Chapter 19

Litigation and Arbitration

1. General

Recently the very roots of the Romanian judicial system were fundamentally modified and updated through the adoption of four new codes, which replaced the old (i) Civil Code, (ii) Civil Procedural Code, (iii) Criminal Code and (iv) Criminal Procedural Code.

They came into force on 1 February 2014. The New Criminal Code and the New Civil Code were adopted by Law No. 286/2009 and Law No. 287/2009 and published in the Official Gazette No. 510 and 511 of 24 July 2009. However, the date when they become effective was 1 October 2011 for the Civil Code, and 1 February 2014 for the Criminal Code. Also, the New Criminal Procedure Code was adopted by Law No. 135/2010 (published in the Official Gazette No. 486/15.07.2010) and it came into force on 1 February 2014.

It is worth mentioning that the New Civil Code incorporates in a single code the entirety of regulations regarding persons, family and neighborhood relations, understandings between individuals, agreements in general as well as between business professionals, patrimony and exchange relations, the circuit of assets and patrimonial values in inheritance matters, as well as the provisions of international private law.

Also, the New Civil Code proposes the regulation of the legal regime of certain rights and legal institutions that had not been enshrined by law thus far, some of which actually existed in the Romanian society (for example, engagement). Some of the most important novelties adopted by the new Code are:

(i) the protection of personal – non-patrimonial rights through specific legal means (e.g., establishing, as a specific means of defense, the right to reply and the right to the rectification of erroneous information broadcast in the audiovisual media);

(ii) provisions concerning engagement, the choice of matrimonial regime and divorce by administrative means;

(iii) general regulation of the terms for the cancellation of rights;

(iv) the regulation of the fiduciary institution of trust;

(v) the regulation of the mortgage on movable assets (at present, this is approved only for immovable assets);

(vi) the regulation of specific agreements in the business environment: commission agreements, consignment agreements, delivery agreements, transport agreements, etc.;

(vii) the regulation of several banking agreements: checking accounts, bank deposits, credit facilities and safe box leases;

(viii) the regulation, in the field of international private law, of the institution of "the exceptional removal of the applicable law", which allows the judge, exceptionally, to establish the best applicable law in a particular case, regardless of the relevant rule on conflict of laws. However,

according to the law for the implementation of the New Civil Code, the new provisions usually apply for acts concluded, or events that taking place, after its entry into force.

On the other hand, the New Criminal Code aims to simplify the substantial law regulations, to transpose the regulations passed at the level of the European Union and to harmonize Romanian material criminal law with the systems of the other European Member States. As a whole, the New Criminal Code rethinks the punishments within other limits (usually by maintaining minimum limits or even increasing them, but also by reducing maximal limits). Other novelties include: a new regulation for punishment by a day-fine (the calculation of a fine based on the system of days as a fine, the possibility to apply the punishment cumulatively with the imprisonment) and the scope of application of such punishment is significantly extended, the form of *praeter intention* (the exceeded intention) is expressly mentioned, a guilty plea is given judicial effects also in the criminal investigation phase, the right of the court of law to waive application of punishment in certain cases etc.

The New Civil Procedural Code was adopted by Law No. 134/2010 and modified through Law No. 76/2012 for the implementation of the New Civil Procedural Code, Emergency Government Ordinance No. 4/2013 and Law No. 72/2013. It was republished with the Official Gazette No. 545 of 3 August 2012. The code entered into force on 15 February 2013.

The New Civil Procedural Code includes significant amendments on the procedural institutions regulated by the previous code, also containing various new institutions meant to ensure enhanced procedural guarantees for litigating parties, as well as increase the efficiency and speed of the judicial process. The law provides for a more comprehensible and unitary regulation of the fundamental principles related to civil court cases, as well as the transposition of some constitutional principles into the civil court's consideration.

In respect of new civil procedural institutions, the following are worth mentioning:

(i) *ex officio* ordering other persons to join judicial and non-adversarial proceedings;

(ii) request for a decision beforehand of the settlement of certain legal issues;

(iii) new evidence such as electronic documents, physical evidence, electronic storage devices.

Other significant amendments include:

(i) amendments to the jurisdiction of the courts;

(ii) the second/final appeal terms extended to 30 days;

(iii) in forced execution cases, the possibility of various categories of creditors, expressly provided for under law, to intervene in a relevant procedure initiated by another creditor.

