Creditor & Debtor Disputes

GENERAL

1. What is the structure of Romanian Courts?

The Romanian judiciary system consists of four levels of courts: local courts, tribunals, courts of appeal and the High Court of Cassation and Justice, which is Romania's Supreme Court.

2. Which rules of jurisdiction govern the creditor & debtor disputes?

As a general rule, a debt recovery claim will be issued in the court holding jurisdiction over the respondent's business headquarters or domicile.[1] In terms of material jurisdiction, claims may be issued in first instance in the local courts or tribunals, depending on the value of the claim. The current threshold is set at approximately EUR 42,000, with no distinction being made between civil and commercial matters.[2]

3. Are there any applicable pre-action protocols to be pursued before commencing litigation?

As of 15 February 2013, the New Civil Procedure Code (NCPC) has repealed the mandatory conciliation procedure for creditor–debtor disputes. The creditor is expected to issue a notice of delay to the debtor before lodging a claim, if not otherwise provided by way of exception in the law or agreed by the parties. The notice of delay will have to include a reasonable deadline for the payment of debt. If such prior notice is omitted, the debtor will benefit from a reasonable timeframe within which payment of debt will

1 Alternative criteria to determine the court having territorial competence as first instance are provided for certain cases, such as the place where the agreement is performed. Other exceptions are provided for claims bearing on immovable assets, where the competency is determined by *locus rei sitae*.

2 The distinction between civil and commercial claims, a pinnacle of former civil proceedings legislation, has been repealed with the entry into force of the New Civil Code on 1 October 2011. All matters covered in the New Civil Code, which also contains regulations in matters formerly included in the Commercial Code, are henceforth deemed "civil". New rules of procedure included in the New Civil Procedure Code are meant to implement this reunification.

lead to the dismissal of the claim, with legal fees to be borne by the creditor.

4. What are the applicable claim formalities?

Unlike other jurisdictions, no claim forms are made available or required by the courts in Romania, even though the law requires minimal contents for the application. The NCPC provides a minimal content of the claim but certain formalities may be fulfilled after the registration of the claim, within the term set by the judge.

Any claim issued in court must attach evidence that legal stamp in the required amount has been paid. The amount of the legal stamp depends generally on the value of the litigation.

5. Which means of evidence are accepted in Romanian courts?

Romania is a jurisdiction where the type of evidence admissible in courts is limitedly provided by law. They include documents (privately made, authenticated and, since 2001, electronic documents provided with electronic signature), witnesses, interrogatory, expert reports, legal assumptions, confessions and on site assessments.

All evidence must be approved and is taken by the court. The court may permit requests for production of documents in the possession of the adversary or a third party to the trial provided the evidence proposed is legal (including legally obtained), credible, relevant and conclusive and the requested documents do not contain privileged information.

6. Which interim and urgent measures are available to a creditor in Romanian Courts?

The NCPC makes available interim applications for creditor-debtor disputes such as injunctions to seize tangible assets or place liens on bank accounts in order to preserve the rights of the creditor. The applications are adjudicated in urgent procedure. In assistance of creditors seeking to preserve rights that may be jeopardised by delay, or prevent, mitigate or remedy damages, or remove impediments that may forestall enforcement, the NCPC provides the urgent application for an injunction, an urgent procedure available prior to or after issuing claims.

RIGHTS OF APPEAL

7. What are the legal means of challenging a judgment?

Judgments passed in first instance are usually challengeable by first appeal, in 30 days as of service. The first appeal is an ordinary application seeking to obtain revision of the judgment on its merits and the appellate court may accept new evidence.

Decisions passed in first appeal or without a right of first appeal may be challenged by final appeal within 30 days of service. The final appeal is an extraordinary challenge to be retained within the jurisdiction of the higher court, its scope being limited to examining the lawfulness of the appealed judgment without any reassessment of the facts of the dispute.

Other extraordinary forms of legal redress are revision (mainly for discovery of new evidence, contradictory decisions, *minus* or *plus petita*) and the motion to annul (mainly for breach of jurisdiction rules or failure to fulfil the summoning procedure).

