

GAR INVESTMENT TREATY ARBITRATION

Romania

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I Overview

1 What are the key features of the investment treaties to which this country is a party?

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Albania (2 September 1995)	No	Yes	Yes	Yes	No	6 months	Yes	Yes
Algeria (30 December 1995)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Argentina (1 May 1995)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Armenia (24 December 1995)	Yes	Yes	No	Yes	Yes	6 months	Yes	Yes
Australia (22 April 1995)	Yes	Yes	Yes	Yes	No	None	Yes	Yes
Austria ¹ (22 April 1994)	Yes	Yes	No	Yes	Yes	3 months	Yes	Yes
Azerbaijan (29 January 2004)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Bangladesh (31 October 1987)	No	Yes	No	Yes	Yes	None ²	Yes ³	Yes ⁴
Belarus (26 June 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Belgium-Luxembourg ⁵ (09 March 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Bolivia (terminated on 17 March 2017) ⁶	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Bosnia and Herzegovina (3 December 2001)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Bulgaria ⁷ (23 May 1995)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Cameroon (16 December 1981)	No	Yes	No	Yes	Yes	None	Yes ⁸	Yes ⁹
Canada (23 November 2011)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Chile (27 July 1997)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
China (1 September 1995)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Croatia ¹⁰ (9 September 1995)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Cuba (22 May 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Cyprus ¹¹ (10 July 1993)	Yes	Yes	No	Yes	Yes	3 months	Yes	Yes
Czech Republic ¹² (28 July 1994)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Denmark ¹³ (terminated on 19 July 2017)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Egypt (3 April 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Finland ¹⁴ (6 January 1993)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
France ¹⁵ (6 January 1993)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Gabon (18 September 1982)	No	Yes	No	Yes	Yes	None	Yes ¹⁶	Yes ¹⁷
Georgia (24 July 1998)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Germany ¹⁸ (12 December 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Ghana (signed but not in force)	No	Yes	No	Yes	No	None	Yes ¹⁹	Yes ²⁰
Greece (11 June 1998) ²¹	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Hungary (16 May 1996) ²²	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
India (21 October 2009)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Indonesia (terminated as of 7 January 2016) ²³	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Iran (12 January 2005)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes



BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Israel (27 July 2003)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Jordan (16 March 1999)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Kazakhstan (17 July 2013)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
South Korea (30 December 1994)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
North Korea (31 March 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Kuwait (26 July 1992)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes ²⁴
Latvia (22 August 2002) ²⁵	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Lebanon (6 April 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Lithuania (15 December 1994) ²⁶	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
North Macedonia (13 February 2002)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Malaysia (8 May 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Mauritania (19 December 1989)	No	Yes	No	Yes	Yes	No	Yes ²⁷	Yes ²⁸
Mauritius (20 December 2000)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Moldova (15 June 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Mongolia (terminated on 4 October 2019) ²⁹	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Montenegro (16 May 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Morocco (3 February 2000)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Netherlands (1 February 1995) ³⁰	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Nigeria (3 June 2005)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Norway (23 March 1992)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Pakistan (8 August 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Paraguay (12 April 1995)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Peru (31 December 1994)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Philippines (14 June 1994)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Poland (terminated on 21 May 2019) ³¹	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Portugal (17 November 1994) ³²	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Qatar (27 April 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Russia (19 July 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Senegal (20 May 1984)	No	Yes	No	Yes	Yes	None	Yes	Yes ³³
Slovakia (7 March 1996) ³⁴	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Slovenia (24 November 1996) ³⁵	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Spain (7 December 1995) ³⁶	Yes	Yes	No	Yes	Yes	6 months	Yes	Yes
Sri Lanka (3 June 1982)	Yes	Yes	Yes	Yes	Yes	6 months ³⁷	Yes	Yes ³⁸
Sudan (signed but not in force)	No	Yes	No	Yes	No	No	Yes	Yes ³⁹
Sweden (terminated 11.03.2020) ⁴⁰	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
Switzerland (30 December 1994)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Syria (26 July 2009)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes



BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Thailand (20 August 1994)	Yes	Yes	No	Yes	Yes	3 months	Yes	Yes
Tunisia (8 August 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Turkey (8 July 2010)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Turkmenistan (28 March 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Ukraine (9 June 1995)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
United Arab Emirates (7 April 1996)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
United Kingdom of Great Britain and Northern Ireland (10 January 1996) ⁴¹	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
United States (15 January 1994)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Uruguay (19 August 1993)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Uzbekistan (30 May 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Vietnam (16 August 1995)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes

FTAs	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Energy Charter Treaty (18 February 1997)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes

II Qualifying Criteria

2 Definition of investor

What are the distinguishing features of the definition of ‘investor’ in this country’s investment treaties?