For the time being, the New Civil Procedural Code and the Old Civil Procedure Code coexist in spite of the fact that the latter was repealed by the first. The law for applying the New Civil Procedural Code provides that this law is applicable to trials or enforcement procedures started after its entry into force. Therefore, if a trial started under the old legislation, its provisions govern the rules of procedure until a final judgment is issued. However, all trials for which action was filed after 15 February 2013 are governed by the provisions of the New Civil

Procedure Code. Similarly, regarding enforcement procedures, the new code is applicable for enforcement requests filed after 15 February 2013.

Another important law adopted during 2010 by Law No. 135/2010 is the New Criminal Procedural Code. The regulations of the New Criminal Procedural Code aim to reduce the duration of trials, simplify criminal judicial procedures by the introduction of new institutions, create a harmonization with the new institutions of the New Criminal Code, and finally, establish a balance between the requirements of criminal procedural efficiency, the protection of fundamental human rights, and compliance with the principles of fair criminal trial in accordance with international standards and requirements of ECHR case law.

Some of the new institutions introduced through the New Criminal Procedural Code are: the acknowledgement of a guilty plea, the reduction of jurisdiction degrees (a court case decision remains final after the appeal), regulation of second appeals in cassation as extraordinary appeals, the institution of a judge of rights and freedoms, and of a preliminary chamber judge, competent to rule on preventive measures and respectively on the legality of the Indictment Act, and in the criminal investigation phase, for the first time as a preventive measure, house arrest. Furthermore, a person regarding whom, through the data and evidence of the case, there results a reasonable doubt that he/she perpetrated a crime is called a suspect.

Until the efforts and accomplishments mentioned above become utterly effective, the Romanian legal system still encounters some difficulties in managing an impressive number of cases, which often impedes their settlement in an expedited 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, third parties do not have access to information related to the Court's and arbitral tribunal's activity in solving the dispute; efficiency – the procedures must be finalized within 6 months of the set-up of the arbitral tribunal, with only a 3 month extension allowed at the initiative of the arbitral tribunal. 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 29 October 2003;
- The new Civil Code - Law No. 287/2009;
- The new Criminal Code - Law No. 286/2009;
- The new Civil Procedural Code - Law No. 134/2010 ("NCPC");
- The new Criminal Procedural Code - Law No. 135/2010;
- Law No. 304/2004 on judicial organization, as subsequently amended and supplemented;
- Law No. 554/2004 on administrative litigation, as subsequently amended and supplemented;
- Government Emergency Ordinance No. 80/2013 regarding judicial stamp duties;

- Law No. 72/2013 regarding the measures for combating delay in payment between business professionals, as well as between business professionals and contracting authorities;
- Law No. 192/2006 regarding mediation and the organization of the mediator profession;
- Law No. 188/2000 concerning the court bailiff, as subsequently amended and supplemented to date;
- Law No. 335/2007 concerning the chambers of commerce and industry of Romania;
- 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 from November 13, 2008;
- As of 10 January 2015, Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, was replaced by Council Regulation (EC) No 1215/2012 of 12 December 2012 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 a payment procedure;
- Rules of arbitration of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romanian, in force as of 5 June 2014.

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 are spread in several towns in each county, the county courts in the county capital, and the existing 15 courts of appeal which have jurisdiction over regions including 2 to 4 county courts, except for the Bucharest Court of Appeal which has 6 county courts in its jurisdiction.

3.1.2. Composition of the Panels of Judges

The present system of the composition of the panel of judges provides the following: according to Law No. 304/2004 in the first instance of a trial a sole judge hears the files, two judges in the causes before the first appeal and three judges in the last appeal (in Romanian '*Recurs*').

At the level of the High Court of Cassation and Justice, besides the panel of judges of the sections, composed of three judges, panels of 5 judges may be formed at the level of the whole Court. Also, in certain cases, the Court may judge in Joint Sections. In criminal matters, the panel of judges from the High Court of Cassation and Justice is composed as follows: a) in cases for which the jurisdiction of first instance is the High Court of Cassation and Justice, the panel consists of three judges; b) appeals against the decisions of judges of rights and freedoms and judges from the preliminary chamber courts of appeal and the Military Court of Appeal, the panel is composed of one judge; c) for appeals against decisions ruled in the first instance by the Courts of appeal and by the Military Court of Appeal, the panel consists of three judges; d) for appeals against the decisions of the judges of rights and freedoms and preliminary chamber judges from the High Court of Cassation and Justice, the panel consists of two judges; e) for appeals against the minutes ruled in the first instance by the Courts of appeal and by the Military Court of Appeal, the panel consists of three judges. In other cases, the panel consist of three judges of the same section.