SPECIAL URGENT APPLICATIONS

8. Which urgent procedures of debt recovery are available to creditors?

The NCPC regulates the procedure of an injunction to pay, available to creditors holding a receivable that is certain (there is no dispute on its existence), liquid (accurately determined or determinable), outstanding (matured and enforceable) and payable in money. To satisfy the urgency test required by such a procedure, the creditor must be capable of evidencing the debt by documents (agreements, invoices), since other evidentiary means, such as witnesses or expert reports, are not admissible.

The injunction to pay provides significant advantages to the creditors: expedited and simplified procedures, reduced legal fees (a fixed legal stamp fee is required-currently set at the equivalent of approximately EUR 42, rather than a pro rata fee from the value of the claim). However, in practice, debtors generally contest the certainty of debts claimed by urgent application in order to obtain denial of the application as inadmissible, and provoke a settlement on the merits under the general rules, which require *pro rata* legal stamp fees, ample evidence and a broader range of available legal challenges.

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AVAILABLE FOR DEBT RECOVERY

9. Which alternative dispute resolution (ADR) procedures are available to creditors seeking debt recovery?

Arbitration, conciliation and mediation are available in Romania as alternative methods of adjudicating claims to the courts. Among them, arbitration is the most common, while the practice of mediation is still in its early stages, despite legislative efforts for increased adherence.

10. Which are the legal coordinates of conciliation as an ADR procedure?

Conciliation as a type of ADR is available in Romania under the Rules for facultative Conciliation approved by the College of the Court of International Commercial Arbitration at the Romanian Chamber of Commerce and Industry in 1999.

11. Which are the legal coordinates of mediation as an ADR procedure?

The Romanian Chamber of Commerce and Industry has been offering the service of mediation since 2003, but this alternative dispute resolution method caught the attention of the general public only after 2006, when a law to regulate it was passed. Mediation was expected to develop a significant practice after a December 2012 legal amendment requiring all parties subject to certain types of litigation (including debt recovery under RON 50.000 - approximately EUR 11,500) to take part in informative meetings on the benefits of mediation. However, this amendment has been struck down by the Constitutional Court in June 2014, reducing the frequency of this procedure even further.

12. Which are the legal coordinates of arbitration as an ADR procedure?

Under the NCPC, the parties may submit disputes to arbitration either to an ad hoc tribunal or to one organised at a permanent court. In ad hoc arbitrations, parties may choose the rules to govern the arbitration, either directly or by reference to an established set of norms, and within the confines of public policy rules.

The most frequent form of arbitration, however, is institutionalised arbitration carried out under the auspices of permanent courts. Most arbitration requests are referred to the Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry, established in 1953 and seated in Bucharest, which handles international as well as local, commercial and civil disputes. The Arbitration Rules of the Court (available on its website[3]) as enacted on 1 January 2018, are to be supplemented with the general rules provided by the NCPC. The arbitration tribunal will consist of one or three arbitrators, "depending on the agreement of the parties" (Article 18 of the Rules). Absent such agreement, the matter will be judged upon by three arbitrators, with each party nominating one and the third elected by the already appointed arbitrators.

Unless the parties agree otherwise, arbitral tribunals must deliver the award within six months from constitution. During interim requests, the 6-month term is suspended. Arbitral awards are final and binding for the parties and may only be challenged by action for annulment, within one month of the issue of the award, for reasons provided limitedly by the NCPC (such as invalidity of the arbitration clause, non-arbitrability of the matter, breach of public policy rules through the award). The action to annul the award is filed with the Court of Appeal having jurisdiction over the place of the arbitration. The court settling the action for annulment may stay the enforcement of the award; motions for a stay require the interested party to place a bond. The decision of the court is subject to final appeal.

The number of arbitrations has significantly increased in the past years, especially in commercial matters, but arbitrations are still not very common, due especially to the costs of the proceedings, which are perceived as exceeding the costs of a dispute in court and which, if the parties do not agree otherwise, are borne by the losing party. Also, with limited grounds to appeal an award, parties may prefer to issue their claims in court, where a double level of jurisdiction is available. In practice, annulments of arbitral awards are rare.

