# LITIGATION & ARBITRATION ASSISTANCE

## *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

- Government Ordinance no. 5/2001 on procedure of summons for payment, published in the Official Gazette no. 422/30th of July 2001

- Law no. 146/1997 on stamp duties, published in the Official Gazette no. 173/29th of July 1997

- Government Ordinance no. 39/2003 on procedures of administration of the debts of the local budgets, published in the Official Gazette no. 66/2nd of February 2003

In case of litigation between natural persons or legal persons, the interested party may address for settlement to courts of arbitration or to courts of common law.

If the parties choose for the settlement of the litigation to be made by the court of common law the following aspects have to be taken into account:

- judicial courts: material competence, territorial competence, composition of the court;
- procedural quality;
- procedural capacity;
- means of proof;
- stamping;
- ways of attack.

## *I. Settlement of the litigations in commercial matter*

### 1. Preliminary procedure of conciliation

In the trials and claims in commercial matter, assessable in money, before the filing of the petition for putting on trial, the plaintiff shall try the settlement of the litigation by direct negotiation with the other party.

For this purpose, the plaintiff shall convene the counter party, by communicating in writing, the invoked claims, their legal grounds, the place and the date in which it shall take place; all the probative documents supporting the plaintiff shall be annexed. The convening shall be made by registered letter with acknowledgment of receipt, by telegram, fax or any means of communication ensuring the transmittal of the text of the act and the acknowledgment of its receipt. The convening may be also made by giving the documents under the signature of receipt. The date of the convening shall be established so as to ensure a term of at least 15 days from the date of the reception of the communicated documents according to those already mentioned.

The result of the conciliation shall be registered in minutes, presenting the claims and of the point of view expressed regarding the subject-matter of the litigation by the two parties.

If a settlement could not be reached by direct negotiation, the plaintiff shall go to court for the settlement of the cause.

## 3. Contentious procedure

### *2.1. Material competence*

In commercial matter, the material competence lies with:

a) the court of law, if the value of the object of the petition is up to lei 1 milliard;
b) the tribunal, if the value of the object of the petition is over lei 1 milliard, as well as the trials and the petitions in this matter whose object cannot be assessed in money.

### *2.2. Territorial competence*

The general rule establishes the territorial competence of the court from the defendant's domicile. If the defendant is a legal person of private law, the competence lies with the court from its head office.

Commercial litigations regarding a building are, exclusively, of the competence of the court in the circumscription of which the building is. If the building is situated in the circumscription of many courts, the competence lies with the one coinciding with the defendant's domicile, and if none coincides with it, the defendant may choose one of them.

### *2.3. Petition for putting on trial*

The petition for putting on trial shall have the content indicated by Art. $720^3$ paragraph 1, Code of Civil Procedure. The petition for putting on

trial as well as all the documents annexed to it that have not been communicated to the defendant during the preliminary procedure shall be filed in as many copies as defendants in the case, and one more copy for the court, with the record office of the competent court for settling the trial.

The court vested with petition for putting on trial shall establish a day that it discloses to the plaintiff by representative, but the date established has to allow the defendant to have at least 15 days from the date of the receipt of the summon, in order to prepare his defense and in urgent trials, at least 5 days. The defendant shall be summoned with the mention that he has to file a statement of claim with minimum 5 days and, in case of emergency, 3 days before the first date.

### *2.4. Prescription of the right to file action*

In commercial matter, the recovery of the debts has a prescription term of 3 years which begins from the date to which the respective payment obligation has become exigible, that is from the date in which the debtor's right to go to court occurred.

### *2.5. Statement of claim and counter claim*

The defendant has the possibility of defending himself within a commercial trial by promoting certain alternative ways: statement of claim and counter claim.

The filing of the statement of claim by the defendant is compulsory; the statement of claim has to be filed at least 5 days before the first trial date, and in emergency causes at least 3 days before. The statement of claim shall have the content indicated by Art. $720^4$ paragraph 2 corroborated with Art.115 Code of Civil Procedure.