The Romanian judicial system has no jury, neither in civil nor criminal cases.

Each court of law acts as a court of first instance in certain criminal matters, depending on their jurisdiction.

3.1.3. Jurisdiction

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

In the first case, the issue is about the jurisdiction on the matter of the cause (*ratione materiae*), while in the second case, about territorial jurisdiction (*ratione loci*).

3.1.4. Material Jurisdiction of the Local Courts

Following the recent adoption of the New Civil Procedure Code, a major change operated with regard to the material jurisdiction of the Courts. Thereafter, the proportion of cases has shifted from the local courts which formerly had jurisdiction over all civil matters, except those given by law to other courts, to Tribunals, which are now generally competent for the vast majority of cases.

As first instance courts, in civil matters local courts have jurisdiction over:

(i) family matters and tutorship;

(ii) civil status of citizens;

(iii) vicinity litigation;

(iv) eviction claims;

(v) possession claims;

(vi) claims for obliging the defendant to do a certain act or abstain from doing an act;

(vii) claims regarding the division of assets regardless of the amount, as well as

(viii) any other monetary claims under RON 200,000 (approx. EUR 44,400).

Local courts also resolve complaints against the judgments of administrative authorities with jurisdictional authority, or other such entities, as well as any other matters thereto assigned by law.

In criminal matters, the general competence belongs to local courts of law, whereas crimes considered of an increased degree of complexity or legislative importance are judged by the superior courts (Tribunals or in a few cases Courts of Appeal). Furthermore, the superior courts (of Appeal or the High Court) are competent to adjudicate cases involving persons having official duties or capacities.

3.1.5. Material Jurisdiction of the County Courts/Tribunals

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

According to the New Civil Procedure Code, the County Court gained a larger material competence. It is the Court generally to be addressed with a judicial claim. Although at present its competence is generally referred to as "all claims not given by law to other Courts", hereinafter are a few categories of disputes that are differed to Tribunals:

(i) civil lawsuits with a value over RON 200,000 (approx. EUR 44,400), except for claims under the jurisdiction of Local Courts;

(ii) copyright, trademarks and industrial property disputes;

(iii) labor conflicts and social insurance disputes;

(iv) administrative litigation, except for that given by law to the jurisdiction of other courts;

(v) lawsuits regarding expropriation;

(vi) requests regarding the approval, nullity or cancelation of adoption;

(vii) requests regarding damages caused by judicial errors in criminal lawsuits;

(viii) 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 issued by the local courts in the first instance, as well as second appeals in specific cases provided for by law.

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.

Tribunals in criminal cases only judge cases as first instance courts, in relation to more important crimes (murders, corruption etc.).

Additionally, County Courts solve competence conflicts occurring between the local courts.

3.1.6. Material jurisdiction of appeal courts/regional courts

In the first instance, the appeal courts/regional courts settle administrative claims in matters expressly provided for by law.

As courts of judicial control, the courts of appeal settle the vast majority of appeals filed against the decisions issued by county courts in the first instance. In cases specifically indicated by law they also settle second appeals.

In criminal matters, the courts of appeal settle, as first instance courts, crimes to the security of the state, crimes against peace and humanity, or crimes committed by high officials such as judges at the local and County Courts. Regional courts settle appeals against the decisions given by ordinary courts. Also, such courts settle conflicts of competence between county courts and petitions regarding extradition.

3.1.7. High Court of Cassation and Justice

The High Court of Cassation and Justice is organized into: (i) four sections (two civil sections, an administrative and fiscal section and a criminal section,), (ii) panels of five judges and (iii) joint sections.

The panels of five judges are in charge of appeals and other claims resulting from the first instance jurisdiction of the Criminal Section of the High Court, and other causes assigned to it by law. Such panels also act as disciplinary courts.

According to the New Civil Procedural Code, the High Court settles second appeals filed against the decisions given by regional courts, and against other decisions specifically provided for by the law, second appeals in the interest of the law, requests to issue a prior judgment for the interpretation of a matter of law, and other cases given by the law in its jurisdiction.

