



## EMERGENCY LEGAL KIT FOR BUSINESS SERIES

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### ENFORCEABILITY OF ARBITRATION CLAUSES – ROMANIA

#### 1. Arbitration-friendly jurisdiction

In Romania, courts of law and arbitral tribunals recognize as a rule the legally binding effects of arbitration clauses and the entailing jurisdiction bestowed upon the arbitral tribunal.

This is mainly the result of an arbitration-friendly national legal framework (namely, Sections IV and VII sub-section IV of the Civil Procedure Code in force as of February 15, 2013) and arbitration-friendly court practice. Parties may choose arbitration as dispute settlement method both before and after the occurrence of the dispute.

Likewise, the opportunity to partake in arbitration proceedings is recognized to a wide range of persons, such as individuals, private legal entities and, under certain conditions (such as international arbitration or, in case of domestic arbitration, statutory authorization to refer to arbitration a specific dispute), the state and its instrumentalities. Furthermore, the arbitrable disputes encompass both pecuniary and / or non-pecuniary matters.

However, despite the good intention, the Romanian arbitration framework has also certain gaps, discrepancies and controversial solutions that may ultimately impede on the efficacy of arbitration clauses.

## 2. Non-arbitrable disputes

As per the law, there are specific litigations that fall within the exclusive jurisdiction of the courts of law and, therefore may not be referred to arbitration. Thus, the arbitral tribunal cannot rule in matters of (i) civil status and capacity, (ii) inheritance, (iii) family relations, (iv) employment litigations, (v) contentious administrative and fiscal litigations, (vi) insolvency proceedings and (vii) pecuniary or non-pecuniary matters the parties may not dispose of as per the domestic law.

## 3. Insolvency cases

Arbitration clauses remain in effect in the event that insolvency proceedings are instituted against one of the contracting parties. In case the request for arbitration is filed by the insolvent party itself, the arbitration proceedings shall carry on irrespective of insolvency proceedings. In case the insolvency concerns the respondent, the arbitration proceedings should be suspended to the extent that the request for arbitration seeks monetary redress. The claimant shall in such case have to register its claims within the insolvency proceedings. Arbitration proceedings should carry on in all other cases (*e.g.*, in case claimant seeks restitution of movable or immovable property).

## 4. Inefficient clauses

Even where a dispute is arbitrable by nature, arbitration clauses may become unenforceable in certain cases. For example, clauses may infringe domestic public order or mandatory provision on participants and procedural principles, or they may be poorly drafted so that parties' choice of arbitration is not clear or proceedings may not commence for practical reasons (*e.g.*, the arbitral tribunal cannot be constituted).

## 5. Arbitration clauses are not enforceable *sua sponte* by courts

From a court of law perspective, the arbitration clause will be effective on condition that the respondent requests the court to decline its jurisdiction on these bases. That is since the courts of law may not *ex officio* recognize the arbitration jurisdiction over the disputed matter. Thus, the contracting parties may, by mutual implied or written consent, refer to the courts of law despite the arbitration clause.

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