



# Dispute Resolution

in 51 jurisdictions worldwide

# 2009

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**GLOBAL ARBITRATION  
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# Romania

Valentin Berea and Alexandru Mocanescu

Bulboaca & Asociatii

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Litigation

## 1 Court system

What is the structure of the civil court system?

### Court system overview

The structure of the Romanian civil court system is generally regulated under the provisions of the Judicial System Law No. 304/2004 and of the Romanian Civil Procedure Code.

The Romanian civil procedural system is organised as a three-tier pyramid comprising the following levels: the judgment on the merits, resolved by the first-instance courts by one judge; the appeal, resolved by the second-instance courts by two judges; and the second appeal, resolved by the third-instance courts by three judges.

However, any claim can be judged on the merits only twice, during the actual judgment on the merits and during the appeal, as the second appeal is an extraordinary means of appeal and, therefore, can only be filed on limited grounds. Nonetheless, there are certain claims that can undergo only two judgment levels: the judgment on the merits and one appeal.

The competence of the courts is regulated by the following two rules, one regarding the personal competence that, as a principle, belongs to the courts of law with jurisdiction in the area where the defendant's domicile or headquarters are located and the second regarding the subject of the litigation, which is usually settled by taking into account the nature and the value of the respective claim.

### Court system structure

The Romanian civil court system comprises the following courts of law, in a hierarchic order: the ordinary courts, the tribunals, the courts of appeal and the High Court of Cassation and Justice.

#### The ordinary courts

Currently there are 188 ordinary courts. As a principle, the ordinary court is a first-instance court and therefore has jurisdiction over any dispute that does not fall expressly under the jurisdiction of higher courts.

#### The tribunals

Currently there are 42 tribunals, located in each county of Romania.

As first-instance courts, tribunals have jurisdiction over the following claims: any commercial claim with a value above 100,000 lei and non-monetary commercial claims, any civil claims with a value above 500,000 lei except for non-monetary civil claims, inheritance-related claims and land-related claims, and claims related to: labour disputes, expropriation, intellectual property, adoption, enforcement of foreign judgments or administrative litigation.

As second-instance courts tribunals have jurisdiction over appeals

filed against judgment on the merits passed by the ordinary courts that are located in the same county as the tribunal.

#### The courts of appeal

Currently there are 15 courts of appeal, each having territorial jurisdiction over several counties.

As first-instance courts, the courts of appeal have jurisdiction over contentious administrative claims pertaining to central administrative authorities and institutions.

As a second-instance court the courts of appeal have jurisdiction over appeals filed against judgments on the merits passed by the tribunals located in their territorial competence area.

As third-instance courts the courts of appeal have jurisdiction over second appeals filed against the appeals resolved by the tribunals or against the judgments on the merits passed by the tribunals, which are not open to a first appeal.

#### The High Court of Cassation and Justice

There is only one such court located in Bucharest, capital city of Romania.

As a principle, the High Court of Cassation and Justice has competence only as a third-instance court, therefore having jurisdiction only over second appeals filed against the appeals passed by the courts of appeal and against judgments on the merits, passed by the courts of appeal, which are not open to a first appeal.

In addition to the above, the tribunals and the courts of appeal should have specialised divisions for matters such as civil, commercial, administrative and fiscal, labour and social security or other matters, depending on the number of related claims.

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## 2 Judges and juries

What is the role of the judge and the jury in civil proceedings?

### Judgment principles

According to current regulations the parties are in charge of the trial and each of the respective parties has to prove the facts that it alleges (*actori incumbit probatio*).

As a result and following the availability principle (eg, the parties set out the factual and award limits of the trial) judges should decide only upon the matters expressly demanded by the parties. Nevertheless, according to Romanian Civil Procedure Code, judges should play a proactive role during the trial and should make every effort to unveil the truth behind the presented facts.

