

Interim and conservatory measures by emergency arbitration in Romania

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Introduction

The new Arbitration Rules of the Court of International Commercial Arbitration of the Chamber of Commerce and Industry of Romania (the **CCIR Rules**)¹, in force as of 1 January 2018, establish the possibility to appoint emergency arbitrators, providing faster and more efficient means of obtaining interim and conservatory measures, without parties having to apply for such measures by separate procedures in state courts, and without having to wait until the arbitral tribunal is constituted.

The possibility to request emergency arbitration for interim and conservatory measures under the CCIR Rules raises the question of how effective these measures can be, given the statutory civil procedure provisions applicable to interim measures and to arbitration, as per the Romanian Civil Procedure Code (the **CPC**).

Summary of procedure

The CCIR Rules stipulate² that a party may apply for the appointment of an emergency arbitrator for interim and conservatory measures. The powers of the emergency arbitrator end when the arbitral tribunal is constituted.

The emergency arbitrator is appointed by the President of the Court within 48 hours from receipt of the application by the Court Secretariat. The emergency arbitrator must issue a procedural order no later than 10 days after the emergency arbitrator received the case file case from the Court Secretariat. The President of the Court may extend this period upon a reasoned request by the emergency arbitrator.

Good news

As per the new Rules, emergency arbitration appears to be a swift and clear method to obtain interim or conservatory measures in commercial disputes deferred to arbitration under CCIR jurisdiction, even before arbitration of the matter in dispute commences. At least in theory, emergency arbitration under CCIR Rules shall now provide such measures in a few weeks. In contrast, obtaining similar relief in Romanian state courts usually takes three months or more. Also, waiting to apply for these measures until the arbitral tribunal is duly constituted may often last for several months.

Bad news

The new CCIR Rules will probably not prove themselves to be so efficient when it comes to the enforcement of the disposed interim or conservatory measures, such as when a party against which these measures were taken must comply by performing or abstaining from a certain action.

¹ Article 40 paragraph 3 of the CCIR Rules: *Requests for interim or conservatory measures filed before the initiation of the arbitration or before the case file was referred to the arbitral tribunal shall be decided by an emergency arbitrator, in accordance with the procedure set forth in Annex II.*

² See Annex II of the CCIR Rules - *Emergency Arbitrator*, Articles 1 - 8

This is because the new CCIR Rules do not - and could not - stipulate powers for an arbitrator to issue orders that are susceptible of being enforced by the state. Under law, the CCIR Rules may not validly modify, contradict or materially add content to the current statutory provisions of the CPC (a law with superior legal force), provisions which only permit state enforcement of arbitral awards and do not extend such permission for procedural orders issued by arbitrators.

Consequently, if a party does not comply with the interim or conservatory measure established by the procedural order issued by the emergency arbitrator, the party having been granted the measure must request a state court order³ to confirm the arbitral ruling. This may take months and effectiveness of the measure decided in arbitration is by no means guaranteed, especially in cases where the state court would consider that a fresh assessment of the matter is required. Such fresh assessment would negate the advantage of having used the emergency arbitration for obtaining the interim or conservatory measure in the first place.

Conclusion

The new emergency arbitration stipulations of the CCIR Rules provide clear and fast means of obtaining interim and conservatory measures outside Romanian state courts and before arbitration on the matter in dispute commences. However, emergency arbitration does not improve the effectiveness of commercial arbitration as a dispute resolution method, due to the inability to enforce the emergency arbitrators' procedural orders establishing interim or conservatory relief.

Legislative changes granting enforceability to interim and conservatory measures issued by arbitrators are needed so that emergency arbitration becomes a fully effective procedure. Until such changes are made, effective interim and conservatory relief by emergency arbitration is far from being guaranteed.

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³ based on Article 547 CPC, read together with Article 997 CPC