Issue	Distinguishing features in relation to the definition of ‘investor’
Legal persons (real/effective economic activities)	<p>In general, the Romanian BITs define as ‘investor’ legal entities incorporated, constituted or otherwise duly organised under the laws of either contracting party. However, some BITs require that investors have both the seat and real economic activities in a contracting party (Argentina, Armenia, Azerbaijan, Canada, Chile, China, Cuba, Czech Republic, Egypt, etc).</p> <p>Under the Philippines–Romania BIT, for a company to be considered an investor, it must have activities according to its national laws within any part of its territory and it must also have the place of its actual management there.</p> <p>Under the BITs concluded by Romania before 1990 (eg, Mauritania, Bangladesh), only companies entitled to carry out international commerce activities are deemed to be investors (this type of clause is outdated).</p>
Natural persons	<p>Under the Lithuania BIT, individuals who are citizens, and also individuals without citizenship who have a permanent residence in Lithuania, are deemed to be Lithuanian investors.</p>
Dual nationals	<p>Under the Israel–Romania BIT, an individual who possesses both Israeli and Romanian citizenship and invests in Israel, will not be considered a Romanian investor. Likewise, a legal person controlled either directly or indirectly by Israeli citizens will not be deemed a Romanian investor.</p> <p>The Canada–Romania BIT excludes natural persons having both Romanian and Canadian citizenship from the ‘investor’ category.</p>



Issue	Distinguishing features in relation to the definition of ‘investor’
Direct or indirect control	Under several Romanian BITs (France, Lithuania, Austria and Australia), an investor is defined also as a legal person that is ‘controlled’, directly or indirectly, by nationals or legal persons of the other contracting party. Two BITs extend the protection to those legal persons having their headquarters within a third state, where an investor having a ‘decisive influence’ (Austria) or ‘substantial interest’ (Australia) is domiciled or comes from the contracting state party that is not the host state party.

3 Definition of investment

What are the distinguishing features of the definition of ‘investment’ in this country’s investment treaties?

Issue	Distinguishing features in relation to the concept of ‘investment’
Eligible assets	<p>BITs concluded by Romania contain broad definitions of investments. Typically, investments are defined as any kind of assets invested by an investor of one contracting party in the territory of the other contracting party, particularly but not exclusively:</p> <ul style="list-style-type: none"> • ownership rights over movable and immovable assets and any other related rights, such as mortgages, warranties, pledges and similar rights; • shares, bonds and any other forms of participation within a company; • loans, receivables or any performance under a contract with an economic value, regarding an investment; • intellectual and industrial property rights, including copyright, trademarks, trade names, patents, process technology, know-how and goodwill; and • any right under the law or under a contract, including exploration, cultivation, extraction and exploitation rights over natural resources. <p>With a few exceptions, Romanian BITs provide that any modification of the form in which investments were made does not affect their nature as ‘investments’, provided that such a modification would not be contrary to the laws of the concerned contracting party.</p>
Limitations	<p>Some Romanian BITs include limitations:</p> <ul style="list-style-type: none"> • The Canada–Romania BIT excludes from the notion of ‘investment’ real estate or other property, tangible or intangible, not acquired in the expectation of, or used for the purpose of, economic benefit or other business purposes; • The Finland–Romania BIT covers only assets connected with an economic activity; and • The USA–Romania BIT states that there are certain spheres of activity in which both contracting parties may refuse the benefits arising out of the treaty, or may not allow foreign investments.
Reinvested benefits	The majority of Romania’s BITs expressly lists ‘returns which are reinvested’ as eligible assets (eg, Argentina, Australia, Austria, Belgium and Luxembourg, Cyprus, Finland, Germany, Greece, Israel, Jordan; Norway, Spain, Sweden, Uruguay and Turkey).
Accordance with local laws	Most of the Romania’s BITs refer to investments made ‘in accordance’ with a contracting party’s laws. With the exception of nine BITs (Bosnia and Herzegovina, Cameroon, Canada, the Czech Republic, Finland, South Korea, Kuwait, Morocco and Spain), Romania’s BITs require such investments to be ‘admitted’ (ie, permitted) by each contracting party.
Commencement of treaty protection	Most of Romania’s BITs apply to investments made by the investors before the BITs’ entrance into force, provided that such investments were made according to the laws and regulations of the contracting party on whose territory the investment was made. However, these BITs do not apply to disputes raised before their entrance into force.

III Substantive Protections

4 Fair and equitable treatment

What are the distinguishing features of the fair and equitable treatment standard in this country’s investment treaties?

Issue	Distinguishing features of the fair and equitable treatment (FET) standard
Illustrations of the FET standard	Nearly all of Romania’s BITs and also the ECT contain a standard obligation to provide fair and equitable treatment to investments.



Issue	Distinguishing features of the fair and equitable treatment (FET) standard
Distinct FET clauses	<p>The Canada, Finland and France BITs provide that FET shall be granted according to the principles of international law and national legislation.</p> <p>The Chile and France BITs provide not only that the parties shall ensure within their territories fair and equitable treatment, but also that each contracting party will ensure that the rights so recognised should not be impaired.</p>

5 Expropriation

What are the distinguishing features of the protection against expropriation standard in this country's investment treaties?

