Investment in Romania

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Preface

Investment in Romania is one of a series of booklets published by KPMG in Romania to provide information to those considering investing or doing business in this country. Its purpose is to provide some general guidelines on investment and business in Romania.

A highly trained labor force, abundant natural resources, geographical advantages that facilitate transportation of goods and one of the largest markets in Central and Eastern Europe (of approximately 20 million consumers) are attributes that make Romania an increasingly attractive destination for investment.

Romania offers many interesting investment opportunities. However, legislation can change frequently, and the economic situation needs to be monitored closely. So we recommend that you seek further advice before making specific decisions. KPMG in Romania, or your local KPMG contact, will be pleased to hear from you if you have questions about this publication or about doing business in Romania.

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CHAPTER 1
General Information about Romania

Romania is a country of considerable natural beauty, with numerous attractions for the visitor. It has seen significant economic growth in the last two decades, spurred on by EU accession in 2007. Although the economy was affected by the global economic downturn from 2008, it has now returned to growth and is performing better than many other countries in the region. The information contained in this document was last updated on 15 March 2016.

Passports, Visas and Residence Permits

For the latest information on entry and immigration requirements see KPMG in Romania’s RoVisa Express iOS app, available in the Appstore. http://bit.ly/12usWxH

 Romanian visas are not required for nationals of EU/EEA countries, Switzerland, Canada, Japan and the USA. Romanian short-stay entry visas are also not required for nationals of Argentina, Australia, the Bahamas, Barbados, Brazil, Brunei, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Hong Kong Special Economic Zone, Israel, Macao Special Economic Zone, Malaysia, Mauritius, Mexico, Nicaragua, New Zealand, Panama, Paraguay, San Marino, Seychelles, Singapore, South Korea, Tonga, Trinidad Tobago, Uruguay, Vanuatu and Venezuela, all of whom may stay in the country up to 90 days within a six month period without the need to obtain any official permission. However, a Romanian long-stay visa and a residence document are mandatory for stays of longer than 90 days.

Holders of valid Schengen visas for short or long term stays are granted visa free entry to Romania (i.e. no Romanian short-term entry visa is required), under certain conditions.

Nationals of countries considered by the Romanian authorities to present a high immigration risk are subject to strict visa requirements and they must follow a special procedure to obtain a visa prior to their arrival. This procedure involves obtaining an invitation approval from the Romanian immigration authorities. Visas are obtained based on this invitation approval requested by a Romanian individual or company. Exceptions apply to certain categories, as provided by law. A bank deposit guarantee may also be needed, although there are some exemptions from this requirement.
Non-EU/EEA/Swiss individuals who come to Romania for work purposes or want to stay longer than 90 days within a six month period must apply for a Romanian residence permit. This is a document issued by the Romanian General Inspectorate for Immigration and is generally renewed on a yearly basis. A number of documents must be provided to secure the permits, the most important of which are evidence of employment in Romania (a work permit is required in nearly all cases), evidence of contribution to the Romanian state health system, medical certificate (most good private clinics will arrange the medical examination) evidence of accommodation in Romania (ownership documents or a rent contract), a copy of the passport used to enter the country, and at least two passport sized photographs. The residence permit is issued within one month, although the passport is not retained during this period.

Extensions of residence permits must be applied for at least 30 days prior to the expiry date of the old one, otherwise a fine is payable. Fees are subject to change, and the laws governing residency are altered frequently.

Highly-skilled employees will obtain an EU Blue Card, which is a special type of residence permit for employment purposes issued to highly-skilled qualified non-EU/EEA/Swiss local hires. Proofs of high-skills / qualifications are mandatory. This type of residence document grants the right to reside and be employed in Romania in a highly-skilled position, is generally issued for up to two years validity (depending on the validity of the employment contract), and is renewable. After an 18-month legal stay, the EU Blue Card holder can move to another EU Member State to occupy a highly-skilled position.

For EU/EEA/Swiss nationals, five year registration certificates are issued, on production of an employment contract or evidence of means of support, as well as proof of social health insurance (a European health card is acceptable in most cases).