If the defendant has claims against the plaintiff, deriving from the same legal relation, he may lodge counter claim in the conditions of a petition for putting on trial; in the case of the litigations in commercial matter another attempt to conciliation is not necessary. The counter claim has to be filed within the term stipulated for the filing of the statement of claim.

### *2.6. Trial*

The trials and claims in commercial matters are judged with priority. At the first presentation the court shall give to the plaintiff a date for the completion or modification of the claim as well as for proposing new proofs; in this case, the court orders the postponement of the case and the

communication of the modified claim to the defendant, in order for him to make his statement of claim.
By way of exception, a date shall not be granted and the claim shall not be considered modified when the plaintiff: rectifies the material errors from the claim, modifies the amount of the object of the claim, when he asks for the value of the object instead of the object itself, when he replaces the claim in establishment with one in the exercising of the right or vice versa.

***2.7. Abandonment of action. Waiver of a right***

The plaintiff may abandon the action anytime, verbally in the session or by a written petition. The abandonment of action is established by the conclusion of the court that can be challenged with recourse (second-appeal). If the petition for putting on trial has been communicated to the defendant, the plaintiff may be forced to payment of the legal charges and if the proceedings on the merits have already begun the trail cannot be abandoned unless the defendant agrees with it.

Waiver of a right can be made anytime without the defendant's consent by authentic act or verbally before the first instance and in appeal. The judgment of the court shall dismiss the petition on the merits and in appeal shall cancel in whole or partially the judgment of the first instance, being allowed to be challenged with recourse (second-appeal).

***2.8. Partial judgments***

If the defendant acknowledges partially the plaintiff's claims, the court shall pronounce a partial decision for this purpose.

***2.9. Transactions***

If the parties reach an agreement during the trial, then a document shall be presented to the court that shall be signed before it by the parties and that shall be registered in the enacting terms of the judgment. The judgment confirming the parties' agreement is given with no right to appeal.

***2.10. Vesting with writ of execution***

The vesting with writ of execution of the final judgments or of those irrevocable is made by the first instance.

### *2.11. Ways of attack against the judgment*

**Recourse (second-appeal).** In commercial matter the judgments may be attacked with second-appeal, within 15 days from the communication. During this term the reasons of second-appeal should be filed also, under the sanction of canceling the second-appeal as groundless at the first trial date.

The second-appeal suspends the execution only in case of liquidation of constructions or other works or liquidation of borders. At request, the court may order motivated the suspension of the execution in other cases too, after the depositing of a bail by the party requesting such a thing.

Under the sanction of nullity, the second-appeal shall be filed with the court whose judgment is attacked. In second-appeal new proofs cannot be administered, except documents.

The court may admit the second-appeal, case in which it shall annul or modify the judgment of the court on the merits, or may dismiss it, cancel it or may establish its lapsing. The court of second-appeal shall hold the case for settling on the merits or in the case in which the first instance has not started the settling of the merits of the case, or one of the parties has not been duly summoned, it shall send the case for re-judging to the first instance.

**Contestation in annulment.** The judgment remained irrevocable as a result of the judging of the second-appeal or by the non-recurring of the one pronounced by the court on the merits, may be attacked with contestation in annulment if:

- the party has not been duly summoned;
- dispositions of public order have been broken regarding the competence of the court.

These reasons may be invoked only if they could not be invoked by the way of second-appeal or if, although invoked, they have been rejected without entering the merits of the cause or because verifications of fact were necessary for this purpose.

This extraordinary way of attack may be exercised before or during the execution, until the performing of the last act of forced execution. In the case of the judgments that cannot be put to forced execution, the contestation has to be filed within 15 days from the date on which the party acknowledged it, but in one year from the date on which it remained irrevocable at the latest. The contestation if judged with priority and urgently, and the judgment pronounced shall be subject of the same ways of

attack as the attacked judgment. A new contestation cannot be made for the same reasons.

**Reconsideration.** The judgment of the court of second-appeal can be attacked with reconsideration for reasons strictly stipulated by law, for example:

- the judgment comprises contrary provisions that cannot be enforced,
- the court has pronounced itself on certain issues not requested, has given more than requested or has not pronounced on a certain count,
- the object of the cause does not exist.