Issue	Distinguishing features of the 'expropriation' standard
Right to regulate for a public purpose	<p>Most of Romania's BITs provide that the investments of a contracting party's investor on the other contracting party's territory cannot be nationalised, expropriated or subjected to any similar measures (indirect or 'creeping' expropriation) unless the following conditions are met:</p> <ul style="list-style-type: none"> • the measures are taken for public interest in accordance with applicable domestic law; • the measures are not discriminatory; and • the measures are taken subject to effective and adequate compensation.
Exceptions	<p>The provisions of expropriation of the Romania – Canada BIT do not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the General Agreement on Tariffs and Trade (GATT).</p> <p>Likewise, in the Amendment to the Romania–Israel BIT, it is stated that the contracting parties may permit the unauthorised use of an IP right provided such authorisation is made in conformity with the principles set forth in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).</p>
Assessment of compensation	<p>Most BITs provide as a rule that the compensation awarded to the investor has to be equivalent to the market value of the expropriated investment, immediately before the date on which the expropriation measure was taken or became known to the public, whichever date is earliest. Other BITs refer to the date when the expropriation took place (eg, Bangladesh, Cameroon, Gabon, Ghana, Jordan, Kazakhstan, Peru, Senegal, Sri Lanka, Sudan and Turkey).</p> <p>Some BITs provide that the compensation should be calculated to cover the real value of the expropriated investment, evaluated according to the economic conditions existent on the eve of the day when the expropriation measure was taken or became known to the public, whichever occurs first (eg, Algeria, Belgium and Luxembourg, Cuba, Morocco and Turkmenistan).</p>
Payment of compensation	<p>Almost all of Romania's BITs state that the amount of the compensation shall be paid without any delay and shall include interest at the current rate up to the date of payment.</p>
Right to local remedies	<p>The majority of Romania's BITs provide an opportunity for the investor to address issues concerning either the validity of the expropriation measure in itself, or regarding the amount of, or the payment methods of, the compensation, to a competent authority/local court according to the contracting party's legislation where the investment was made.</p>
Right to arbitration	<p>A limited number of BITs (such as Bangladesh, Cameroon, Ghana, Mauritania and Senegal) provide for the possibility for an investor to address an issue regarding the amount of compensation (or other issues arising out of the expropriation) to arbitral proceedings (solely to arbitration or after exhaustion of domestic remedies). A cooling-off period is mentioned in most cases, during which the parties must try to amicably settle the dispute.</p>

6 National treatment/most-favoured-nation treatment

What are the distinguishing features of the national treatment/most favoured nation treatment standard in this country's investment treaties?

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Scope	<p>All of Romania's BITs include a most favoured nation clause stating that neither contracting party shall subject investments in its territory to less favourable treatment than that granted to investments made by investors of any third state.</p> <p>In addition, the majority of the BITs include a national treatment clause, providing that the treatment granted to any investor may not be less favourable than that accorded to their own nationals.</p>



Issue	Distinguishing features of the ‘national treatment’ and/or ‘most favoured nation’ standard
Extensions	<p>There are some BITs that extend the most favoured nation clause to the management, use, enjoyment or disposal of the investments or returns (eg, Canada, Cyprus, the Czech Republic, Denmark, Indonesia, Israel, Jordan, South Korea, Kuwait, Moldova, Norway, Peru, Portugal, Spain, Sri Lanka, Thailand, Ukraine and the United Kingdom).</p> <p>The Netherlands BIT extends the most favoured nation clause to fiscal issues, such as taxes, fees, discounts and tax exemptions. Other BITs extend the most favoured nation clause to expropriation proceedings (Belgium, Luxembourg, Germany, Portugal and Thailand).</p>
Standard limitations	<p>The majority of Romania’s BITs provide that the provision of ‘most favoured nation’ and/or ‘national treatment’ does not extend to the benefits of membership of a customs union, monetary union or free trade area, nor to taxation agreements or taxation legislation.</p> <p>In addition, the Canada–Romania BIT expressly provides that the most favoured nation and national treatment protections do not apply to treatment by a contracting party pursuant to any existing or future bilateral or multilateral agreement relating to aviation, fisheries, maritime matters or financial services.</p>
Specific limitations	<p>The Lebanon–Romania BIT excludes the application of the most favoured nation clause to the treatment granted to investors of Arab countries.</p> <p>The Russia–Romania BIT provides that any contracting party may reserve its right to determine areas of activities where foreign investors’ activities may be limited or excluded under the most favoured nation clause.</p> <p>The Austria–Romania BIT excludes the application of the most favoured nation clause to the benefits granted regarding facilitating border traffic.</p>

7 Protection and security

What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country’s investment treaties?