Judges at the High Court of Justice sit in panels of three (when they represent a first court), and panels of five in case of appeals.

In criminal matters, the High Court of Cassation and Justice acts as first instance court in case of crimes committed by high officials, such as members of the Parliament and of the Government. As a court of judicial control, the High Court judges the appeals against decisions passed by the regional courts (courts of appeal).

The High Court of Cassation and Justice reunites in Joint Sections for solving disputes regarding changes in case law, and for the notifying the Constitutional Court with a request for checking the constitutionality of laws before their promulgation.

The territorial jurisdiction principle states that an application must be filed before the court of the defendant's domicile, in the case of individuals, or headquarters in the case of legal entities or moral persons.

In order to establish the territorially competent court, only where the defendant actually lives at the time the application is filed is of interest, regardless of his or her address of "domicile" as mentioned in identity documents. For corporations, their registered headquarters according to their incorporation documents is generally considered for the purposes of territorial competence.

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:

(i) the court competent over the location where the defendant – private entity – has a subsidiary, for obligations to be performed in the respective location, or originating from documents concluded through the subsidiary, or from its acts or deeds;

(ii) the courts from the capital of the country or the county where the plaintiff's domicile is located, for requests filed against the State, Government or State-owned companies;

(iii) 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;

(iv) in requests deriving from a cheque or promissory note, the court located in 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 mandatory, 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 requests concerning immovable property, which must be filed only before the court with jurisdiction over such immovable assets, or on corporate matters which fall in the jurisdiction of the court where the entity has its headquarters.

3.1.8. Relocating Lawsuits

When there are certain circumstances that justify an assumption that the court entitled to solve the litigation is not impartial, or that the trial might cause a threat to public safety, the other party may file a petition for the relocation of that case to another court of the same rank, before the Appeals Court, if the trial is pending before a Local or County Court, or before the High Court of Cassation and Justice, if the trial is pending before an Appeals Court.

The General Prosecutor of the High Court of Cassation and Justice is the only one entitled to request the transfer of a lawsuit for reasons of public safety.

3.2. The Procedure

3.2.1. Civil Lawsuit Features

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

(i) the lawsuit should be settled during a reasonable period of time – this requirement was recently stipulated expressly within the New Civil Procedural Code in consideration of the European Court of Human Rights case law on this topic. For trials started under the new legislation, at the first hearing the judge must estimate the length of the trial. Should the trial unjustifiably exceed this period, the parties are entitled to file a complaint in order to expedite the proceedings.

(ii) the hearings are open to the public – the court may declare the hearings secret only when this is required for the protection of the parties' interests, public order and morals;

(iii) the active role of the judge – expressed through the judge's possibility to invoke on his own initiative the violation of certain mandatory legal norms, to qualify a request according to its content and not by its title, and to order the production of any evidence necessary to appropriately settle the case;

(iv) In practice, the active role of the judge is highly contested, especially concerning the possibility of ordering 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 a civil trial.

3.2.2. Preliminary Proceedings

In certain cases, before addressing the court, it may be compulsory to fulfill certain preliminary procedures, under the sanction of rejecting a request as premature/inadmissible. Such mandatory preliminary procedures exists in certain types of civil litigation and in administrative matters.

For example, according to Law No. 554/2004, any person whose rights are breached or damaged through the act of an administrative authority, whose petitions are not solved within the legal term, may challenge such an act by means of a complaint addressed to the authority which issued the act, or to the authority hierarchically superior to the issuing one, which is compelled to respond within 30 days. The court must be approached within a period of six months from the issuance date of the damaging act.

However, Law No. 554/2004 provides an exception to this rule, stipulating that, for solid grounds, a petition against an administrative act may be filed after the six months period has elapsed, but not later than one year from the issuance date of such an act.

3.2.3. Stamp duties due for legal actions

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

Petitions with financially assessable object are taxed by applying a percentage to such a value. For example, if the claim is assessed at RON 20,000, the duty owed is RON 355 + 5% of the amount exceeding RON 5,000, resulting in a total of RON 1.105. Also, for a claim of RON 1.000.000, the duty owed is RON 6.105 + 1% of the amount exceeding RON 250.000, resulting in a total of RON 13.605.

