ARBITRATION COURTS

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Romanian Code of Civil Procedure from the 9th of September 1865, republished in the Official Gazette no. 177/26th of July 1993, as further amended and completed

- Decree-Law no. 139/1990 on Romanian chambers of commerce and industry, published in the Official Gazette no. 65/12th of May 1990

- Order no.6/1999 on the approval of the Regulation no. 3/1999 of procedure of the Arbitration Chamber of the Bucharest Stock Exchange and of the Arbitration Chamber of RASDAQ Market, published in the Official Gazette no. 319/5th of July 1999

I. Scope

The provisions of the Code of Civil Procedure, fourth book are the common law of any form of private arbitration, regulating the voluntary arbitration under its different forms: domestic and international arbitration, arbitration in law and arbitration in equity, ad-hoc arbitration and institutional arbitration.

According to Art.340 Code of Civil Procedure, the persons having full legal capacity may agree upon settling their patrimonial litigation by arbitration, except those regarding rights on which the law does not allow for a transaction to be made.

1. Procedures for settling litigations by arbitration

The Romanian law recognizes:

- Ad-hoc Arbitration;
- International Arbitration;
- Optional Conciliation

2. Litigations that cannot be settled by arbitration:

- those regarding the status of the person;

- those regarding the items which are not in trade;
- litigation of the exclusive competence of the courts of law.

II. Institutions of Arbitration

The following ones are institutions of arbitration: International Commercial Arbitration Court within the Chamber of Commerce and Industry of Romania, Arbitration Chamber of Bucharest Stock Exchange and the Arbitration Chamber of the Rasdaq Market.

III. Arbitral Convention

Arbitration is organized and takes place according to the arbitral convention. The arbitral convention is concluded, in writing, under the sanction of nullity. The arbitral convention may be concluded:

- under the **form of an arbitration clause,** written in the main contract. Through the arbitration clause, the parties agree for a litigation arising from the contract in which it is inserted or in connection with it to be settled by arbitration, comprising the name of the arbitrators and the way of their appointment.
- or under the **form of independent agreement,** denominated **compromise.** By compromise, the parties agree for a litigation arising between them to be settled by arbitration, mentioning under the sanction of nullity, the object of the litigation, the name of the arbitrators and the way of their appointment.

The main effect produced by the conclusion of the arbitral convention is the exclusion of the competence of the courts of law.

IV. Arbitral tribunal

The parties may agree, through the arbitral convention, for the arbitration to be organized by a permanent arbitration institution or by a third party. The sole arbitrator or, as the case may be, the arbitrators vested form the **arbitral tribunal.** Any natural person, having Romanian citizenship, having full capacity of rights may be arbitrator.

The parties may establish if the litigation is settled by a sole arbitrator or by two or more arbitrators. If the parties fail to establish the number of arbitrators, the litigation shall be settled by three arbitrators, one for each party and the third one – the presiding arbitrator – appointed by the two arbitrators.

The appointment of the arbitrator or as the case may be of the presiding arbitrator shall be made by the judicial court upon request of the party wishing to resort to arbitration, under the following **circumstances:**

- if the parties do not agree upon the appointment of the sole arbitrator;
- if one of the parties fails to appoint the arbitrator;
- if the other two arbitrators do not agree upon the person of the presiding arbitrator.

The conclusion of appointment shall be given within 10 days from the notice, subject to summoning of the parties. It is not subject to ways of attack.

V. Notification of the arbitral tribunal

Arbitration petition

The arbitral tribunal is notified by the claimant through a written petition – arbitration petition. The request may be performed also through a **minutes** concluded beside the arbitral tribunal and signed by the parties or only by the claimant, as well as by the arbitrators.

Contestation

The respondent is compelled to lodge a contestation within 30 days from the receipt of the copy of the arbitration petition. The contestation **shall comprise:**

- exceptions regarding the claimant's petition,
- the answer in fact and in law regarding this petition,
- proofs proposed by the defense,
- the other mentions accordingly provided for the arbitration petition.

If, by failure to file the contestation the litigation is postponed, the respondent will be compelled to the payment of the arbitration expenditures caused by the postponement.

3. Counter claim

The respondent may lodge a counter claim if he has claims against the claimant deriving from the same legal relation.

The counter claim should be filed within the term of filing of the contestation or at the first term of presentation at the latest and has to fulfill the same conditions as the main petition.

4. Place of arbitration

The place of arbitration is established as follows:

- by the parties;
- by the arbitral tribunal if the parties have not written such a provision in the arbitral convention.

VI. Arbitral procedure

1. Establishment of the trial date

The trial date shall be established after the expiration of the term of filing of the contestation. The term must be thus establishes as between the date of the receipt of the summons and the term of debate to exist a period of at least 15 days.

2. The trial

The trial takes place subject to compliance with the principles governing the lawsuit which takes place before the judicial courts. Parties may participate in the trial in person or by representatives and may be assisted by any person. At the same time, either party may request for the settlement of the litigations to be made in contumacy, on the basis of the documents filed with the dossier.

The litigation may be settled in the presence of only one of the parties, if the other one, though duly summoned, has not requested for the postponement of the litigation for solid reasons, notifying within the same term the other party as well as the arbitrators. If a term has been requested, the postponement may only be granted once.

3. Proofs

Each party has the burden of proving the facts on which it grounds its claim of defense in the litigation.