Issue	Distinguishing features of the ‘protection and security’ standard
Illustrations of the FPS standard	<p>Several Romanian BITs provide that investments made by investors of each contracting party shall benefit from full protection and security in the territory of the other contracting party (eg, Australia, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Israel, the Netherlands, Portugal, Russia, Sweden, Ukraine, the United Kingdom, the United States and Uruguay).</p>
Limitations	<p>Some BITs provide that the investments shall benefit from constant protection and security subject to measures necessary for maintaining public order (eg, Belgium–Luxembourg, Croatia, Kazakhstan, Morocco and the United States).</p> <p>The Romania–Canada BIT states that the protection and security clause shall not apply to any treatment granted according to a bilateral or multilateral agreement related to aviation, fisheries or maritime matters, including salvage or financial services.</p>
International law	<p>Some BITs state that provisions of any contracting party’s legislation or the obligations grounded in international law (either existent or subsequently established between the contracting parties) will prevail if such provisions contain a general or specific regulation, which entitles investors of the other contracting party to more favourable treatment than that provided by the BIT.</p>

8 Umbrella clause

What are the distinguishing features of the umbrella clauses contained within this country’s investment treaties?

Issue	Distinguishing features of any ‘umbrella clause’
Scope	<p>More than half of the BITs include an umbrella clause that states that each contracting party shall respect ‘any other obligations’ it has undertaken concerning the investments made in its territory by the investors of the other contracting party.</p>



9 Other substantive protections

What are the other most important substantive rights provided to qualifying investors in this country's investment treaties?

Issue	Other substantive protections
Armed conflict/civil unrest	The majority of the BITs include a compensation for loss clause for losses owing to war, armed conflict, revolution, state of emergency or rebellion that would be accorded in the same conditions as the nationals of the contracting party or investors of a third country.
Free transfer of payments	Most of the BITs contain provisions requiring contracting parties to allow investors to freely transfer investments and investment returns, sometimes subject to conditions requiring investors to fulfil the legal requirements regarding tax or other similar obligations. Most BITs provide in general terms that transfers shall be carried out without delay.
UE amendments	Some BITs provide that the substantive protection provisions are without prejudice to the measures adopted by the European Union. Such wording was introduced by amendments, before Romania acceded to the European Union (eg, Albania, Azerbaijan, Croatia and Egypt).
Subrogation	Most BITs recognise the subrogation of the insurer in the rights of the investor.
General exceptions	Some BITs contain general exceptions. For instance, the Romania–Canada BIT contains a public health and environment exception, whereas the Romania–Kazakhstan BIT refers to the protection of essential security interests and to measures necessary for the maintenance of public order.

IV Procedural Rights

10 Are there any relevant issues related to procedural rights in this country's investment treaties?

Issue	Procedural Rights
Fork in the Road (specific provisions)	A limited number of BITs provide that where an investor has submitted a dispute to the competent court of the contracting party or to international arbitration, such choice shall be final (eg, Argentina, Bolivia, Chile, China, Macedonia, Peru, Qatar, Syria, Tunisia). Under the Romania–Germany BIT, disputes may be submitted to an international arbitration tribunal only if no decision on the merits of a claim regarding the same dispute has been rendered by national courts.
Waiver of local remedies	Under the Romania–Canada BIT, the investor's right to commence arbitration is conditional on the investor waiving its rights to initiate or continue any other proceedings concerning the same circumstances giving rise to the alleged breach.
Exhaustion of local remedies	The Romania–Jordan BIT provides that where a dispute between the investor and the contracting party continues after the final decision of the national court or other competent body from the country in which the investment was made, either of the parties may submit the dispute to ICSID arbitration within two months of the exhaustion of domestic remedies. The Netherlands–Romania BIT provides that in case the dispute is not resolved by the competent court of the contracting party within a period of 10 months, the investor may, subject to withdrawing his or her claims from the courts of the contracting party concerned, submit the dispute to international arbitration.
Amicably settle disputes	The majority of Romania's BITs provide for the opportunity of an amicable settlement of three to six months (cooling-off period).
Time limits	The Romania–Canada BIT provides a three-year limitation period for the submission of investments disputes by the investors, which commence on the date on which the investor first acquired or should have acquired knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.
Applicable law	The Romanian BITs are generally silent on the issue of applicable law. Some treaties provide that the arbitration tribunal shall decide in accordance with: (i) the terms of the relevant BIT (Argentina, Australia, Belgium and Luxemburg, Bosnia and Herzegovina, Canada, Greece, India, Macedonia, Morocco, Paraguay, Peru, Spain, Syria, Turkey); (ii) the laws of the contracting party involved, including its rules on the conflict of law (Argentina, Australia, Belgium and Luxemburg, Bosnia and Herzegovina, Macedonia, Morocco, Paraguay, Peru, Spain, Turkey); and (iii) the relevant principles of international law (Argentina, Australia, Belgium and Luxemburg, Canada, Greece, India, Macedonia, Morocco, Paraguay, Peru, Spain, Syria, Turkey).