### Judges' role

As a result of the obligation of being proactive, the judge or judges should – by way of example – explain to the respective parties their procedural rights and obligations or the consequences of certain pro-

cedural actions such as concluding a settlement agreement or withdrawing a claim. Furthermore the judges may request the respective parties to present any evidence that may be appropriate to reveal the truth and lawfully conclude the trial. Moreover, the judges should try to persuade the respective parties to settle the dispute in an amicable manner.

In conclusion, the Romanian procedural system is mainly contentious, thus the judges play only a moderate interventionist management role.

### No jury

The jury is unknown to the Romanian legal system.

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### 3 Limitation issues

What are the time limits for bringing civil claims?

According to the provisions of Decree No. 167/1958, the general limitation period for civil and commercial matters is three years, starting from the date one has gained the right to sue, pertaining to a respective matter. Nonetheless, there are numerous exceptions to the aforementioned general limitation term.

Under Romanian law the statutes of limitation may be, only under expressly regulated cases, suspended (ie, at the end of the suspension term the limitation period will start to run from the point where it was suspended) or interrupted (ie, at the end of the interruption a new limitation period will start to run). Furthermore, the statutes of limitation cannot be in any way subject to parties' agreement (eg, the parties can not extend or suspend the period according to their own wishes).

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### 4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

As a general rule, there is no express requirement to take any pre-action steps before filing a court claim. However, there are several expressly regulated exceptions in which a pre-action procedure is mandatory, the most important of which are:

- for monetary commercial claims there is a mandatory conciliation procedure that parties have to follow before filling a lawsuit claim (the main evidence to be relied on in court must be attached to the conciliation letter by the claimant); and
- for administrative litigation, there is also a mandatory pre-action procedure which requires the instigator first to file a complaint with the respective administrative authority.

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### 5 Starting proceedings

How are civil proceedings commenced?

Under Romanian law civil proceedings are commenced with the filing of a formal claim with the court.

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### 6 Timetable

What is the typical procedure and timetable for a civil claim?

A civil trial typically comprises the following stages: the written stage, the debates (court hearings) and the judges' deliberation and passing of the court decision.

#### The written stage

The written stage starts when the plaintiff files a claim with the court registry office. Subsequently, the claim is randomly distributed to

a judge or panel of judges. The first hearing date is set so that the respondent has at least 15 days (five days in urgent matters) to prepare its statement of defence, starting from the day it receives the summons.

The defendant will have to file the statement of defence (and counter claim, if the case) five days before the first hearing date.

The average time length between the filing of the claim by the plaintiff and the first hearing date is about one month. However, this period is likely to be longer in the case of higher degree courts and courts located in major cities, which usually register a large number of claims.

#### The debates

The debates are usually conducted during one or several hearings, which are set by the presiding judge. One of the most important principles that govern the civil proceedings is the principle of contradiction, which means that each of the parties has the right to discuss the opposing party's arguments and evidence before the debates are closed.

After the parties have presented all their evidence and arguments the debates will be deemed closed by the judges.

#### The judges' deliberation and passing of the court decision

After the debates are deemed closed the judges have to deliberate and pass a court decision. The decision should, in theory, be passed during the same day the debates were deemed closed or it may be delayed for no more than seven days. Nonetheless, in practice, especially in complex cases, the passing of the decision is usually delayed for more than seven days.

According to article 6 of the European Convention on Human Rights, to which Romania is a party, any person is entitled to a fair trial within a reasonable time. However, statistics reveal that the average duration of a trial in Romania that has gone through all three jurisdiction stages is between two and three years.

There has been some improvement, however; for example, in due commercial debts recovery matters, one can obtain an enforceable court decision in 30 to 60 days.

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### 7 Case management

Can the parties control the procedure and the timetable?

As a general rule the parties do not have control over the timetable of the procedure, which is the responsibility of the court. However, in practice, parties may postpone the proceedings by using various procedural delay tactics.

The parties control the procedure when it comes to the factual issues presented and the related claims. However, the judges should play a proactive role and should make every effort to unveil the truth behind the presented facts.

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### 8 Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

The court may request any of the parties to bring forward any evidence, including documents, that the court may deem necessary to find the truth and resolve the case.