ENFORCEMENT OF DOMESTIC JUDGMENTS AND ARBITRAL AWARDS

13. Which legal documents constitute writs of execution under Romanian law?

In Romania, enforceability is in principle specific to domestic judgments (issued upon first appeal or without right to first appeal, depending on the matter) and domestic

3 http://arbitration.ccir.ro.

arbitral awards, which are recognised and *ipso jure* enforceable on the territory of Romania. There are other instruments to which law recognises enforceability, such as certain agreements (e.g. such as loan contracts concluded with banks), or documents authenticated by the notary public, provided certain conditions are met.

14. What is the general enforcement procedure under Romanian law?

The enforcement procedure begins with the creditor's requests towards a bailiff having jurisdiction over enforcement procedures. The request must contain the following information: a) the debtor's and creditor's name and address/registered office, b) the pursued asset or the type of debt that is owed and c) the types of enforcement requested by the creditor. The title, along with the request for enforcement is then handed over to the bailiff, who will ask the enforcement court to approve forced execution.

Writs of execution may be enforced within three years as of the moment the creditor is allowed to request enforcement, with the exception of writs bearing on rights *in rem*, for which the prescription term is of 10 years.

15. Which types of enforcement does the Romanian law permit?

Enforcement, governed by the NCPC, may be direct, whenever the creditor seeks to satisfy his right by a performance in kind (for instance, when the debtor owes the creditor an asset and the creditor pursues the debtor for that asset), or indirect, when the debt is satisfied from amounts the creditor obtains from enforcement (either from selling the debtor's assets, or directly from the debtor's accounts or from third parties owing money to the debtor). Enforcement is carried out by bailiffs, a professional body organised under the supervision and control of the Ministry of Justice.

16. How can enforcement be challenged by the debtor?

A debtor can resort to legal requests aimed to forestall, stay, or even cancel the enforcement procedure. The procedure may be forestalled by way of a preliminary request for a stay, which is filed by urgent application in advance to the adjudication of a main request for a stay.

The main request for a stay is filed simultaneously with the opposition to enforcement,

and requires the debtor to deposit a bond, generally established prorata from the amount of the debt under enforcement. Oppositions to enforcement seek to cancel the enforcement, wholly or partially, usually for formal miscarriages, such as invalidity of the enforcement formal papers, which are prepared by the bailiff, or the absence of a valid writ of execution.

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

17. Which are the general principles regarding recognition and enforcement of foreign judgments and arbitral awards?

Foreign judgments may be recognised and enforced in Romania by procedures which differ depending on the place of issue being inside or outside the EU. Neither procedure allows the courts competent to adjudicate applications for recognition and enforcement to review the judgment on its merits.

18. What is the legal procedure for recognition and enforcement of judgments issued in EU Member States?

The procedure for the recognition and enforcement in Romania of judgments issued in Member States is governed by the European Parliament and Council Regulation No. 1215/2012 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters. According to this simplified procedure, the interested party submits its application for enforcement to the competent local authority, having attached (i) a copy of the judgment which satisfies the conditions necessary to establish its authenticity, as well as (ii) a certificate issued by the court that passed the judgment, certifying that the judgment is enforceable and containing an extract thereof. The local enforcement authority will limit its verifications to the enforceability of the judgment.

19. What is the legal procedure for recognition and enforcement of judgments issued in non-EU Member States?

The procedure for the recognition and enforcement in Romania of judgments issued in non-Member States is regulated by the NCPC. In order to obtain recognition, the creditor must prove that the foreign judgment is final, that the foreign court had jurisdiction to rule on the case (without such jurisdiction being exclusively based

on the presence of the defendant or assets belonging to him, in the State of the said jurisdiction, if this presence held no direct relation to the dispute) and that reciprocity exists with respect to the acknowledgement of the effects of foreign judgments between Romania and the State of the issuing court. The enforcement of non-EU foreign judgments in Romania is conditional upon the petitioner proving the fulfilment of conditions similar to the ones for recognition, as well as the enforceability of the judgment.

20. What is the legal procedure for recognition and enforcement of arbitral awards?

Foreign arbitral awards are recognised and enforced in Romania under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and under the NCPC.

In case of inconsistencies, the New York Convention prevails. The above-presented conditions in relation to the recognition and enforcement of foreign judgments issued in Non-Member States will apply, in principle, to the recognition and enforcement of foreign arbitral awards.