Issue	Procedural Rights
Institutional and ad hoc arbitration	Generally, Romania's BITs provide for ICSID arbitration and for ad hoc arbitration under the UNICITRAL rules. However, in the BIT concluded with Finland, the only choice is ICSID, if prior to such proceedings, the dispute has not been settled by conciliation or domestic courts. Moreover, the Romania–Cuba BIT does not include ICSID arbitration among the mechanisms of settling the dispute. Likewise, the Turkey–Romania BIT provides that disputes related to ownership and ownership rights over real estate may not be submitted for settlement to ICSID, as Turkish courts have exclusive jurisdiction regarding such disputes.
Confidentiality	The Canada–Romania BIT provides that the arbitral tribunal shall establish procedures for the protection of confidential information in consultation with the disputing parties. It also stipulates that any award under the treaty shall be publicly available, subject to the omission of confidential information.

11 What is the status of this country's investment treaties?

In 2015, the European Commission initiated infringement proceedings against four member states (including Romania), requiring those states to terminate their intra-EU bilateral treaties. As a result, Romania adopted on 24 March 2017 the Law No. 18/2017 on approval of the termination of the agreements on reciprocal promotion and protection of the investments concluded by Romania with the EU member states. Law No. 18/2017 states that Romania will terminate its intra-EU BITs either by mutual consent or by unilateral termination. Pursuant to this law, Romania terminated by mutual agreement three of its intra-EU BITs: with Denmark, Poland and with Sweden.

Following CJEU Case C-284/16 (*Achmea* case), in which the CJEU found that investor-state arbitration clauses in intra-EU BITs are incompatible with EU law, on 5 May 2020, 23 of the EU member states⁴² signed an agreement for the termination of intra-EU bilateral investment treaties (Termination Agreement). Under the Termination Agreement, the BITs concluded by Romania with Cyprus, Czech Republic, Portugal, Lithuania, Netherlands, Bulgaria, Croatia, Spain, Slovakia, Hungary, France, Slovenia, Greece, Belgo-Luxembourg Economic Union and Latvia will be terminated once the ratification instruments are exchanged by the contracting parties with the Depository of the Termination Agreement. In accordance with the Termination Agreement, the sunset clauses contained in the BITs are also terminated and shall not produce any legal effect, following termination of the BITs.

As regards extra-EU BITs, Romania terminated its BITs with Bolivia in 2017, with Indonesia in 2016 and with Mongolia in 2019. The BITs signed with Ghana and Sudan have not yet entered into force.

V Practicalities (Claims)

12 To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?

Government entity to which claim notices are sent	None of Romania's investment treaties specifies a certain government entity to which claim notices must be sent. In practice, notices of dispute are usually addressed to (i) the Secretariat General of the government (a public institution that handles the activities of the Romanian government), (ii) to Romania's Minister of Foreign Affairs, and (iii) to Romania's Minister of Public Finance.
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13 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations	Pursuant to the government's Ordinance No. 126/2005, the Romanian Ministry of Finance typically handles investment treaty arbitrations; other state agencies may be involved on an ad hoc basis.
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- 14 Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?

Internal/External Counsel	In all the investment treaty arbitrations so far brought against Romania, external counsel has represented the state. In 2007, Romania adopted an internal procedure regulating the selection of the external counsel for representation before ICSID. Since then, the appointment of external counsel has been made via public tenders organised by the Ministry of Finance.
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VI Practicalities (Enforcement)

- 15 Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.

Washington Convention implementing legislation	The Washington Convention was signed and ratified by Romania by Decree No. 62/1975 (published in Official Gazette No. 56 of 7 June 1975).
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- 16 Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.

New York Convention implementing legislation	Romania signed and ratified the New York Convention, through Decree No. 186/1961 published in the Official Gazette on 24 July 1961, subject to two reservations: (i) it applies only to disputes arising out of legal relationships, whether contractual or not, which are considered to be 'commercial' under its legislation, and (ii) it applies to the recognition and enforcement of awards made in the territory of another contracting state. As regards awards made in the territory of certain non-contracting states, Romania will apply the Convention only on the basis of reciprocity established by joint agreement between the parties.
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- 17 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

Legislation governing non-ICSID arbitrations	The Romanian Civil Procedure Code contains provisions governing international arbitration seated in Romania.
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- 18 Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?

Compliance with adverse awards	In the <i>Awdi</i> case (ICSID ARB/10/13), Romania complied with the award voluntarily by paying the compensation granted by the ICSID tribunal. However, as regards two more recent ICSID awards rendered against Romania – <i>Micula</i> case (ICSID Case No. ARB/05/20) and <i>Gavazzi</i> case' (ICSID Case No. ARB/12/25), investors have had to start enforcement procedures to recover the damages granted by the ICSID tribunals, owing to the failure by Romania to comply voluntarily with the awards.
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- 19 Describe the national government's attitude towards investment treaty arbitration.