Furthermore, if one party requests the court to oblige the other party to present a certain document, the latter party will have to disclose such if: it is a joint document of the parties; the alleged party made reference during trial to the respective document or the law expressly requests so.

**9 Evidence – privilege**

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

As a general rule, all available documents that the court considers relevant for the case have to be presented to the court. However, there are several expressly regulated cases in which documents are considered privileged, as follows:

- documents pertaining to strictly private matters;
- documents whose disclosure would break a legal obligation to keep the respective document confidential; and
- documents whose disclosure will lead to a criminal investigation against one of the parties or other persons or will expose one of the parties or other persons to public contempt.

Furthermore, according to the provisions of Lawyer Law No. 51/1995 and according to the provisions of Judicial Counsellors (ie, in-house lawyers) Law No. 514/2003, lawyers and judicial counsellors are under the obligation to keep professional secrets. Therefore, any documents, including legal advice pertaining to lawyers' and judicial counsellors' work, is privileged. Nonetheless, if they become public, or the parties agree on disclosure, such documents can be disclosed.

**10 Evidence – witnesses**

Do parties exchange written evidence from witnesses and experts prior to trial?

No. However, in the case of monetary commercial claims, parties have to undergo a conciliation procedure which among other matters provides for the obligation of the claimant to indicate and attach to the conciliation letter the main documents on which it relies.

**11 Evidence – trial**

How is evidence presented at trial? Do witnesses and experts give oral evidence?

According to the Romanian Civil Procedure Code there are five forms of evidence, as follows: written evidence, witnesses, confession (including cross-examination), expert analysis and on-site investigation.

As a principle, each party will have to prove its own allegations, thus each party has to propose evidence. The plaintiff has to propose evidence through the claim and the defendant through the statement of defence and counterclaim, if there is a counterclaim.

However, additional evidence may be requested pending the trial in the following particular cases:

- the necessity of the respective evidence resulted from the debates and the party could not foresee it;
- the presentation of the respective evidence will not delay the trial; and
- a party, not represented by a lawyer, did not request the evidence due to lack of legal assistance.

The method by which evidence is presented at trial depends on the type of evidence. By way of example, written evidence will be submitted as a copy (the originals must be presented only at the request of the court).

Witnesses give oral evidence under oath. Regarding experts, their evidence is represented by the written expert report. However, experts may be heard by the court in relation to the expert report submitted.

**12 Interim remedies**

What interim remedies are available?

Interim measures can be taken by way of injunction. Furthermore, a creditor may also apply for safeguard measures pending the trial on the merits of the case, namely sequestration of all assets of the debtor, sequestration of the disputed asset and foreclosure of bank accounts.

As regards foreign proceedings, according to the provisions of Law 105/1992 regarding the settlement on private international law relations, injunctions can be issued by Romanian courts, irrespective of whether they are competent to solve the main claim or not.

**13 Remedies**

What substantive remedies are available?

The claimant may request the court to compel the defendant to perform a certain obligation (ie, to do or to refrain from doing something) and to pay monetary damages.

In respect of interest, in commercial matters interest is calculated starting from the date any amounts became due and payable, but in civil matters the interest is calculated only from the date a formal notice was delivered to the debtor, or the date the claim was registered with the court. Interest accrues until actual payment.

Under Romanian law punitive damages are not available. Any claim for damages must be based on a quantifiable and proven prejudice (both actual loss and lost profit).

**14 Enforcement**

What means of enforcement are available?

With regard to the means of enforcement, these vary in respect of the remedies awarded. In the case of monetary awards the creditor may:

- enforce its receivable against the moveable and immoveable assets of the debtor;
- foreclose the debtor's bank accounts; or
- pursue the un-cropped fruits and harvests of the debtor.

In the case of non-monetary awards the creditor may:

- if the judgment orders a specific performance and the debtor fails to execute it, it may be subject to a fine for the delay. In such case the creditor, having obtained court authorisation, may fulfil the obligation in the name of the debtor then ask the court for monetary damages;
- if the judgment orders the debtor to refrain from a specific obligation the creditor may ask the court for a fine for the delay and damages; or
- if the judgment orders the handing over of specific assets the creditor may seize the assets with the help of a enforcement officer and police forces.