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

The law also provides that certain legal actions are exempted from judicial stamp duty, such as those related to labor, social security, consumer protection, criminal litigation etc. Besides exemptions specified by law, the Ministry of Public Finance may also grant exemptions if the requesting party proves that he/she lacks the funds to pay the stamp duty.

The court awards the stamp duty as a judicial expense to the plaintiff in the event he wins the trial. The winning party can also be awarded other judicial expenses such as expert's fees and attorney fees.

3.2.4. Evidence

The court settling the case directly produces the evidence, except for 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 the New Civil Procedure Code, lawyers may also administrate the evidence. The evidence may be administrated at the office of the lawyer, or in any other place agreed to by the parties. Lawyers administrate the evidence in accordance with a schedule approved by the court.

If there is a risk that the evidence may be lost in the future, an interested person can file for a procedure of preservation or examination of that particular evidence before even the competent court is called to settle a particular case in relation thereto. In this case, the request of preservation of the evidence is addressed to the court in whose territorial area such evidence is located.

The claims of the parties may be proven by documents, interrogation, witnesses, technical expertise reports and on-site investigations. In addition, the law also provides that the claims of the parties may be proved through a confession made by the parties, or through presumptions drawn by the judge.

In civil matters, a witness may not be used to prove the existence and/or content of a written document, unless the parties agree otherwise.

3.2.5. Means of Contesting a Judicial Award

a) **Appeal –** in civil matters, most decisions given in the first instance may be challenged by appeal. In principle, the term for filing the appeal is of 30 days from the date of communication of the court decision to be challenged.

   In case the grounds for appeal are not properly filed with the court, the appeal is settled based on the claims and evidence produced before the first court.

   In civil matters, awards given in appeal are final and may be enforced even if a second appeal is filed.

b) **Second appeal** – under the New Civil Procedure Code a second appeal is an extraordinary challenge that 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. However, a second appeal cannot be declared against claims which were under the jurisdiction in the first instance of local courts, claims regarding civil navigation and naval activities, labor conflicts, expropriation, judicial error litigation or monetary claims under RON 500.000.

   A second appeal must also be filed within 30 days from the date of communication of the challenged decision and must be motivated in the same period, under sanction of its cancellation. The grounds for a second appeal are limited, and expressly specified by law, and they address questions of law and not questions of fact. As an element of novelty with regard to the old legislation, a second appeal can

contest only a wrong application of the substantive law, thus exempting the alleged breach of the procedural rules.

Decisions passed within a second-degree appeal are final.

c) **Annulment and Revision** – are extraordinary means of challenge that may be filed against irrevocable or definitive decisions, and are solved by the court which 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 for by law.

d) **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, by the Managing College of the High Court of Cassation and Justice, by the Managing colleges of the regional courts of appeal, or by the Ombudsman.

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 has as its main purpose the issuance by the High Court of Cassation and Justice of a decision on some legal matters that were dealt with 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 the High Court to give a unitary interpretation over legal matters that were solved in different ways by the courts of law.

3.2.6. Special Procedures

a) Injunction

The New 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 enforcement procedure.

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

b) Payment Ordinance

This procedure allows faster recovery of receivables which are certain, liquid and due, originating from acts/deeds proven by written documents. The procedure may also be employed for the recovery of debts against public authorities, arising from a public procurement agreement or a concession of public works or services. As a condition of admissibility, before filing for a Payment Ordinance, a creditor must first send a notice to the debtor and ask for payment within 15 days. Should the deadline expire without any payment from the debtor, the creditor can file for a Payment Ordinance thereto attaching the notice.

The application for the issuance of a payment ordinance is submitted to the court with due competence to adjudicate on the merits of the matter in the first instance.

Under the New Civil Procedural Code, requests for payment ordinance are decided only based on the documents filed by the parties. Submitting a statement of defense is mandatory, failure to do so within 3 days prior to the first hearing entitles the judge to consider it a relative presumption recognizing the creditor's claims. If, after their review, the creditor's claims are considered justified, the judge will issue an injunction thereby ordering the debtor to pay, as well as the deadline for such payment (between 10-30 days). Should the debtor contest the claim, and for deciding on the claim the Court finds that it needs other evidence than the documentary evidence admissible within such procedure, the court dismisses the request. In this case, the creditor can afterwards file a lawsuit by means of a regular civil action. Against a Payment Ordinance, the debtor may file for annulment, within 10 days from the date of its communication. Filing of the request for annulment does not suspend the enforcement of a payment ordinance.

c) Conservatory Measures

The New Civil Procedural Code provides three categories of conservatory measures, *i.e.*, judicial seizure, conservatory seizure and attachment.

