

Țuca Zbârcea & Asociații secures an important precedent in a complex ICC arbitration case within the oil and gas industry



Țuca Zbârcea & Asociații successfully represented a major independent oil and gas producer in Romania in a Paris-seated ICC arbitration. The client held the status of operator in a joint operating agreement with respect to several petroleum blocks in Romania.

The joint operating agreement with respect to several petroleum blocks in Romania (the "JOA") was concluded in an adjusted form of the JOA model of AIPN, the 2002 version (AIPN - Association for International Petroleum Negotiators, currently AIEN - Association for International Energy Negotiators), for the joint performance of petroleum operations and related activities for obtaining and using incremental production.

During the JOA performance, the production of natural gas significantly declined, and the operator recorded several losses resulting from gas sales to third parties. The operator sought to include these losses in the joint venture costs.

The main issues disputed in the ICC arbitral proceedings were the following: (i) whether gas sales fall within the scope of the JOA, (ii) whether the operator acted in accordance with the mandate entrusted under the JOA when concluding the gas sales contracts, on the one hand, and when managing the gas sales contracts after the production shortfall occurred, in order to minimise the losses of the joint venture, on the other hand, (iii) whether respondent must bear the risks and costs of gas sales in accordance with its participation in the joint venture and, in particular, (iv) whether the "no gain, no loss" principle, inherent to joint operation agreements in the industry, is also applicable to gas sales.

By its arbitral award, the Tribunal decided that the answer to all these questions is affirmative and ordered respondent to share the joint venture losses derived from the production deficit, according to its participation, respectively 50%. In delivering its decision, the Tribunal took into account, inter alia, the common intention of the parties as regards the content of the relevant contractual terms which were drafted in an amended form of 2002 JOA AIPN model, including by reference to the actual conduct of the parties during the performance of the contract.

The claimant in this arbitration proceeding was represented by a team of lawyers from the arbitration department of Țuca Zbârcea & Asociații, which was made up of, among others, [Cornel Popa](#) (Partner), [Cornelia Tăbîrță](#) (Managing Associate), [Maria Avram](#) (Associate) and [Darius Șerban](#) (Associate).

Țuca Zbârcea & Asociații currently stands as the best-ranked law firm in Romania for its expertise in the key areas of business law according to the British legal directory "Legal 500", being also one of the most awarded law firms

nationally and internationally.