Sarbu Partners

State of Commercial Arbitration in Romania

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Sarbu Partners received the Award for Excellence in International Commercial Arbitration at the 19th edition of the *Gala Club Antreprenor*, held in Bucharest on 19 March 2025. This award reflects the commitment of Sarbu Partners' team of arbitration lawyers to provide the highest standards of representation and legal assistance in international commercial arbitration.

In the following, we will analyse the state of commercial arbitration in Romania in 2025 and beyond.

1. Why commercial arbitration?

Commercial arbitration is an alternative form of dispute resolution. Commercial arbitration is a strictly conventional jurisdiction in the sense that parties who wish to submit disputes between themselves to arbitration must include an arbitration clause in their commercial contracts.

Disputes may then be submitted to an arbitral tribunal (usually composed of 3 arbitrators - one appointed by each party and one supra-arbitrator), constituted under the aegis of commercial arbitration institutions. In Romania, there are several institutions organising domestic and international commercial arbitration, whose lists include arbitrators recognised in the legal field. The institutions organising commercial arbitration provide premises where arbitration hearings can be held, a corps of assistant arbitrators who manage the files and other facilities necessary for the organisation of commercial arbitration.

Commercial arbitration is the main method of resolving commercial disputes in most European countries, and Romania is beginning to follow this trend, with more and more economic operators preferring to submit their disputes to arbitration.

This increase in the number of arbitration disputes in Romania is largely due to the popularisation of arbitration in the information channels of entrepreneurs, but also to the fact that in the last 5-10 years companies have had the opportunity to participate in commercial arbitration proceedings, thus getting in touch with the advantages of arbitration as compared to litigation before the ordinary courts.

At the same time, the arbitration rules promoted by the arbitration institutions in Romania are in line with the latest international trends in arbitration, offering flexibility and speed in the resolution of disputes.

Experience in Europe and around the world shows that no free market can be open to foreign investment without a strong arbitration centre (e.g. ICC Paris in France, VIAC in Austria, LCIA in the UK, SIAC in Singapore). Most companies investing abroad seek to open their factories, plants and branches in jurisdictions that offer them the possibility of resolving their disputes before an independent, impartial and expeditious tribunal. Commercial arbitration is therefore a prerequisite for attracting powerful foreign investors to an emerging market such as Romania.

Below we will analyse some of the characteristic elements of commercial arbitration.

The arbitral award is directly enforceable

The main advantage of commercial arbitration is that the party concerned can quickly obtain a directly enforceable award.

Unlike state courts, where an enforceable judgment usually requires both a first instance and an appeal, commercial arbitration offers a major advantage for companies that want to resolve their disputes quickly: the arbitral award is directly enforceable from the moment it is rendered.

Thus, the winning party in a commercial arbitration can immediately benefit from the enforcement of the claims awarded in the arbitral award, having gone through only one level of jurisdiction - the arbitral award.

The award is final and cannot be appealed. The only remedy against an arbitral award under Romanian law is an action for annulment. The action for annulment of an arbitral award is a very limited remedy, which only concerns the legality of the arbitral award and cannot address substantive issues.

The grounds for an action for annulment are expressly and exhaustively provided for by law and can only relate to grounds of illegality, such as: the arbitral award was

rendered in violation of mandatory provisions of the law; a party was not summoned to the proceedings within the time limit; the dispute was not arbitrable, etc.

In our experience as lawyers specialised in commercial arbitration in Romania, Romanian courts very rarely allow actions for annulment of arbitral awards, which shows that Romanian arbitral tribunals render arbitral awards in accordance with the law.

Obtaining an award that is directly enforceable is also advantageous from a time and cost perspective.

Time needed to obtain a directly enforceable arbitral award is shorter than the time it would take to obtain an enforceable court judgment. First, arbitration requires only one rather than two levels of jurisdiction (first instance and appeal) to obtain an enforceable award, which significantly reduces the time it takes for companies that resort to commercial arbitration to enforce their claims. Secondly, arbitration is characterised by speed and efficiency, principles that are strictly implemented in all arbitral rules of arbitral institutions in Romania.