**Hotel and Long Term Accommodation**

Romania offers a wide range of hotel accommodation. Major hotels offer all normal facilities business travellers expect (Wi-Fi etc.). A passport or residence permit is required to register at any hotel.

Because of the relatively high cost of hotel accommodation in Romania, many longer term or frequent visitors find it more convenient and cost effective to rent accommodation in an apartment. Short term rentals on a daily basis are widely available.
Credit and debit cards are widely accepted in hotels in Bucharest and major cities, but might be more difficult to use in remote areas. Payment for accommodation in city hotels can usually be made in foreign currency as well as lei.

There are numerous ATMs in all cities. Euros, U.S. dollars and other major currencies are also easily exchanged at banks or exchange offices. It is advisable to reserve hotel accommodation before arriving in Romania, especially during peak periods.

**Air Transportation**

The Romanian airline, TAROM, serves major points in Romania, Europe, and Asia. International full service carriers currently serving Romania include Aegean/Olympic, Air France, Alitalia, Austrian Airlines, British Airways, El Al, Lufthansa, KLM, Turkish Airlines, Aeroflot (Russia), CSA (Czech Republic and Slovak Republic), and LOT (Poland). Romania is also well served by low cost carriers, such as Wizzair, Blueair, EasyJet and Ryanair.

In Bucharest, all flights now use Henri Coanda (formerly Otopeni), which is Romania’s main international airport. (The smaller Bucharest Baneasa airport, which used to be served by low cost carriers, was converted into an airport 100% dedicated to business air traffic in March 2012). There are 7 other airports in Romania; Cluj, Iasi, Oradea, Satu Mare, Sibiu, Suceava and Timisoara. Some are served by international flights and most are connected to Bucharest by domestic services.

Taxis are readily available at airports, and in Bucharest are best ordered using the yellow machines in the arrivals hall. Many good hotels arrange airport transfers, often without extra cost.

**Ground transportation**

The Romanian road system is fairly undeveloped, with a very limited highway network, but new highways are currently under construction and existing national roads are being upgraded. Rail travel is slow and the condition of the rolling stock can be poor. Sleeping car services operate on long distance routes.

**Sea Ports**

The biggest port in Romania and in the entire Black Sea region is Constanta. It can host vessels of over 150,000 tones. Mangalia and Sulina are free ports. There are also several river ports on the Danube: Turnu Severin,
Giurgiu, Calarasi, Cernavoda, Orsova, Turnu Magurele and Oltenita. Braila, Galati and Tulcea are both sea and river ports.

**Geography and Population**

Geographical Location

Romania is situated in South-East Central Europe, to the north of the Balkan Peninsula, on the Lower Danube, bordered in the southeast by the Black Sea. The country is crossed by the parallel of 45° F latitude north and by the meridian of 25° longitude east, and is located midway between the North Pole and the Equator, and midway between Europe’s Western and Eastern extremities.

Neighbours

Romania is bordered by the Black Sea to the southeast, Bulgaria to the south, Serbia to the southwest, Hungary to the west and Ukraine and the Republic of Moldova to the north and east.

Population

The Romanian population is 19,599,506, of which 88.6% are of ethnic Romanian origin. There is a significant ethnic Hungarian minority, mainly located in the Western province of Transylvania, representing 6.5% of the total national population, a Roma population of 3.2% and a small percentage of other ethnic groups (2011 census figures).

Climate

The climate varies considerably from one part of the country to another, but is generally considered to be continental. There are four clear-cut seasons, with an average temperature of -5°C in wintertime and 24-30°C in summertime, and average annual rainfall of ca. 640 mm. Bucharest has warmer winters than most of the country, with temperatures on average a few degrees above zero, but with occasional cold spells.

Official Language

The official language, spoken by the majority of the population, is Romanian. It is the language taught in schools and spoken in national institutions. The
Romanian language is derived from the Latin used in ancient times in the Roman provinces of Dacia and Moesia. It has a 31-letter Latin alphabet and is very similar to French, Italian and Spanish, with some Slavic influences.

