 15-day term. The procedure concerning the statement of defence in both types of appeal follows the customary rules of first instance trials (see *Question 9*).

## CLASS ACTIONS

### 21. Are there any mechanisms available for collective redress or class actions?

Romanian law does not recognise typical class actions, as, for example, in the US. However, Romanian procedural law contains certain provisions relating to cases involving multiple parties, when the parties are under the obligation to appoint one or more representatives, or the representative must be appointed by the court.

## COSTS

### 22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

The principle is that the unsuccessful party must pay the successful party's costs, upon that party's request. However, if the defendant accepts the claim during the first hearing when parties are duly served, he cannot be compelled to pay the claimant's court expenses, unless the claimant had previously asked the defendant to fulfil its obligation, and that obligation is the subject matter of the claim.

If the claim is admitted only in part, or if a counterclaim is also admitted, the costs of the parties are subject to set-off as determined by the court.

The court calculates costs based on evidence of due payment submitted by the party for the:

- Court fees.
- Legal fees.



- Expert fees.
- Translation and other costs in relation to the dispute.

The court cannot challenge the amount of court fees and other procedural taxes, experts' fees, witness disbursements and other costs that the successful party proves to have incurred. However, the court can decide to decrease legal fees if it considers them unreasonable, in relation to the value of the case and services rendered.

### 23. Is interest awarded on costs? If yes, how is it calculated?

Interest is awarded only on the amount claimed, as the case may be, and not on costs. However, if legal costs are claimed separately (through a separate claim) interest on legal fees can be demanded based on the general rules of obligations.

## ENFORCEMENT OF A LOCAL JUDGMENT

### 24. What are the procedures to enforce a local judgment in the local courts?

Local judgments are enforced through bailiffs, qualified enforcement officers, using one of the following procedures:

- Seizure of the debtor's movable and immovable assets, followed by their sale at public auction or other means mutually agreed by the creditor and the debtor.
- Third-party debt orders, which redirect to the creditor funds owed to the debtor by a third party (for example, attachment of bank accounts).
- Insolvency proceedings.

## CROSS-BORDER LITIGATION

### 25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

In general, courts defer to the governing law of a contract chosen by the parties.

The court can disregard the choice of the parties if it was made to avoid mandatory provisions of the law that would have otherwise governed the contract.

The following matters are subject to the exclusive application of Romanian law:

- Insolvency of Romanian companies.
- Land and other immovable assets located in Romania.
- Anti-competitive practices affecting a relevant market on Romanian territory.
- Romanian registered patents.
- Certain corporate matters relating to Romanian companies.

### 26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

Romanian courts observe the choice of jurisdiction in a contract. Romanian courts must set aside a choice of jurisdiction clause if the law provides for the exclusive jurisdiction of the Romanian courts, for example, in cases concerning land and other immovable assets in Romania, or insolvency or other corporate disputes involving Romanian corporations.

For contracts involving EU jurisdictions, Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation) is applicable.

### 27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?

If the proceedings to be served are from another EU member state, service can be effected under Regulation (EC) 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (Service of Documents Regulation).

The proceedings can be also served under the HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention), if the state of origin is a signatory to it, but not an EU member state.

The central authority (as designated under the above Regulations or the Hague Service Convention) from the originating state refers an official request and the relevant documents to the Ministry of Justice, which further refers them to the specialised service of the courts.

Romania also concluded bilateral treaties in relation to legal assistance in civil and commercial matters with a number of states, providing similar mechanisms of communication of summons and judicial documents.

### 28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

The procedure for taking evidence from a witness in Romania, on a request from any EU member state except Denmark, is governed by Regulation (EC) 1206/2001 on co-operation between the courts of the member states in the taking of evidence in civil or commercial matters, and is initiated by a request filed with the relevant Romanian court by the foreign court which settles the dispute. The Romanian court takes the evidence under Romanian procedural rules.



The foreign court can request the use of communication technology such as teleconference or videoconference when the evidence is taken. In addition, representatives of the requesting court have the right to be present in the Romanian court during the taking of evidence.

If the foreign court wants to directly take evidence in Romania, it should file a request with the Ministry of Justice. Direct taking of evidence by the foreign court is not allowed if it requires coercive measures. The taking of evidence will not be performed if the person to be heard can claim the right to refuse to give evidence or to be prohibited from giving evidence.

Romania is a party to the HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970 (Hague Evidence Convention), which governs the procedure for taking witness statements abroad on requests originating from signatory states.

### 29. What are the procedures to enforce a foreign judgment in the local courts?

Foreign judgments made by courts in states that are not EU members can be enforced in Romania by a special recognition and enforcement procedure implying a local claim with this object. Throughout this procedure, the Romanian court is not allowed to re-examine the case on the merits, but can refuse to enforce the judgment if the judgment is contrary to Romanian public policy. A number of formal requirements are also provided, for example, providing the original foreign judgment apostilled or legalised by the competent foreign authority, as well as proof that the foreign judgment is final and enforceable in the country of origin.