Attitude of government towards investment treaty arbitration	Following the development of the <i>Micula</i> case'and the <i>Achmea</i> case, Romania decided in 2017 to terminate its intra-EU BITs. Romania terminated its BITs with Denmark, Poland and Sweden (by mutual agreement through exchanges of <i>note verbale</i>). On 5 May 2020, Romania signed the Termination Agreement. The BITs concluded by Romania with Cyprus, Czech Republic, Portugal, Lithuania, Netherlands, Bulgaria, Croatia, Spain, Slovakia, Hungary, France, Slovenia, Greece, Belgo-Luxembourg Economic Union and Latvia will be terminated once the ratification instruments are exchanged by the contracting parties with the Depository of the Termination Agreement.
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20 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

Attitude of local courts towards investment treaty arbitration	<p>In 2012, the Romanian courts granted enforcement of an ICSID cost award against the investor Spyridon Roussalis (ARB/06/1). The Bucharest Tribunal considered the award ‘directly enforceable’ under the ICSID Convention, and has granted Romania leave for enforcement without the need of exequatur.</p> <p>Likewise, in 2018, the Romanian courts granted the enforcement of the ICSID award rendered against Romania in the <i>Gavazzi</i> case (ARB/12/25), stating that an ICSID award should be enforced as a ‘final judgment’ of a Romanian court, pursuant to article 54 of the ICSID Convention.</p> <p>In contrast, in a debated decision relating to the enforcement of the <i>Micula</i> award, the Bucharest Court of Appeal held in 2020 that an ICSID award does not turn the arbitral award in question into a ‘national decision’. As a result, this ‘foreign decision’ requires exequatur even though the recognition procedure under Romanian law has been abolished (ICSID awards being automatically ‘recognised’ by law).</p>
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VII National Legislation Protecting Inward Investment

21 Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.

National legislation	Substantive protections			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
Government Emergency Ordinance No. 92/1997	Yes	Yes	Transfer of funds	Yes	Yes ⁴³

VIII National Legislation Protecting Outgoing Foreign Investment

22 Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?

Relevant guarantee scheme	Qualifying criteria, substantive protections provided and practical considerations
Multilateral Investment Guarantee Agency (MIGA Convention)	Under the MIGA Convention, investors are protected against the risks of transfer restriction, expropriation, war and civil disturbance, breach of contract and not complying with financial obligations. Romania ratified the MIGA Convention in 1992. Since then, Romanian citizens and entities are eligible to acquire, in exchange for the payment of a premium, political risk insurance from MIGA in respect of investments made in certain developing states (if certain requirements are met).
Insurance issued by the Import-Export Bank of Romania EXIMBANK SA	Under the Inter-Ministry Finance, Securities and Insurances Committee Decision No. 116/2019, Eximbank SA issues, in the name of the Romanian state, risk insurance to Romanian companies to secure export credits and capital investments abroad. The risks covered are (i) commercial, political and force majeure risks concerning export credits; and (ii) political risks in countries with high political risks related to capital investments made abroad (if certain requirements are met).



IX Awards

23 Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties

Awards

Ioan Micula, Viorel Micula and others v Romania (ICSID ARB/14/29), Award rendered on 5 March 2020 (BIT Sweden–Romania) – *Micula II*

Ioan Micula, Viorel Micula and others v Romania (ICSID ARB/05/20), Award rendered on 11 December 2013; the ad hoc committee issues its decision on annulment on 26 February 2016 (BIT Sweden–Romania) – *Micula I*

Marco Gavazzi and Stefano Gavazzi v Romania (ICSID ARB/12/25), Award rendered on 18 April 2017 (BIT Italy–Romania)

Hassan Awdi, Enterprise Business Consultants, Inc and Alfa El Corporation v Romania (ICSID ARB/10/13), Award rendered on 2 March 2015 (BIT Romania–United States of America)

Ömer Dede and Serdar Elhüseyni v Romania (ICSID ARB/10/22), Award rendered on 5 September 2013 (BIT Turkey–Romania)

Rompotrol Group N.V. v. Romania (ICSID Case No. ARB/06/3), Award rendered on 6 May 2013 (BIT Romania–Netherlands)

Spyridon Roussalis v Romania (ICSID ARB/06/1) Award rendered on 7 December 2011 (BIT Greece–Romania)

S&T Oil Equipment & Machinery Ltd v Romania (ICSID ARB/07/13), Order of discontinuance due to lack of payment, dated 16 July 2010 (BIT Romania–United States of America)

EDF (Services) Limited v Romania (ICSID ARB/05/13), Award rendered on 8 October 2009 (BIT United Kingdom of Great Britain and Northern Ireland–Romania)

Noble Ventures, Inc. v Romania (ICSID ARB/01/11), Award rendered on 12 October 2005 (BIT Romania–United States of America)

