

# **International Commercial Arbitration in Romania: Can the New Changes Release the Tension Instilled in the Past?**

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Why is the evolution of international commercial arbitration important for Romania? First of all, Romania has a significant geostrategic position: it lies at the crossroads of three large international markets: the European Union, the Balkans and the Commonwealth of Independent States. Romania is the access gate of the East to the single market of the European Union. The Romanian arbitration system currently undergoes a process of reformation, tailored to the requirements and needs of potential arbitration users and the parties to international disputes.

### **International Institutional Arbitration**

The Court of Arbitration attached to the Romanian Chamber of Commerce is the most important and renowned Romanian arbitral institution (the “Romanian Court of Arbitration” or the “Arbitration Court”). The Romanian Chamber of Commerce and Industry (the “CCIR”) was established in 1953 in order to settle foreign trade disputes. Under the Law No. 335 of 3 December 2007, the Romanian Court was set up as a permanent arbitration institution. According to the Regulations on the Organisation and Operation of the CCIR, the Arbitration Court provides arbitration services, consultancy on procedures, studies and research in the field of arbitration, and is engaged in international and internal cooperation within the system of Chambers in Romania.

According to the 2014 Rules of Arbitration Procedure (the “Arbitration Rules”), the Romanian Court of Arbitration resolves, *de jure* or *ex aequo et bono*, international disputes in accordance with the arbitration agreements concluded by the parties. The Arbitration Court also settles domestic disputes (Article 3). In this sense, the arbitration clause recommended by CCIR reads 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.”

According to the Arbitration Rules and the information provided by the Secretariat of the Court, dispute settlement through arbitration before the Romanian Court of Arbitration has the following advantages:

- The awards are **final and binding**;
- They enjoy a **wide international recognition**, as Romania ratified the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- The arbitrators' **expertise**: The arbitrators of the Court are highly qualified specialists in law and international commercial relations;
- **Confidentiality**: The hearings are not public, and third parties do not have access to the information on file;
- **Expediency**: The arbitral proceedings take no longer than 12 months for international arbitrations and 6 months for domestic arbitrations;
- **Low costs**: The arbitration fees (which include the arbitrators' fees) are calculated as a percentage of the amount in dispute, at decreasing rates.

### **The 2014 Rules: Composition of the Court of Arbitration and List of Arbitrators**

In August 2014, the Romanian Court of Arbitration amended its arbitration rules and returned to the long-standing principle of party autonomy in the constitution of the arbitral tribunal. Prior to that, for a period of roughly two years, the Arbitration Court promoted an appointment mechanism whereby the CCIR President appointed all arbitrators (or the sole arbitrator) from pre-established lists published on the CCIR website. This appointment system generated great tensions both within the Arbitration Court and as far as the parties were concerned, who saw themselves deprived of the ultimate reason for which arbitration was preferred to resolution of disputes in court. The old system proved its flaws and limitations in that the number of cases administrated by the Arbitration Court decreased drastically during this period of two years, culminating with a corruption scandal that led to the amendment of the Arbitration Rules.

Since the enactment of the new rules in early 2014, the general arbitration environment regained its values. Besides reinstating the principle of party autonomy, the new rules also permit public entities engaged in economic activities to enter into arbitration agreements (unless prohibited by their own by-laws). The overall climate also improved through the adoption of new regulations governing the organization and functioning of the Romanian Court of Arbitration and the setting-up of the College of the Court, which ensures its general management.

Among its attributions, the College of the Court approves the list of arbitrators and sends it to the management of the Chamber of Commerce for confirmation. Thus, shortly after its creation, the College had to examine the then existing list of arbitrators. This issue has sparked vivid debates because, according to the regulations of the Arbitration Court, the term of office of each arbitrator is five years; thus many arbitrators whose terms of office has not yet expired were also subject to such scrutiny.

The arbitrators are confirmed by the CCIR Management Board upon the proposal of the College of the Court of Arbitration. Individuals not included on the List can also act as arbitrators through direct party appointment for a specific proceeding, as long as they fulfill the conditions set forth in the Arbitration Court's regulations in force and the 2014 Arbitration Rules.

The Arbitration Rules provide that the arbitral tribunal may consist of a sole arbitrator or of three arbitrators. In each set of proceedings, to ensure that no disruptions jeopardize the proceedings, besides the main arbitrators, the parties are required to also appoint substitute arbitrators at the same time as the appointment of lead arbitrators. If the parties fail to appoint their arbitrator or the

two party-appointed arbitrators fail to appoint the president of the tribunal ("*supraarbitrul*"), such appointment will now be made by the President of the Court of Arbitration.

Interestingly, in pending cases for which the arbitral tribunal had been constituted under the old rules, parties were allowed to proceed to new appointments if they so wished, but only until the first day of hearings and within a period of 10 days from the date when the new Arbitration Rules entered into force. The first day of hearings is, according to Article 44 of the 2014 Arbitration Rules, the first date of arbitration when the duly notified parties can file legal conclusions, and when the tribunal discusses with the parties the organization of the procedure, possible settlements, jurisdictional objections, and whether the parties have other claims or wish to make additional submissions. However, if, at the time the new Arbitration Rules became effective, proceedings were already more advanced than the first day of hearings, the appointment of new arbitrators could have been done only upon the agreement of both parties, until the next hearing at the latest. Finally, Article 88 of the 2014 Arbitration Rules made it clear that cases pending at the time when the new rules were adopted will be governed by the rules in force at the time of filing the request for arbitration, unless the parties decide otherwise.

### **The arbitral procedure**

The claimant submits to the Court a request for arbitration. The request contains the same elements as a request filed with a state court, to which the claimant should attach a copy of the document containing the arbitration clause (the main contract or the separate arbitration agreement). The respondent files a statement of defense, to which it has the right to add counterclaims arising out of the same legal relation. Objections regarding the existence or validity of the arbitration agreement or the constitution of the arbitral tribunal must be raised by no later than the first hearing day, under risk of preclusion. By contrast, public order objections can be invoked at any time during the whole arbitral proceeding.

### **The Award**

The deliberations of the tribunal are conducted confidentially. The award is final and mandatory, having with the same effect as a final and binding court decision. Once enforced by state courts, the award becomes a writ of execution just as a court order. In domestic arbitrations or international arbitrations seated in Romania, the award can be challenged for any of the reasons set forth in the Code of Civil Procedure. The parties are not allowed, under Romanian law, to waive their right to seek annulment before the award is made. Once that is issued, such right can nevertheless be waived.

### **Conclusion**

The continuous reformation of the arbitration system in the current economic context in Romania, as well as from the perspective of Romania's status as European Union Member State, has become a priority, especially since all the tension placed by applying certain rules can be completely eliminated.

An important issue to consider is the arbitrators' training. In order to continuously improve their professional training and align themselves to international standards, arbitrators are offered training courses such as those offered by CI Arb. In my opinion, maintaining and creating new international working groups are essential for any significant development.