Foreign judgments made by courts of law in the EU are enforced in Romania under the Brussels Regulation, implemented through a local regulation. The party seeking enforcement of the judgment must file an application before the tribunal.

## ALTERNATIVE DISPUTE RESOLUTION

### 30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries?

The most employed ADR method in Romania is arbitration, as an alternative to litigation in the state court system. In addition, parties are compelled to use mediation or the conciliation procedure (see Question 8).

### 31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

Commercial disputes involving monetary claims can only be brought before the court after mediation or the mandatory conciliation procedure. Non-compliance with this requirement may lead to the dismissal of the claim as inadmissible. If the parties did not attempt mediation before the initiation of the

lawsuit, the court can recommend parties resort to mediation and can also request the parties to participate in a meeting where a mediator would inform the parties of the advantages of mediation.

### 32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

There are no detailed rules on giving evidence in ADR. In mediation, these rules are, as a matter of principle, agreed by the parties or, if an agreement cannot be reached, drawn up by the mediator.

Under the law governing mediation, documents or admissions made or produced throughout the mediation process cannot be used in court, unless the parties expressly agree or if legal provisions provide otherwise.

The mediation process and its outcome are confidential.

In the conciliation procedure the law recognises exchanges and communications of documents during the conciliation procedure. Admissions are subject to ordinary evidentiary rules.

The outcome of the mandatory conciliation procedure is confidential if the parties expressly agree on confidentiality, or if the documents concluded between them contain confidentiality clauses relating to the subject matter of the dispute.

### 33. How are costs dealt with in ADR?

The mediation contract must contain detailed provisions regarding costs incurred during the mediation. In other ADR methods, the parties are free to agree on the costs.

### 34. What are the main bodies that offer ADR services in your jurisdiction?

There are no significant bodies offering ADR services in Romania. Mediators have their own offices, similar to lawyers and notaries.

## PROPOSALS FOR REFORM

### 35. Are there any proposals for dispute resolution reform? Are they likely to come into force?

The main contemplated reform consists of a new CCP which is currently being drafted. This reform aims to improve the Romanian system of dispute resolution through the following means, among others:

- Regulating for the first time the fundamental principles of the civil trial, which are at present contained in doctrine.
- Rearranging competence of the courts by subject matter (see Question 3).





- Enhancing the efficiency of the service of proceedings system.
- Improving the efficiency of judicial activity and reducing the duration of trials, while preserving all procedural guarantees.
- Enacting rules to prevent a party's attempts to extend the duration of the trial.
- Introducing new regulations concerning appeals.
- Introducing a new mechanism aimed at unifying case law.

- Providing new procedural rules for arbitration.
- Ensuring the prompt and effective enforcement procedures.

The new CCP is highly likely to become law, but the time frame is unknown.

A limited reform was accomplished at the end of 2010 through amendments to the current CCP. That reform was aimed at reducing the duration of legal proceedings.

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**Qualified.** Romania, 1991

**Areas of practice.** Litigation and arbitration.

#### Recent transactions

- Acting for ThyssenKrupp in relation to one of the most complex international litigations pending in Romania for over 27 years, arising from the sale and purchase of steel during the communist political regime (claim value US\$50 million).
- Representing Roche Romania with respect to several commercial litigations concerning the recovery of significant commercial debts.
- Acting for SC Romprest SA in a litigation concerning a public procurement of services (total value EUR400 million).

**Qualified.** US, New York, 2004; Bucharest, 1997

**Areas of practice.** Litigation and arbitration.

#### Recent transactions

- Representing Rompetrol Group NV, one of the largest gas and refinery businesses in Romania, in the three major litigations currently ongoing, in the context of the upcoming repayment by Rompetrol of a historical debt of EUR570 million to the Romanian state.
- Representing the Authority for State Assets Recovery against the US investor Noble Ventures in a commercial litigation with claims in excess of EUR15 million arising from the infringement of the privatisation contract of Resita Steel Mill.

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- Corporate / M&A (PLC Which Lawyer?, Chambers Global, IFLR 1000, Legal 500)
  - Privatisation and PPP (Legal 500, Chambers Europe)
- Banking (PLC Which Lawyer?, Chambers Global, IFLR 1000, Legal 500)
  - Project Finance (IFLR 1000, Legal 500)
- Dispute Resolution (PLC Which Lawyer?, Legal 500, Chambers Europe)
  - Energy and natural resources (Legal 500, Chambers Europe)
- Real estate and construction (PLC Which Lawyer?, Legal 500, Chambers Europe)
  - IT, Telecoms and Media (PLC Which Lawyer?, Legal 500)
  - Competition/Antitrust (PLC Which Lawyer?, Chambers Europe)
    - Intellectual Property (PLC Which Lawyer?)
    - Labour and employee benefits (PLC Which Lawyer?)
    - Environment (PLC Which Lawyer?)
    - Tax (PLC Which Lawyer?)
- Restructuring & Insolvency (PLC Which Lawyer?, Chambers Global)
  - Capital markets (PLC Which Lawyer, IFLR 1000)
  - Private Equity/ Venture Capital (PLC Which Lawyer?)