Pending proceedings

Alpiq AG v Romania (ICSID ARB/14/28), (BIT Romania-Switzerland and Energy Charter Treaty) – annulment proceedings

Alverley Investments Limited and Germen Properties Ltd v Romania (ICSID ARB/18/30) (BIT Cyprus–Romania)

LSG Building Solutions GmbH and others v Romania (ICSID ARB/18/19), (Energy Charter Treaty)

Nova Group Investments, BV v Romania (ICSID ARB/16/19), (BIT Romania–Netherlands)

Gabriel Resources Ltd and Gabriel Resources (Jersey) v Romania (ICSID ARB/15/31), (BIT Canada-Romania and BIT UK–Romania)

Petrochemical Holding GmbH v Romania (ICSID ARB/19/21) (Energy Charter Treaty)

Edward and Jak Sukyas v Romania (UNCITRAL arbitration) (BIT Canada–Romania and BIT US–Romania).

Reading list

<https://investmentpolicy.unctad.org/international-investment-agreements/countries/174/romania>.



Notes

- 1 This treaty falls under the scope of the Law no 18/2017. As such, the Romania-Austria BIT will be terminated either by mutual consent or by giving notice of termination to the other contracting party. Unless the sunset clause (article 11 (3) of the BIT) is waived by both state parties to the BIT, the provisions of the BIT will remain in force for a further period of 10 years following termination, in respect of investments made before the termination date.
- 2 There is a six-month cooling-off period for disputes between contracting parties.
- 3 Only regarding expropriation (article 4, para 1).
- 4 Only regarding expropriation (article 4, para 2).
- 5 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and BLEU exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 14 (3) of the BIT) will also be terminated.
- 6 Since 17 March 2017, the BIT is no longer in force, but according to the sunset clause (article XII), the provisions of the treaty will remain in force for a further period of 10 years for the investments made before the termination date.
- 7 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Bulgaria exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 12 (3) of the BIT) will also be terminated.
- 8 Only in respect to disputes regarding compensation in case of expropriation.
- 9 Only in respect to disputes regarding compensation in case of expropriation.
- 10 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Croatia exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 12 (2) of the BIT) will also be terminated.
- 11 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Cyprus exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 11 (3) of the BIT) will also be terminated.
- 12 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Czech Republic exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 12 (3) of the BIT) will also be terminated.
- 13 According to the contracting parties' note verbale exchanged during the termination of the BIT, the sunset clause (article 16 (2)) is no longer applicable.
- 14 This treaty falls under the scope of the Law no 18/2017. As such, the Romania-Finland BIT will be terminated either by mutual consent or by giving notice of termination to the other contracting party. Unless the sunset clause (article 11 (3) of the BIT) is waived by both state parties to the BIT, the provisions of the BIT will remain in force for a further period of 10 years following termination, in respect of investments made before the termination date.
- 15 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and French Republic exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 12 (3) of the BIT) will also be terminated.
- 16 Only in respect to disputes regarding compensation in case of expropriation.
- 17 Only in respect to disputes regarding compensation in case of expropriation.
- 18 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Germany exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 13 (3) of the BIT) will also be terminated.
- 19 Only in respect to disputes regarding compensation in case of expropriation.
- 20 Only in respect to disputes regarding compensation in case of expropriation.
- 21 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Greece exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 12 (3) of the BIT) will also be terminated.
- 22 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Hungary exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 12 (3) of the BIT) will also be terminated.
- 23 For investments made prior to the termination date, the provisions of the BIT continue to be effective for a further period of 10 years from the date of termination.
- 24 Limited to disputes regarding compensation for expropriation (article 7) and to transfers (article 8).
- 25 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Latvia exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 11 (3) of the BIT) will also be terminated.
- 26 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Lithuania exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 13 (2) of the BIT) will also be terminated.
- 27 Limited to disputes regarding the quantum of the compensation in case of expropriation (article 4).
- 28 Limited to disputes regarding the quantum of the compensation in case of expropriation (article 4).
- 29 The provisions of the Romania-Mongolia BIT will continue to be effective for a further period of 10 years for investments made before the termination date.
- 30 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Netherlands exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 13 (3) of the BIT) will also be terminated.
- 31 The Contracting Parties agreed that none of the Romania-Poland BIT clauses will remain in force (including the sunset clause).
- 32 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Portugal exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 12 (3) of the BIT) will also be terminated.
- 33 Limited to disputes regarding the quantum of the compensation in case of expropriation and subject to a final local decision being granted.
- 34 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Slovakia exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 12 (3) of the BIT) will also be terminated.
- 35 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Slovenia exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 12 (2) of the BIT) will also be terminated.
- 36 This treaty falls under the scope of the Termination Agreement, as defined below, and it will be terminated as soon as both Romania and Spain exchange the ratification instruments with the Depository of the Termination Agreement. The sunset clause of the BIT (article 12 (3) of the BIT) will also be terminated.