Judicial seizure implies the entrusting by the court of movable or immovable assets which are disputed in the litigation to a person chosen by the parties or the court. The person to whom the movable/immovable asset is entrusted may even be one of the parties.

Conservatory seizure and attachment are meant to prevent the diminishing of a debtor's assets until a judgment is issued ordering the debtor to pay. In this respect, the law allows such conservatory measures taken on a 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 the dispute attachment.

One essential requirement for the approval of a conservatory measure is the possibility of the court to impose the payment of a bond, of up to 20% of the value of the claim, at thr court's discretion. Should the creditor fail to pay such a bond in the deadline established by the court (which is usually a matter of days), the conservatory measure ceases de jure.

4. Forced Execution (enforcement procedure)

4.1. General

The forced execution procedure was largely restructured by the adoption of the New Civil Procedure Code. These legislative changes were meant to reduce the duration of the enforcement, and to entrust the bailiffs with broader functions.

4.2. Forced Execution Officers

Officers that carry a forced execution into effect are:

(i) court bailiffs, with full executive jurisdiction over the territorial area of a court of appeal;

(ii) officers of financial bodies, for forced execution of budgetary debts;

(iii) executive officers from the Authority for State Assets Recovery, a public authority with specific competences.

The territorial competent bailiff is the one located within the Court of Appeal where the unmovable asset which is to be enforced is located, or, should the enforcement procedure be aimed at movable assets or bank accounts, the competent bailiff is the one within the territorial boundaries of the Court of Appeals of the headquarters or domicile of the debtor.

4.3. Writs of execution

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

(i) final court decisions, arbitral awards, communicated to the parties;

(ii) deeds authenticated by a public notary, certifying certain liquid and due receivables;

(iii) promissory notes and cheques;

(iv) bank loan agreements;

(v) titles concerning budgetary debts and detailed customs declarations;

(vi) movable security interests contracts concluded in writing;

(vii) leasing agreements.

In addition, foreign arbitral decisions and decisions given by foreign courts may be enforced, after preliminary completion of a judicial procedure for the recognition of these decisions on the territory of Romania. Under European Council Regulation No. 1215/2012, certain European titles are recognized automatically in the Romanian legal system, without the need for any supplementary judicial proceeding.

According to the New Civil Procedural Code, before hiring a bailiff, the writ of execution must first be approved by the court. Following the approval, the writ should be handed to the bailiff in order to commence the enforcement.

4.4. Challenging the Forced Execution

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 an execution.

Until the opposition 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 cases when the law provides otherwise.

4.5. Restoration of the Execution

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

5. Other Authorities with Judicial Activities

5.1. Overview

Beside the courts of law, there are other authorities performing judicial activities, settling certain disputes with a highly technical character, their decisions usually being 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 laws before their endorsement by the President of Romania (prior control), initiatives of revising the Constitution, international treaties, regulations of the Parliament, laws and ordinances in force (subsequent control) and the statutes of political parties.

The constitutionality control of the laws and Government ordinances, after the latter enter into force, is accomplished through an unconstitutionality motion which is raised before the ordinary courts of law during a trial.

Under the previous enactment (Law No. 47/1992 on the organization and operation of Constitutional Court), if the settlement of a case depended on certain legal provisions the unconstitutionality of which it was claimed, the court was bound to suspend the pending case and notify the Constitutional Court for the ruling on the unconstitutionality exception. By repealing the provisions mentioned above through Law No. 177/2010 for amending and supplementing Law 47/1992 on the organization and operation of the Constitutional Court, and the Civil and Criminal Procedure Codes, the cases will no longer be *de jure* suspended. The measure is aimed at a reduction in the parties' possibility to suspend the proceedings by invoking in bad faith unconstitutionality motions. Whenever the Constitutional Court declares a provision unconstitutional within a law, a Government ordinance or within Parliament's internal regulations, such a provision ceases to have effect 45 days after publication of the Constitutional Court decision if, during this period, the Parliament or the Government do not amend such a provision in accordance with the Constitution. During this period, provisions declared unconstitutional are suspended *de jure*.