Hungarian is also used, mostly in the north-eastern part of the country. Other languages are also spoken by small numbers.

**Standard Time**

The standard time is GMT + 2 hours (East European Zone Time). Summer time is GMT plus 3 hours, from late March to late October. The spring and autumn change is synchronized with the rest of Europe, so Romania is always one hour in advance of France, Germany, Austria etc.

**Area**

Romania covers about 238,391 square kilometers of land, which makes it a medium sized European country. It is approximately the same size as England and it ranks 13th in size in Europe.

**National Day**

1 December (the anniversary of the Great Assembly held at Alba Iulia in 1918, which brought about the union of all Romanians into a single state).

**Legal Holidays**

1 and 2 January - New Year; Easter Monday (Orthodox); 1 May- May Day; the Monday after Pentecost (normally 7 weeks after Orthodox Easter); 15 August - Dormition of the Virgin Mary; 30 November – St. Andrew; 1 December - National Day of Romania; 25 and 26 December - Christmas.

**Religion**

Nearly all the population is Christian according to the 2011 census, of which a large majority is Orthodox (85.9%). 4.6% are Catholic. Around 6% belong to various Protestant denominations, the most important of which is the Hungarian Reformed Church (3.2%). Romania has a small number of Muslims (0.3%) and a Jewish community of around 6000.
National Currency

The national currency is the Leu (pl. Lei) with the subdivision Ban (pl. Bani). In economic and business circles the currency is generally referred to as the RON (New Leu) to distinguish from the ROL (Old Leu) which functioned until July 2005 (when four zeroes were eliminated from the old currency). Approximate official rates in March 2016:

1 EURO = 4.46 Lei
1 USD = 4.02 Lei

Sources:
- The Romanian Statistical Yearbook
- The official Web site of the National Bank of Romania
- The official Web site of the Ministry of Transport
CHAPTER 2
Forms of Business Organization

Individuals and legal entities may freely enter into partnerships and set up companies to develop business activities. According to the Company Law (Law 31/1990, as republished and subsequently amended) there are five types of companies:

Limited liability company; *societate cu răspundere limitată* (S.R.L.) whose obligations are secured by the company’s assets. Shareholders are liable only for the payment of their contributions to the share capital.

Joint stock company; *societate pe acţiuni* (S.A.) whose obligations are secured with the company’s assets. Stockholders are liable only up to the value of their subscribed contribution to the share capital.

General partnership; *societate în nume colectiv* (SNC), whose obligations are secured with the company’s assets and the unlimited and joint liability of the partners.

Limited partnership; *societate în comandită simplă* (SCS), whose obligations are secured with the company’s assets and the unlimited and joint liability of the general partners. Limited partners are liable only up to the value of their subscribed contribution to the share capital.

Limited partnership by shares; *societate în comandită pe acţiuni* (SCA), whose share capital is divided into shares and whose obligations are secured with the company’s assets and the unlimited and joint liability of the general partners. Limited partners are liable only up to the value of their subscribed contribution to the share capital.

The organisation of general partnerships and limited partnerships is governed by a contract of association while joint stock companies, limited partnerships by shares and limited liability companies are organized under a contract of association and by-laws (which may be concluded as a single document “Acts of Incorporation” or “Articles of Association”).

According to the Company Law, as republished and subsequently amended, the notarization of the Acts of Incorporation is compulsory only in the following instances: (i) when real estate is brought as a contribution in kind upon incorporation of a company; (ii) when a general partnership or a limited partnership is set up and (iii) when a joint stock company is set up by public subscription.
All companies must be registered with the Romanian Trade Registry Office and they acquire a legal status as from their registration date. The registration procedure has been simplified under Law 359/2004, according to which all companies must be registered with the relevant Trade Registry Office, which grants the newly set up companies their registration certificate, specifying the individual registration code issued by the Ministry of Public Finance, and if all conditions have been met, the authorizations and permits necessary to start up their business activities (e.g., for health and safety conditions, environmental compliance, work protection as well as sanitary-veterinary conditions).