The petition is directed to the court that has pronounced the judgment whose reconsideration was claimed.

If the court admits the petition for reconsideration it shall change totally or partially the attacked judgment. The term in which the reconsideration may be requested is of one month, and starts from different moments, according to the reason invoked in the petition. Usually, the judgment is subject to the ways of attack stipulated for the reconsidered one.

## *II. Payment summons according to Government Ordinance no.5/2001*

The creditor may request the issuance of a payment summons if certain conditions are fulfilled:

i) The debt has to be sure, liquid and exigible
   - the debt is sure when there is no litigation on it
   - the debt is liquid if it has a precisely determined quantum
   - the debt is exigible if it reached the maturity date, the creditor beign able to request immeditaly its execution.

ii) The debt refers to the obligation of payment of an amount of money;

iii) The obligations resulting from a contract established through a document, from a bylaw, regulation or another document assumed by the parties by signature or in another way admitted by law.

iv) The content of the contract is represented by rights and obligations regarding the performing of certain services, works or other performances.

The competent court for judging the request regarding the issuance of payment summons is the court of law, in the case of those lodged in civil matter and the tribunal in the case of those lodged in commercial matter, regardless of the value of the object.

***Petition on issuance of payment summons***

The petition on issuance of payment summons shall have the content indicated by Art. 3, paragraph 1, Government Ordinance no. 5/2001.

In all the cases, for the settling of the petition, the judge orders the summoning of the parties, according to the provisions of the Code of Civil Procedure regarding the urgent cases, for further explanations and specifications, as well as in order to persist in making of the payment of the amount owed by the debtor or for the parties' agreement on payment methods. The debtor may also file statement of claim at the first trial date.

***The settling of this petition can be made as follows:***

a) The creditor receives the payment of the debt or declares that he is satisfied with the agreement on the payment, and then the court takes knowledge of it and shall proceed to the closure of the dossier, pronouncing an irrevocable conclusion. The conclusion on parties' agreement on the payment is writ of execution.

b) The court establishes that the creditor's claims are not justified and dismisses the creditor's petition. The dismissal ordinance is irrevocable. The creditor may file petition for putting on trial according to the common law.

c) The court establishes that the creditor's claims are justified and issues the ordinance containing the payment summons to the debtor, as well as the term of payment.

The ordinance of admittance entirely or partially of the creditor's petition, against which a counter claim has not been filed, is irrevocable. In order to be put into execution, the irrevocable ordinance has to be vested with writ of execution, according to the common law provisions.

***Ways of attack against the ordinance containing he payment summons***

The debtor may file action in annulment within 10 days from the date of its handing over or communication. The action in annulment is settled by the court competent for the judging on the merits of the cause in the first instance. The judgment, through which the action in annulment has been dismissed, may be attacked with second-appeal by the debtor.

If the debtor has not filed, within the legal term, action in annulment or this petition has been dismissed and remained irrevocable by non-recurrence or by the dismissal of the second-appeal, the debtor may file a contestation to the execution, according to the provisions of the Code of Civil Procedure.

## *III. Contesting of the acts of economic-financial control*

The measures taken by acts of control or taxation by the bodies of the Ministry of Public Finances, on taxes, duties, customs duty, contributions to the special funds, increases of delay, penalties as well as other amounts and measures ordered, within the legal competences can be contested by the interested persons. The contestations thus lodged are stamp duties exempt.

The contestation shall be filed with the body that has issued the attacked act, within 15 days. The contestations sent by mail are considered filed within 15 days, if they were handed over with registered letter with the post office, before the completion of the term.

***Competence of settling the contestations***

The contestations having as object amounts whose quantum is of up to lei 5 milliard are settled by the specialized bodies (services of settling of contestations) within the county general departments of public finances and state control, and of the Bucharest municipality, in the territorial range of the domicile or headquarter of the person filing contestation.
Contestations have as object amounts whose quantum is of lei 5 milliard or even more, as well as those lodged against acts drawn up by the control bodies within the central system of the Ministry of Public Finances, regardless of amount are settled by the specialized bodies (General Department for settling of contestations) within the Ministry of Public Finances.