INSOLVENCY

21. What is the general insolvency legal framework in the Romanian system?

Insolvency in Romania is governed by Law No. 85/2014 (Insolvency Law) passed in the process of harmonising domestic laws with the legal principles applied in the European Community.

22. Which conditions are to be met for being granted insolvency status?

According to Romanian law, insolvency means the debtor's manifest incapacity to pay its matured debts out of the available liquidity. Under Romanian law, a "debtor" can be any professional, i.e. legal person carrying out an enterprise, as well as a *regie autonome*.

The insolvency procedure may be initiated at the request of the debtor itself, of any of its creditors, or at the request of certain especially enabled institutions, such as the

Fiscal Supervision Authority for debtors-listed companies.

The following conditions must be cumulatively met to ground an application:

- The debtor owes amounts in excess of RON 40.000 (approximately EUR 8,500) or in excess of six national average salaries for debts arising from labour or civil relations;
- The debtor is unable to pay its matured debts in cash for more than 90 days;
- The debtor may declare itself insolvent and place itself under the protection of a judicial reorganisation procedure should its insolvency be imminent. For such an application to pass, the total of tax debt must take less than 50% of the amount of all declared debts.

23. Who are the participants to an insolvency procedure?

All applications under the Insolvency Law are, in first instance, within the jurisdiction of the insolvency division of the tribunal where the debtor is headquartered. The participants to the insolvency procedure are: the court, the syndic judge appointed by the president of the court, the creditors' collegial bodies (the assembly and the committee), the official receiver (appointed by the creditors), the special administrator of the debtor (appointed by the debtor's shareholders) and the liquidator (appointed by the syndic judge for liquidation/bankruptcy).

24. Which are the main steps of an insolvency procedure?

The Insolvency Law makes available two types of procedures for debtors unable to pay their outstanding debts: the general insolvency procedure and the simplified procedure.

The general procedure consists of two stages:

- The judicial reorganisation procedure, aimed at allowing the debtor to pursue its activity and pay its debts under a reorganisation plan. If the debtor does not comply with the plan or the continuance of its activities causes losses or new debt, the official receiver or any of the creditors may request, at any time, the syndic judge's approval to commence bankruptcy procedures;
- The bankruptcy procedure, wherein the debtor's assets are liquidated and the amounts obtained are distributed to satisfy the creditors. The liquidation of a debtor's assets is carried out by the liquidator under the control of the syndic judge. In order to maximise the value of the debtor's assets, the liquidator will take all measures necessary to publicise the sale, in whatever manner deemed adequate.

The liquidation costs are borne from the debtor's assets.

After a period of observation, insolvency under the general procedure allows for reorganisation. The legal text highlights that assistance provided to the debtor in view of surviving financial distress, reorganising its activity on an efficient basis and satisfying its creditors' claims best fulfils the goal of insolvency procedures, which is not limited to the paying of creditors, but also includes the debtor's economic redress.

The simplified procedure, applicable in certain cases (such as the debtor having been already placed under judicial reorganisation within the previous five years from application), permits the bankruptcy procedure be opened without the preliminary stage of the judicial reorganisation.

COVID-19

1. What were the major changes brought by the COVID-19 crisis in the field? Will these changes stick?

On 16 March 2020, the President of Romania issued Decree No. 195 which established a 30-day state of emergency for the whole territory of Romania. Under this decree, all civil cases were automatically suspended. However, the courts continued to examine such urgent matters as established by the Management Committees of the High Court of Cassation and Justice or of the Courts of Appeal (for example, interim injunction applications, the stay of the enforcement procedure, public procurement disputes were among these urgent matters). Hearings could only be held by videoconference and documents only communicated by electronic means.

A new presidential decree (Decree No. 240 of 14 April 2020) extended the state of emergency by 30 days; therefore, most civil cases were automatically suspended until 15 May 2020. In the meantime, the state of emergency has been replaced by the a "state of alert" extended monthly by the authorities, and court proceedings have been resumed as per usual, with the exception of the sanitary protection rules put in place (masks, distancing etc.).

Overall, one notices that the number of debt recovery disputes has increased against the background of the COVID-19 crisis, most of them being however resolved amicably rather than being brought before a judicial body.

However, it is still too early to evaluate the real and long-lasting impact of COVID-19 pandemic on the litigation field.