In addition to the above there are no specific sanctions in the event a court order is disobeyed, except for fines for delays, as mentioned above. However, if the debtor tries to resist enforcement or stops the creditor from using a certain awarded immoveable asset, this might constitute a criminal offence and could lead to criminal sanctions against the respective debtor.

**15 Public access**

Are court hearings held in public? Are court documents available to the public?

As a constitutional principle, court hearings are public and court decisions are passed during public hearings. Furthermore, if the aforementioned principle is not observed the court decision will be deemed null and void.

Nonetheless, as an exception, there are certain cases in which hearings may be deemed secret by the court if there is concern that the debates will damage public order. In such cases, only parties and their counsellors may attend the hearings.

The documents submitted to the court as evidence and the court documents are, as a principle, accessible only to the parties, their appointed counsellors and representatives.

**16 Inter partes costs**

Does the court have power to order costs?

All legal costs are to be covered by the losing party. However the judges are entitled to refuse the full reimbursement of the lawyers' fees provided that the court considers such fees exaggerated.

The claimant is not required to provide any security for the defendant's costs. Nonetheless, in the event of safeguarding measures, the plaintiff may be required to pay a certain bond.

**17 Funding arrangements**

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

According to the EU attorneys' ethics code and its Romanian counterpart and to the Romanian Bar Association laws the 'quota litis' clause between parties and their attorneys is forbidden. Therefore, as a principle, attorney fees have to be set at a fixed sum (ie, per hour, per case, etc). Therefore arrangements having pro rata or conditional fees are forbidden. However, 'success fees' are allowed provided that they are set at a fixed amount.

In respect of third-party funding, there are no related legal interdictions, therefore parties are free to conclude trial funding agreements. However, such arrangements are uncommon. Furthermore, the party claiming legal costs will have to prove it has actually incurred and paid such costs.

**18 Insurance**

Is insurance available to cover all or part of a party's legal costs?

Such insurance is not prohibited, but it is not common.

**19 Class action**

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

As in most of the civil law European countries class actions are permitted for consumer organisations as regulated under Consumer Protection Ordinance No. 21/1992. Such actions are exempted from judicial stamp fees irrespective of the value of the claim.

Furthermore, according to Union Law No. 54/2003, class actions may be brought by trade unions to protect their members. Also, according to Government Ordinance No. 137/2000 regarding

the prevention of discrimination, non-governmental organisations can bring up class actions if a community or a group of people is considered to be discriminated against.

**20 Appeal**

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

The first appeal is not subject to limited grounds. The second appeal is considered as an extraordinary mean of appeal, therefore it may only be pursued for legality issues pertaining to the challenged decision.

**21 Foreign judgments**

What procedures exist for recognition and enforcement of foreign judgments?

**EU member states**

According to Council Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters any judgment given in a member state shall be recognised in any other member state without any special procedure. Furthermore, according to Government Emergency Ordinance No. 119/2006 regarding procedures for the implementation of certain EU regulations, the competent court is the tribunal. The recognition or enforcement decision can be subject to further appeal.

**Non-EU member states**

In the case of non-EU member states foreign judgments will be recognised either through bilateral conventions or according to the provisions of Law 105/1992 regarding the settlement of private international law relations. Provided that a foreign judgment complies with the conditions set out by Law 105/1992 (ie, the decision is final, the court that passed the decision was competent, the decision is not the result of fraud, there is reciprocity regarding recognition of judgments between Romania and the respective state, the decision does not breach Romanian public order regulations) the foreign courts decision and related documents have to be apostilled or supra-legalised and filed along with a request with the competent tribunal.

**22 Foreign proceedings**

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

**EU member states**

Between EU member states such procedures are regulated under the provisions of Council regulation No. 1206/2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters. According to the Council Regulation European courts directly address their requests to the Romanian courts, which have 90 days to respond to the request.