6. Arbitration in Romania

6.1. General

The New Civil Procedural Code is the main piece of legislation dealing with arbitration. Other regulations dealing with arbitration concern the organization of arbitral bodies and their arbitration rules. In this respect, the most important body enacting such rules is the Court of International Commercial Arbitration affiliated to the Romanian Chamber of Commerce and Industry.

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

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

The Court, whose head office is in Bucharest, functions according to its Regulation as updated on 6 May 2014. A new set of Rules on the arbitral procedure (the "Rules") were published in Official Gazette No. 613 of 19 August 2014, being in force since 5 June 2014, based on which 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.

6.3. Categories of Disputes Subject to Arbitration

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

6.3.1. Disputes arisen from internal and international trade relations

These disputes are 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 Romanian arbitration law (in case the seat of arbitration is in Romania) and the international treaties of which Romania is a part. In case the parties revert to institutional arbitration, the dispute is settled in accordance with the relevant institutional arbitration rules. In case the parties chose the arbitration rules of the United Nations 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 arising from internal or international monetary legal relationships, other than 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 an 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 is 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, are applicable.

6.3.3. Disputes that may not be subject to arbitration

(i) those concerning the civil status and capacity of individuals, inheritance, family relationships and rights upon which the parties cannot decide;

(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.).

Ad-hoc arbitration is arbitration organized by the parties based on the procedural rules tailored by them, or by 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.

6.4. Ad-Hoc Arbitration

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

(i) appointment of the arbitrators and chairman, according to the arbitral convention and Rules of the Court;

(ii) establishing and providing the Rules of the Court to the parties, as well as a list of arbitrators, both with 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 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 that organized by an arbitration institution such as the International Commercial Arbitration Court attached to the Romanian Chamber of Commerce.

Its main features are that it is organized by arbitration institutions, in exchange for an administrative tax, usually at its headquarters. The arbitration institutions 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 an arbitration clause is stipulated in the underlying agreement, when the parties agree that all disputes that might arise from the performance of an agreement would be settled through arbitration. In such a 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 does not automatically become void or unenforceable (NCPC, Art. 550 para. 2). The parties may also enter into an arbitration clause subsequent to the dispute, by a separate agreement referred to as a compromise.

The arbitration clause must be in writing and must contain the modality of appointment of arbitrators. In the case of institutional arbitration, it is sufficient to provide reference to the institution or the rules of the institution organizing the arbitration. The compromise must mention the subject-matter of the dispute, the names of the arbitrators, or the manner of appointment thereof in the case of ad-hoc arbitration. In the case the arbitration agreement refers to a litigation related to the transfer of ownership rights and/or the constitution of another real right over an immovable asset, the agreement must be concluded in authentic notarized form. Failure to comply with these requirements renders the arbitration clause void (NCPC, Art. 548, 550 and 551). The existence of an arbitration clause compels the parties to settle a dispute by arbitration. The courts lack jurisdiction to adjudicate the claim if a valid arbitration clause was executed (NCPC, Art. 553). However, the court does not itself raise the issue of a lack of jurisdiction, the onus is with the defendant to invoke the arbitration clause should the plaintiff file 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 attached to the Chamber of Commerce and Industry of Romania, as follows:

"Any dispute under or related to this agreement, including with respect to the execution, performance or termination hereof, shall be settled by means of arbitration, by the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, in compliance with the Rules of arbitration procedure of the Court of International Commercial Arbitration, in force, published in the Official Monitor of Romania, Part. I".

6.6.2. The arbitral tribunal – choosing the arbitrators

According to Art. 555 of the New Civil Procedural Code, the parties may appoint as an arbitrator any individual who has full legal capacity. The arbitration clause establishes whether there will be only one arbitrator or more arbitrators. If there is no specific provision in the arbitration clause on the number of arbitrators, the arbitration takes place with three arbitrators, one appointed by each party, and the chairman appointed by the two chosen arbitrators (NCPC, Art. 556). Any provision in the arbitration clause allowing one party to appoint more arbitrators than the other party, is void (NCPC, Art. 557). 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 a competent court to appoint the sole arbitrator or chairman (NCPC, Art.561). An arbitrator must explicitly accept the appointment. An arbitrator may be disqualified for the same reasons calling for the disqualification of a judge (NCPC, Art. 562), such as direct commercial relations with one of the parties, or when they have provided assistance to one of the parties, assisted and represented one of the parties, or testified in an earlier procedural stage of the case and other situations alike. When a party is knowledgeable of any reason for disqualification, 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 grounds for a challenge. The decision of the court on the grounds or disqualification is final (NCPC, Art. 563).

