The 2018 Revision of the Rules of the Court of Arbitration Attached to the Chamber of Commerce and Industry of Romania – An Important Upgrade

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A heated debate has been ignited by the results of the 2018 Queen Mary Survey, which highlighted time and cost as the most fervid complaints respondents had regarding arbitration. In order to address these issues, a series of measures have been implemented by major international arbitral institutions in recent years in order to counteract significant delays as well as excessive expenses.

Aligning themselves to the necessities and evolution of arbitration, the Rules of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (hereinafter "the Rules" and "CICA-CCIR") have been revised in 2018 to enable parties to dispose of their dispute in a more efficient manner.

The much needed upgrade follows a series of efforts to revive flexibility and efficiency of arbitration in Romania after previous versions of the Rules severely damaged the principle of party autonomy. In a 2014 study conducted by the Directorate-General for Internal Policies of the European Parliament on arbitration in Romania, parties expressed discomfort concerning "the traditional freedom of arbitration from governmental and institutional control". However, the conclusion of the study described the problems Romania faced at the time as "far from insoluble" as well as its capacity to "increase substantially as an arbitral State". This was due to the 2011 and 2012 versions of the Rules providing for the "exclusive prerogative of the appointing authority" to appoint the presiding arbitrator of a dispute and, later on, all the members of the arbitral tribunal, annihilating the parties' involvement in such a crucial matter, defects which have since been cured.

In this context, the endeavors of the institution become even more laudable, with considerable improvements generated by the 2014 and the now 2018 revisions respectively. These have also synchronized with the 2014 revision of the Romanian Code of Civil Procedure regulating domestic and international arbitration, an inspiration from the UNCITRAL Model Law. Although traditional litigation is still the preferred method of resolving disputes nationwide, despite an overly burdensome caseload beset upon courts, it has been held that "[c]ommercial disputes in Romania are increasingly being submitted to arbitration, particularly in sectors such as construction, concessions, public-private arrangements and corporate joint-venture type investment schemes" [fn] Florian Nitu, Raluca Petrescu, Catinca Turenci, *Arbitration Procedures and Practice in Romania: Overview*, Practical Law, 1

August 2016 [/fn]. This demonstrates that the discomforts expressed in 2014 are slowly dissolving, with the new provisions amounting to yet another stepping stone, particularly in terms of combating concerns over time and costs.

Emergency Arbitrator

The emergency arbitrator is provided for under Annex II of the 2018 Rules. The President of CICA-CCIR decides upon the jurisdiction of CICA-CCIR and proceeds to appoint an emergency arbitrator within 48 hours of receipt of the application. In two days' time after his or her appointment, the emergency arbitrator establishes a procedural timetable to be followed by the parties, with a decision being rendered within 10 days as of his or her designation. One particularity pertains to the impossibility of *ex parte* proceedings, the request for an emergency arbitrator being communicated to all the parties in dispute.

Contrasting the expedited proceedings that apply under art. 6 of Annex V to disputes arising out of arbitration agreements concluded after the entry into force of the 2018 Rules, there is no mirroring text for the emergency arbitrator provisions. This significant intermission has already been contemplated in what has been the first dispute submitted to CICA-CCIR this year under the emergency arbitrator provisions. The respondents filed an action for annulment of an order rendered by an emergency arbitrator arguing that, procedurally, the emergency arbitrator was not competent because the arbitration agreement had been concluded prior to the entry into force of these provisions and had provided for a number of three arbitrators and that, substantially, the requirements for granting the interim measure were not met.

The Bucharest Court of Appeal granted the request submitted by the respondents and annulled the order. Although the reasoning of the Court of Appeal has not yet been rendered in order to determine the procedural or substantive grounds for the decision, parties should mind the gap left open in the 2018 Rules as well as keep an eye on the publication of the reasoning (it can take courts up to one year to have the reasoning published) as it might create an important precedent for future cases.

Expedited Proceedings

The expedited proceedings provisions regulated under Annex V of the 2018 Rules apply automatically if the value of the dispute is below 50,000 lei (approximately 10,700 EUR or 12,500 USD) or as an opt-in alternative. The advantages of this procedure is that it consists of a sole arbitrator, a tighter procedural timetable, administering only necessary evidence, undergoing communications solely via e-mail and a time limit of 3 months for rendering the award.

Case management conference

A number of techniques have been put in place under art. 31 of the 2018 Rules relating to the case management conference and under Annex IV of the Rules relating to case management techniques. The former takes place at the first hearing date, addressing the necessity of filing an additional memorandum to the statement and answer to the statement of claim respectively, the general course of proceedings, the choice of having the arbitral tribunal decide *ex aequo et bono*, jurisdictional objections, requests for multi-party proceedings and the manner of appointing experts. The latter addresses, among others, the bifurcation the proceedings, the issuance of partial awards, the identification of issues that need to be addressed only in writing, the limitation of the parties' submissions to only some key aspects of the dispute and the usage of audio and video means of communication instead of in-person hearings.

Although the 2018 version of the CICA-CCIR Rules is still perfectible in certain aspects, the

modifications will enhance both the expeditiousness and the quality of arbitration proceedings. However, these advantages can only prove fruitful if parties themselves or, more precisely, legal counsel meet the commitment threshold the institutions adhere to when maintaining and improving the attractive but "deceptive simplicity" of having "no flags, maces, orbs or scepters" [fn] Alan Redfern, Martin J. Hunter, Nigel Blackaby, Constantine Partasides, *Redfern and Hunter on International Arbitration*, 6th edition, Ed. Oxford University Press, Oxford, 2015, par. 1.06. [/fn] of arbitration as opposed to litigation.

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