- 37 Limited to disputes regarding the quantum of the compensation in case of expropriation (article 7 (1)).
- 38 Limited to disputes regarding the quantum of the compensation in case of expropriation (article 7 (1)).
- 39 Limited to disputes regarding the quantum of the compensation in case of expropriation (article 4 (1)).
- 40 The contracting parties agreed that none of the Romania-Sweden BIT clauses will remain in force (including the sunset clause).
- 41 This treaty falls under the scope of the Law No. 18/2017. As such, the Romania–United Kingdom BIT will be terminated either by mutual consent or by giving notice of termination to the other contracting party. Unless the sunset clause (article 11 (3) of the BIT) is waived by both state parties to the BIT, the provisions of the BIT will remain in force for a further period of 10 years following termination, in respect of investments made before the termination date.
- 42 Except Austria, Finland, Ireland and Sweden.
- 43 Disputes between foreign investors and the Romanian State in relation to several provisions of Government Emergency Ordinance No. 91/1997 can be settled, at the investor's choice, (i) by local administrative courts, (ii) in accordance with ICSID Convention, if the investor is a citizen of a signatory state to the Convention, or (iii) in accordance with UNICITRAL Rules of Arbitration.





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Chloe's practice focuses on international arbitration, in particular investment treaty arbitration and public international law. She has extensive experience of both ad hoc arbitration and arbitrations under the rules of the major international arbitration institutions, including leading a number of substantive and high-value investment treaty and international commercial arbitrations under the rules of the ICC, ICSID and UNCITRAL. Chloe acts for both claimants and respondents, and has handled cases in the mining, energy, hotel, construction, banking and telecommunications sectors. She has a wealth of experience dealing with disputes arising out of bilateral investment treaties and the Energy Charter Treaty, including such issues as jurisdiction, disqualification proceedings and provisional measures, unlawful expropriation, unfair and inequitable treatment, and denial of justice. She also advises on sovereign immunity issues and the annulment of and appeals against arbitration awards. Chloe has also advised a state on the reform of its arbitration laws and the creation in that state of an international financial centre and arbitration court, including drafting a model arbitration clause. She has also advised potential investors and states on pre-contract structuring in relation to investment projects.

Chloe writes extensively on investment treaty issues, has authored chapters in major international arbitration publications and articles in industry focussed magazines. She is a visiting lecturer on public international law and arbitration issues at the Kazakh Humanities and Law University. Chloe also speaks on investment treaty and international arbitration issues at GAR Arbitration events, and conferences hosted by the Investment Treaty Forum and the British Institute of International & Comparative Law.



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Raluca is a Romanian senior commercial lawyer, until recently a senior associate with Iordache Partners and now taking a senior role as in-house counsel. Raluca's practice is versatile, with a wide breadth of experience in corporate law, commercial and regulatory advice and general disputes. As an international arbitration practitioner, she has acted successfully as counsel in a number of cross-border commercial disputes under ad hoc, LCIA, ICC and CCIR rules.



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Trained in common law and civil law jurisdictions, Lucian is a solicitor advocate in England and Wales, a member of the Paris and Bucharest bars. He is referenced as an arbitrator on the Bucharest International Arbitration Court's list of arbitrators, and acts in such role in ICC proceedings.

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Adrian is the managing partner of the Bucharest-based law firm Iordache Partners, with a dual practice out of London and Bucharest. Adrian's practice focuses on cross-border commercial transactions in a variety of sectors. Adrian's experience in international arbitration covers both commercial and investment arbitration under the main rules and institutional settings worldwide. He has particular interest in renewable energy, new technologies, aviation (transactional) and the film industries.

Adrian is qualified in New York State, England & Wales (solicitor), DC and Bucharest. Adrian is widely recognised as a pragmatic, business-first attorney, with a deep knowledge of both the international environment and local complexities.





Reed Smith is strongly positioned to provide the highest level of service in dispute resolution to its clients. With offices in the world's leading arbitral centres, including London, Paris, New York, Singapore, Hong Kong, Dubai, Miami and Houston, it has one of the largest and most diverse international arbitration practices in the world, with the ability to represent clients in every significant arbitral centre and seat around the globe.

As a leader in public international law and international arbitration (Reed Smith is ranked in the elite GAR 30, *Global Arbitration Review's* ranking of the world's leading international arbitration practices) and with a team of lawyers focused on investor-state arbitration, we help clients to pursue and defend against investor-state claims, as well as secure and benefit from investment protections under bilateral and multilateral treaties, national investment laws and applicable contractual mechanisms.

Reed Smith has substantial experience representing both claimants and respondents, and a strong track record of obtaining successful results. Our deep knowledge of industry sectors including energy, natural resources, life sciences, transportation, telecoms, insurance and banking enables us to understand the industry-specific factors and environments affecting our clients' disputes. This combination of deep arbitration experience, our lawyers' advocacy skills and industry knowledge gives us a competitive advantage when representing our clients.

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