***Decision for the settlement of contestations***

By decision, the contestation shall be admitted, entirely or partially, or dismissed. In case of admission of the contestation the total or partial annulment of the act attacked, as the case may be, is decided.

## *IV. Contestation of administrative acts*

Any natural or legal person, considering as being injured in his or her rights, acknowledge by law, by an administrative act or by the unjustified refusal of an administrative authority to resolving his or her petition regarding a right acknowledged by law, may address to the court for annulment of the act, acknowledgment of the claimed right and redress of the damage that has been caused to her or him.

***Preliminary administrative procedure***

Before requesting the court the annulment of the act or the obliging to its issuance, the injured party shall address for the defense of his or her right, within 30 days from the date of the communication of the administrative document or at the expiring of the term of 30 days in which no answer has been given, to the issuing authority. The issuing authority is obliged to resolve the complaint within 30 days from it.

***Notification to the competent court***

If the party considering itself injured is not content with the solution given to its complaint, it may notify the competent court within 30 days from the communication of the solution.

The notification of the competent court shall also be allowed to be made if the issuing administrative authority or the higher authority does not resolves the complaint within the 30 days term.

In all the cases, the introduction of the petition with the competent court shall not be allowed to be made after one year from the date of the communication of the administrative act whose annulment is requested.

The judging of the actions is of the competence of the tribunal or of the court of appeal from the petitioner's domicile.

***Settling of the action***

Settling the action, the court may, as the case may be:

a) cancel totally or partially the administrative act;
b) oblige the administrative authority to issue an administrative act or to issue a certificate, an attestation or any other document.

In the case of the admission of the petition, the court shall decide upon the material and moral damages requested.

## *V. Administrative-jurisdictional ways of attack according to the Government Ordinance no. 39/2003*

Any taxpayer, natural or legal person, malcontented by the way in which the local taxes and duties and their accessories have been established, as well as by other amounts or measures, has the right to lodge objections and contestations:

a) requesting the diminution or annulment, as the case may be, of the local taxes, duties of their accessories and of another amounts, established by the specialized departments;
b) contesting the measures enforced by the specialized departments.

Exceptions from those above-mentioned are the contraventions established and the fines enforced by acts of the specialized bodies of the authorities of the local public administration, which are settled according to the provisions of Government Ordinance no. 2/2001, approved as amended and completed by the Law no. 180/2002, as further amended.

Objections may be lodged against establishments and measures established within legal competences by minutes or by administrative acts of the specialized departments. The objections, as well as contestations addressed are stamp duties exempt. The exercising by the taxpayers of the ways of attack against:

a) acts of control establishing differences of obligations to the local budget,
b) minutes of calculation of interests and penalties for delay,

does not suspend their payment.

Objections may be lodged within 15 calendar days from the date of communication of the administrative act and are filed with the specialized departments that have issued the attacked act.

The malcontented taxpayer by the way in which the objections have been settled may address with contestation, within 15 calendar days from the date of the communication of the answer to the mayor/general mayor of the Bucharest municipality/president of the county council, according to their competence is establishing local taxes and duties.

Contestation is filed with the specialized department that has settled the objections, following for it, within 5 calendar days from the reception, to present to the issuer of the order the contestation and the dossier of objections.

**Action in annulment of the mayor's order**

The malcontented taxpayer may address, according to law, to the court of law or, as the case may be, to the tribunal against the order of the mayor/general mayor of the Bucharest municipality/president of the county council with action for the annulment of the respective act. The term of filing the action is of 15 calendar days from the date of the communication of the order.

## *VII. Stamping*

Art.1 from the Law no.146/1997 on judicial stamp duties stipulates that the actions and petitions filed with the judicial courts, as well as the petitions addressed to the Ministry of Justice and the prosecutor's office attached to the Supreme Court of Justice are subject to judicial stamp duties, stipulated by law and are charged differentially, according as their object is assessable or not in money, with the exceptions stipulated by law.

The petition is stamped according to the value of the claims requested, according to Art.2 from the Law no.146/1997 on judicial stamp duties, as further completed and amended.