The arbitral tribunal may request from the parties written explanations regarding the object of the petition and the facts of the litigation and may order the administration of any proof provided by law. Any petitions of the parties and any writings must be filed until the first term of presentation at the latest. Proofs not requested until this moment, will not be allowed to be invoked during the arbitration, except the cases in which:

- the necessity of proof would result from the debates;
- the administration of proof does not cause the postponement of the settlement of the litigation.

Administration of proofs

The administration of proofs is performed in the arbitral tribunal session, but the arbitral tribunal may order for the administration of proofs to be performed before an arbitrator from its composition. The arbitral tribunal cannot apply sanctions to the witnesses or to the experts and cannot resort to the means of coercion. For taking such measures the parties may address to the law courts. The administered proofs shall be judged by the arbitrators according to their own interior beliefs.

4. Conclusions of the session

The arbitral debates, as well as any provision of the arbitral tribunal are written in the conclusion of the session.

The conclusions in which the provisions of the arbitral tribunal are written must be motivated.

The parties have the right to take notice of the content of the conclusions and of the acts of the dossier and, upon request, a copy of the conclusion of the session may be submitted to them.

Upon parties' request or ex officio the arbitral tribunal may rectify or complete the conclusion of the session by another conclusion.

VII. Arbitral award

1. Consideration, pronouncing of the award

After the conclusion of the debates, the arbitrators consider secretly, with the participation of all the arbitrators in person, this participation being written in the award.

If the pronouncing is not made at the term in which the trial took place, it will be postponed with maximum 21 days, subject to condition of framing within the term of arbitration.

According to the Art.353^3 Code of Civil Procedure, if the parties did not provide otherwise, the arbitral tribunal must pronounce the award within maximum five months from the date of its establishment.

The term suspends for the duration of the judgment of a petition of challenge or of any other incidental petition addressed to the law court.

The extension of the term of arbitration may be approved in writing by the parties; the extension of the term with maximum two months may be ordered by the arbitral tribunal for solid reasons.

2. Communication of the award

The arbitral award is final and binding. The arbitral award shall be communicated to the parties within maximum one month from the date of its pronouncing. Within 20 days from the date of the communication of the award, the arbitral tribunal shall file with the dossier of the litigation to the competent law court, annexing the proofs of communication of the arbitral award.

3. Execution of the arbitral award

The arbitral award is binding. The arbitral award is fulfilled willingly by the party against whom it has been pronounce, as soon as or within the term stipulated in the award.

The vesting with executory formula is made at the request of the winning party. The **conclusion of vesting** is given by the competent legal court, without summoning the parties, except the case in which there are doubts regarding the regularity of the arbitral award, case in which the parties shall be summoned. The arbitral award vested with executory formula is writ of execution and is forced executed just like a judgment.

4. Cancellation of the arbitral award

The arbitral award may be cancelled only by action in avoidance filed within one month from the date of the communication of the arbitral decision, for the reasons expressly provided for in the Code of Civil Procedure.

The parties cannot waive by arbitral convention the right to file action in avoidance against arbitral award. But the waiver to this right can be made after the pronouncing of the arbitral award.

Settling of the action in avoidance

The competence to settle the action in avoidance is incumbent to the court of law immediately superior to the court of law that would have been competent to settle the litigation if the parties had failed to conclude the arbitral convention. The territorial competence – the law court in the circumscription of which the arbitration took place.

The judgment of the court of law regarding the action in avoidance may only be challenged with recourse.

VIII. Arbitral expenses

The expenses for the organization and performance of the arbitration, as well as the arbitrators' fees, expenses for the proofs administration, traveling expenses of the parties, of the arbitrators, experts, witnesses are borne according to the agreement of the parties. If such agreement is not concluded, the arbitral expenses are borne by the party that has lost the litigation, integrally if the arbitration petition is granted entirely or pro rata with what has been granted, if the petition is granted partially.

If the arbitration is organized by a permanent institution, the duties for the organization of the arbitration, the arbitrators' fees as well as the other arbitral expenses are established and paid according to the regulation of that institution.

IX. International arbitration

Art. 369 – 371 Cod of Civil Procedure, comprises provisions regarding the international arbitration.

An arbitral litigation that takes place in Romania is considered international if it has appeared from a relation of private law with element of foreign origin. Through the arbitral convention referring to an international arbitration, the parties may establish for it to take place in Romania or in another country.

In international arbitration judged in Romania or according to Romanian legislation, the arbitral tribunal shall consist of an odd number of arbitrators, either party having the right to appoint an equal number of arbitrators. The foreign party shall appoint only arbitrators of foreign citizenship. The parties may agree for the sole arbitrator or the presiding arbitrator to be citizen of a third state.

The debate upon the litigation beside arbitral tribunal shall be made in the language established through arbitral convention.

The arbitrators' fees and traveling expenses are borne by the party that has appointed him, except the case in which the parties agree otherwise; in the case of the sole arbitrator or presiding arbitrator, these expenses are borne in equal parts.

Acknowledgment and execution of the foreign arbitral awards

The foreign arbitral award is the award given on the territory of a foreign state or the one which is not considered as national award in Romania.

Foreign arbitral awards may be acknowledged in Romania, in order to benefit from the power of res judicata by the accordingly enforcement of the provisions of Art. 167 – 172 from the Law no. 105/1992 on the regulation of the relations of international private law.

Foreign arbitral awards, which are not fulfilled willingly by those compelled to execute them, ma be put in forced execution on the Romanian territory, by the proper enforcement of the provisions of Art. 173 – 177 from the Law no. 105/1992.

Foreign arbitral awards, pronounced by a competent arbitral tribunal, have probative force besides the Romanian courts regarding the situations of fact established by them.