When arbitration is organized by a permanent arbitral body, then the arbitral institution decides upon all matters related to the appointment, removal or disqualification of the arbitrators (NCPC, Art. 619).

6.6.3. Proceedings

Arbitral proceedings are carried out in accordance with the rules agreed to 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 NCPC. In any case, the arbitral proceedings must comply with such fundamental norms of fairness and substantial justice as the right to be heard, equality between the parties and the adversarial nature of the trial (NCPC, Art. 575).

Arbitrators adjudicate the dispute according to the contract between the parties, applicable rules of law and trade usages. The parties may confer to the arbitrators the power to render and award *ex aequo et bono* (NCPC, Art.601 para. 2). The place of arbitration is the place set by the parties or, failing such an agreement between the parties, the place decided by the arbitral tribunal after its constitution. (NCPC, Art. 569).

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 (NCPC, Art.585). The arbitral tribunal has the power to order attachments or other relief measures. However, the competent court must carry out the actual enforcement of such measures.

The previous Rules of Arbitration adopted the system of a “Planning Act” (which was similar to the system of “terms of reference” inspired by the ICC Rules of Arbitration) prepared by the arbitral tribunal and agreed upon by the parties prior to the beginning of the arbitral process. The Planning Act, which had to be signed by the parties and the arbitral tribunal, provided the concrete rules and planning of the arbitral procedure, including, *inter alia*, the main factual and legal issues the arbitral tribunal should address, the supporting evidence to be submitted by the parties, as well as the applicable submission deadlines. This system was

abandoned by the New Rules, which implemented a procedural approach very similar to the common judicial process before the courts of law.

The arbitrators must issue the award within six months from the date of constitution of the Arbitral Tribunal, a period that may be extended only once by three additional months (NCPC, Art. 567). 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 (NCPC, Art. 602).

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 domicile or 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 (NCPC, Art.603).

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 (NCPC, art. 604).

The award and the entire file must be submitted to the competent court of law within 30 days of the service of the award to the parties. In case a permanent arbitral body organized the arbitration, the file is deposited with that institution (NCPC. Art. 607).

6.6.5. Challenges of the arbitral award

An arbitral award may be challenged only by an action for annulment, 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 who 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 is against public policy; or (ix) after the Arbitral Award was rendered, the Constitutional Court decided upon a plea of non-constitutionality which was raised during the arbitral proceedings, and declared unconstitutional the law, Government Ordinance or legal provision of a law or of a Government Ordinance subject to the plea of non-constitutionality (NCPC, art. 608).

The action for annulment can be brought before the court of appeal in the circumscription of which the arbitration took place (NCPC art. 610). The decision of the court may be appealed to a higher court (usually, the High Court of Cassation and Justice).

6.6.6. Enforcement of the arbitral award

The arbitral award is carried out voluntarily by the party against whom it was rendered, at once, or within the time limit indicated in the content thereof. The arbitral award constitutes an enforcement title and is enforced in the same manner as a court judgment (NCPC, art. 615).

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 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 arbitration clause agreed by the parties. A certified (official) translation must be produced together with these documents.

The grounds for 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, Romanian law requests that the statutes of limitation of the right to request the enforcement should not have expired (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, according to the customary civil procedure rules.

6.6.8. Arbitral taxes and expenses

Arbitral taxes represent the fees of the Romanian arbitrators and, in case of institutionalized arbitration, 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 evidence administration, translation/recording of documents/debates, foreign arbitrators' fees, travel and accommodation expenses of arbitrators, fees of experts and expenses made of witnesses.

Arbitral taxes and expenses are usually incurred according to the parties agreement; in case such an agreement does not exist, the expenses are incurred by the party that loses the case.

6.7. Other Romanian Arbitration Institutions

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

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

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

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

The main attributes of the Arbitration Commission reside in organizing and administering the settling by arbitration of certain disputes between, on the one hand, suppliers of medical services, medicines and medical devices and, on the other, 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 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 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, Family and Equal Opportunities.

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

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

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

For activities 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 the conflict.