Cost is also an important factor in the choice of arbitration as a dispute resolution method. From this point of view, the cost of arbitration fees is similar to the cost of court fees, taking into account the first instance judgement and the appeal before the ordinary courts. Moreover, arbitration is preferable when large sums are at stake, since the higher the amount in dispute, the lower the arbitration fees.

At the same time, the recovery of arbitration costs by the winning party is much easier in commercial arbitration. Unlike ordinary courts, arbitral tribunals usually do not censor the arbitration costs they award to the losing party, which means that the winning party can recover its full costs for lawyers, experts, fees, etc. at the end of the arbitration. Also, in arbitration, the parties can agree how costs are to be allocated at the end of the arbitration - for example, they can agree that each party will bear its own costs in full.

Romania has favourable legislation on the recognition and enforcement of foreign arbitral awards

Romania is party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This means that foreign arbitral awards rendered in most countries of the world can be enforced under favourable conditions in Romania.

At Sarbu Partners, we provide assistance and representation for the recognition and enforcement of foreign arbitral awards in Romania. In our experience, we have assisted Romanian and foreign companies to recognise and enforce in Romania arbitral awards rendered abroad. The recognition and enforcement procedure is carried out before the Romanian courts as a matter of urgency and aims to fulfil clear and objective formal and substantive conditions. An important aspect is that, once recognised in Romania, the arbitral award is an enforceable title and can be presented to a Romanian bailiff for enforcement without further formalities.

Confidentiality, Specialisation, Flexibility

Confidentiality is an important element for commercial arbitration users, who prefer private hearings to protect their commercial interests. Confidentiality in commercial arbitration concerns the existence of the dispute itself, but also the documents and pleadings in the file, the identity of the parties and the award. The confidentiality of commercial arbitration is appreciated by economic operators operating in niche markets where there are fewer competitors.

Specialisation manifests itself in arbitration on three levels:

- Specialisation of arbitrators: In international commercial arbitration, there are already professional arbitrators with reputations built on decades of experience in arbitrating in highly specialised fields. This feature is also present to a certain extent in commercial arbitration in Romania, where the parties have the possibility to nominate arbitrators on the basis of their professional experience and reputation built up over time.
- Specialisation of experts: Complex commercial disputes (which are best suited to commercial arbitration) often involve the need for technical expertise, quantum or delay impact analyses of particular complexity. Commercial arbitration offers the parties the advantage of employing their own party experts to provide technical advice and prepare technical reports to the highest standard, with the benefit of time and incentivised remuneration agreed with the employing party.
- Specialisation of lawyers: As commercial arbitrations often arise in niche areas (e.g. infrastructure, power plants, telecommunications, installations), lawyers have also adapted to deal with the technical components inherent in disputes. Lawyers specialising in commercial arbitration offer a holistic perspective to the client, and are able to combine the legal strategy with the technical features

of the dispute and present them to the arbitral tribunal in such a way that the client's case is fairly and fully presented.

Flexibility in commercial arbitration is mainly procedural. The parties can choose the procedural rules to govern the arbitral dispute, agree to add or waive procedural steps, propose or manage evidence under more flexible conditions than in civil proceedings before the courts. Most arbitral institutions also offer the possibility of conducting hearings by videoconference, which often facilitates the work of all parties, reduces costs and saves time.

2. Main areas of commercial arbitration

Construction Arbitrations

Construction arbitration is one of the main specialisations of our company, Sarbu Partners. Companies operating in the Romanian construction market are increasingly resorting to arbitration, due to the solutions based on technical analysis, the speed with which the arbitral dispute is resolved and the confidentiality of the proceedings. In construction arbitration, technical expertise is constantly used to resolve purely technical issues. Commercial arbitrations arising out of standard construction contracts, such as FIDIC contracts, are common. Commercial arbitration is already an established dispute resolution method in the construction sector and we expect it to become more popular in the coming years.