Furthermore, the requesting court may obtain evidence directly provided that: it submits a request with the Romanian Ministry of Justice and the evidence is delivered by the relevant parties on a voluntary basis.

**Non-EU member states**

In the case of non-EU member states the procedure is regulated under the provisions of Law No. 189/2003 regarding international judicial assistance in civil and commercial matters.

If Romania is the requested state, a formal application has to be filed with the Ministry of Justice, which will then send the request to the competent Romanian court. The evidence will then be obtained according to Romanian civil procedure law.

If Romania is the requesting state, the formal application will be sent by the requesting court through the Ministry of Justice to the foreign competent court.

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## Arbitration

### 23 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Please note that arbitration is regulated under the provisions of Book IV of the Romanian Civil Procedure Code, which contains rules for both domestic and international arbitration. However, the rules of arbitration provided therein are not based upon the UNCITRAL Model Law.

### 24 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

There are two types of arbitration agreements: arbitration clauses, inserted in the main agreement and separate arbitration conventions. Such agreements have to be executed in writing and, in the case of arbitration conventions, have to indicate the litigation object and the name of the arbiters, or the appointment procedure, otherwise it will be deemed null and void. In addition to the above, the validity of the main agreement does not affect the validity of the arbitration clause.

### 25 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed and how will they be appointed?  
Are there restrictions on the right to challenge the appointment of an arbitrator?

According to the provisions of the Romanian Civil Procedural Code, in such case the dispute shall be settled by three arbitrators, two appointed by the parties and one supra-arbitrator appointed by the two arbitrators.

The appointment of a certain arbiter may be challenged at the competent court of law for the same reasons for which a regular judge can be challenged. Furthermore, the procedure for challenging an arbiter has to be started within 10 days from the appointment of the respective arbiter or from the date the party found out about the challenging reason.

### 26 Procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

Arbitration rules (except public order-related rules) provided under Book IV of the Romanian Civil Procedure Code will apply only if the parties do not settle their own arbitration rules through the arbitration agreement or the appointed arbitral tribunal does not have such rules.

The regulated arbitration rules provide that the arbitration procedure starts by way of filing a claim with the arbitration tribunal. The claim has to be forwarded by the plaintiff to the arbitral tribunal and to the defendant. The defendant has 30 days starting from the receiving of the claim to file a statement of defence and a counterclaim, if

there is a counterclaim. The parties have to be summoned for the first hearing. Furthermore, the absence of one or all parties (legally summoned) does not prevent the judgment of the dispute. Nonetheless, the arbitral tribunal may postpone the hearings provided that it considers that the parties' presence is necessary or provided that the postponement was requested for good reasons.

The parties may participate at the hearings either personally or through an attorney in fact. The parties may be assisted during the proceedings by any persons (eg, attorneys, counsellors, experts). However, foreign attorneys can represent parties only in international arbitration proceedings.

Each party has to prove its allegations and the evidence will be presented before the arbitral tribunal.

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### 27 Court intervention

On what grounds can the court intervene during an arbitration?

As a general rule set out by the provisions of the Romanian Civil Procedure Code, the competent court of law to intervene during arbitration proceedings is the court that would have been competent to judge the dispute if the respective dispute had been rendered to arbitration.

Such court is competent, among other matters, to: grant interim relief, enforce the arbitral award, enforce witness or expert depositions, resolve petitions regarding the challenging of arbiters, or to judge the appeal against the arbitral award.

The parties can restrict some of the court's powers by way of their agreement. Nonetheless, parties cannot give up in advance their right to appeal the arbitral decision.

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### 28 Interim relief

Do arbitrators have powers to grant interim relief, such as to preserve assets or documents?

During the arbitration proceedings, both the arbitral tribunal and the competent court of law have the power to grant interim relief. Thus the arbitral tribunal is competent to offer similar interim relief as the competent court of law, namely freezing injunctions, ascertaining of factual circumstances, or other urgent interim measures. However, the arbitral tribunal does not have the authority to enforce such measures. As a result, enforcement can only be ordered by the competent court of law.