Arbitrations in public contracts

The number of arbitrations in public procurement contracts has increased significantly in recent years following the introduction of the mandatory arbitration clause in public works contracts based on the model of HG no. 1/2018 (National Public Works Contract). Some contracting authorities have been receptive to commercial arbitration as a more efficient dispute resolution solution, but there are still contracting authorities that are more sceptical about the usefulness of commercial arbitration. This also explains why the possibility for contracting authorities to include in the award documents a clause for dispute resolution by the courts rather than by arbitration has been introduced in the Model National Works Contract in the National Works Contract 2022. However, it is certain that commercial arbitration in public contracts has gained popularity in the last 5-7 years and there will continue to be commercial arbitration in relation to public contracts.

Arbitrations between members of joint ventures

Closely related to public procurement are arbitrations between members of joint ventures. Joint ventures are often used by economic operators who participate together in public procurement procedures and, depending on the performance of the contracts awarded to them or the relationship between the members of the joint venture, disputes often arise which are settled by arbitration. In this case, confidentiality is very important for the members of the consortium, as it is not in their interest that the contracting authorities or competitors in the market have access to the information on file, which may contain business secrets, prices charged between the members of the consortium or other confidential commercial information.

Arbitrations in contracts with foreign parties (foreign investors)

Foreign companies investing in Romania by building factories, plants, power stations or opening subsidiaries have an interest in having disputes arising from contracts executed in Romania decided by arbitration tribunals independent of the state courts. This need is even more important in the case of contracts concluded with the Romanian State. Therefore, for foreign investors in Romania, commercial arbitration is a clear solution for settling disputes with Romanian companies or with the Romanian State.

3. In which areas may arbitration disputes arise in the future?

Arbitrations concerning companies in insolvency

The large number of companies that have become and will become insolvent in Romania paves the way for an increasing number of arbitrations in which insolvent companies have the status of claimants. Of course, we cannot talk about arbitrations on insolvency per se or on the creditor's estate, as these are under the exclusive jurisdiction of the insolvency judge according to Law No. 85/2014. However, we can assume that insolvent companies would be interested in having recourse to arbitration in disputes concerning the nullity of contracts, obligations or other matters that do not affect the competitive insolvency proceedings. Thus, insolvent companies could include arbitration clauses in their current contracts with traders or contractors.

GAFTA Arbitrations

GAFTA contracts are a set of standardised contracts for the sale of grain and cereals and are already widely used by Romanian professionals in the agricultural industry.

GAFTA arbitrations are a special type of arbitration organised under the auspices of the Grain and Feed Trade Association (GAFTA) and are used by professionals in the agricultural industry. We expect the number of GAFTA arbitrations to increase in the coming years, given the government's objectives to modernise and technologise the agricultural sector. We also expect the presence of Ukrainian grain exporters on the Romanian market to increase with the end of the war in Ukraine. This could lead to GAFTA trade disputes between Ukrainian and Romanian companies in the future.

Arbitrations involving Ukrainian parties

The future 'Reconstruction of Ukraine' expected after the end of the war could also have an impact on commercial arbitration in Romania. Major contractors from the Romanian market are already preparing to invest in infrastructure, construction or rehabilitation contracts in Ukraine in the coming years. This opening of the Ukrainian market to Romanian companies is expected to result in a number of arbitrations involving Ukrainian parties, particularly in the field of commercial arbitration in the construction, infrastructure and telecommunications sectors.

Conclusions

Commercial arbitration has established itself in the last 5-10 years as a suitable solution for Romanian and foreign companies wishing to settle their disputes in an efficient, specialised and confidential framework. The responsiveness of the Romanian arbitral institutions to the latest trends in commercial arbitration gives users of arbitration the confidence that their disputes will be resolved under optimal conditions. In the future, we expect an even greater openness of Romanian professionals to this alternative dispute resolution modality. At Sarbu Partners, we focus on achieving exceptional results for each client. We aim to build lasting relationships based on trust and efficiency, through experience and a meticulous approach to each individual case.