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### 29 Award

When and in what form must the award be delivered?

#### Arbitration deadline

The Romanian Civil Procedure Code provides that an arbitration decision must be awarded within five months starting from the date the proceedings began, unless otherwise provided under the arbitration agreement.

#### Award form

The arbitral decision has to be taken with the vote of the majority of the arbiters. In the event of a tie a supra-arbiter shall be elected. The arbitral decision has to be issued in a written form and has to be grounded on legal provisions and on the factual issues presented.

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### 30 Appeal

On what grounds can an award be appealed to the court?

The arbitral decision may be appealed by way of filing an annulment claim (within one month starting from the date the respective

### Update and trends

The Romanian government passed on 25 February 2009 a new Civil Procedural Code, Criminal Code and Criminal Procedure Code, which were sent to the Romanian Parliament for approval. According to the statements of current political decision-makers, it seems that the government is pushing things forward extremely fast, as the Ministry of Justice declared that the three codes, along with a new Civil Code, will be enacted in early summer 2009.

decision has been served to the parties) with the competent appeal court, which is the superior court to the one that would have been competent to settle the dispute if the matter had not been deferred to arbitration.

There are nine appeal reasons provided by the Romanian Civil Procedural Code as follows:

- the dispute was not susceptible of being rendered to arbitration;
- there was no arbitration agreement between the parties, or the arbitration agreement was null or inoperable;
- the arbitration tribunal was not constituted according to the arbitration agreement;
- the party was not present on the date the dispute was heard and the summoning procedure was not legally fulfilled;
- the decision was awarded after the expiry of the regulated arbitration deadline;
- the arbitral tribunal decided upon matters that were not requested or failed to decide upon a matter upon which a decision was requested, or awarded more than was requested;
- the arbitral decision does not provide its grounds, does not state the date and the place where it was awarded, or is not signed by the arbiters;
- the award includes provisions that can not be carried out; or
- the arbitral award does not respect public order, moral values or mandatory legal provisions.

In addition to the above, the court decision can be subject to a further appeal based on legality issues expressly provided by the Romanian Civil Procedure Code for second appeals.

### 31 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

#### Domestic awards

The arbitral award can be enforced with the authorisation of the competent court of law. The actual enforcement procedure will be carried out by an enforcement officer.

#### Foreign awards

Romania is part of the New York Convention for the recognition and enforcement of foreign arbitral awards and of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, and therefore any awards granted in one of the contracting states can be enforced in Romania.

In the case of awards issued in countries that are not party to the New York Convention, their enforcement in Romania is subject to bilateral conventions with the relevant states, and the observance of the provisions of Law No. 105/1992 regarding the settlement of private international law relations.

### 32 Costs

Can a successful party recover its costs?

Unless provided otherwise through the arbitration agreement, the arbitration cost will be borne according either to the arbitration tribunal's rules, in the case of institutionalised arbitration, or according to the provisions of the Romanian Civil Procedure Code in the case of ad hoc arbitration.

Therefore, in ad hoc arbitration the arbitration costs are covered by the losing party. Nonetheless, in the case of claims that are only partially admitted, the costs will be awarded proportionally.

### Alternative dispute resolution

#### 33 Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

According to Romanian laws there are two types of ADR: conciliation and mediation.

#### Conciliation

For monetary commercial claims there is a mandatory conciliation procedure, provided by the Romanian Civil Procedure Code, that parties have to follow before filing a court claim. However, the conciliation procedure does not have to be followed in the case of monetary commercial arbitration claims or payment order procedures.

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**Mediation**

The mediation procedure is regulated under the provisions of Law No. 192/2006 regarding mediation and the mediation procedure. This procedure is not yet commonly used, because it was recently enacted (22 May 2006) and is a new concept in Romania.

**34 Requirements for ADR**

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

As mentioned above, the conciliation procedure is mandatory for monetary commercial disputes.

**Miscellaneous**

**35** Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

No.