According to the Company Law, contributions to a company’s share capital may be in cash, in kind or in receivables. A cash contribution is compulsory upon the incorporation of any type of company.

The shareholders of each type of company must hold at least one ordinary meeting per year, within a maximum five month term after the end of the financial year. The resolutions adopted in a General Meeting must be registered with the Trade Registry within 15 days of their adoption in order to become opposable to third parties, with penalties being imposed for non-compliance with this term.

Companies, irrespective of type, are managed by one or several directors. In joint stock companies, the directors will form the Board of Directors. In limited liability companies, a Board of Directors will be organized only if the Acts of Incorporation so provide. Directors can be individuals or legal entities, appointed either under the Acts of Incorporation, or by the ordinary general meeting of shareholders. Generally, in joint stock companies, directors and members of the Management Board and Supervisory Board can have a 4-year term of office but they can be re-elected if the Acts of Incorporation do not provide otherwise. The mandate of the first members of the Board of Directors and Supervisory Board cannot exceed two years. Directors have the following main duties: (i) to ensure the timely payment of share capital contributions due by shareholders or partners; (ii) to comply with the rules on the distribution of dividends; (iii) to ensure that the company’s statutory records are kept according to the law; (iv) to ensure the enforcement of the resolutions adopted by the meetings of shareholders; (v) to fulfil all the duties imposed by the law and by the Acts of Incorporation.

There are no special requirements with respect to the citizenship of a company’s directors. However, individuals convicted of certain criminal offences, such as the offences listed under the Law for the prevention and penalization of money laundering as well as for the adoption of measures for preventing and fighting against financing of terrorist acts may not be
directors, managers, members of the Supervisory Board or members of the Management Board or founders and where they have been appointed to such positions, they will forfeit these rights.

All types of companies must file their financial statements, on paper and in electronic format, or only in electronic format, with the local offices of the Ministry of Public Finance within a maximum of 150 days of the end of the financial year. Companies with an annual turnover exceeding RON 10,000,000, representing the equivalent of approximately EUR 2,257,336 at an exchange rate of EUR 1 = RON 4.43, are required to publish in the Official Journal of Romania, part IV, a notice confirming the registration of their financial statements as mentioned above. Companies with an annual turnover that does not exceed RON 10,000,000 should publish, for free, a notice of the registration of their financial statements on the website of the National Trade Registry Office. Listed companies must also file their financial statements with the Financial Supervisory Authority, as well as reports by their directors, censors and financial auditors.

Limited liability companies and joint stock companies are the most common types of companies and therefore we will present the characteristics of these two.

**Limited Liability Companies**

A limited liability company (S.R.L.) may be set up by not more than 50 shareholders. The Company Law allows for the incorporation of a company with one shareholder. However, an individual or a legal entity cannot be a sole shareholder in more than one S.R.L. (proof of this must be presented prior to registration). Furthermore, an S.R.L. with one shareholder may not be the sole shareholder of another S.R.L.

The share capital of an S.R.L. may not be less than RON 200, representing the equivalent of approximately EUR 45 at an exchange rate of EUR 1 = RON 4.46 and it is divided into shares ("parti sociale") with a registered value of at least RON 10 each. Shares are not marketable titles but they can be traded among shareholders and transferred to third parties as well.

The general meeting of shareholders is the main decision-making body of the company. The main obligations of the general meeting of shareholders are: (i) to approve the annual financial statements and the distribution of profits; (ii) to appoint the Directors and censors or, as applicable, the internal auditors, and to revoke them and to decide upon contracting a financial audit where this is not compulsory according to the law; (iii) to decide upon the liability of Directors and censors or, as applicable, of the internal auditors, for
any prejudice caused to the company; (iv) to amend the Acts of Incorporation.

Directors may undertake any operations required for the business of the company, except for the restrictions or limitations provided by the Acts of Incorporation or by the general meeting of shareholders.

The Acts of Incorporation may provide for the election by the shareholders of one or several censors or of a financial auditor, but the appointment of censors or of a financial auditor is mandatory only if the company has more than fifteen shareholders.

According to the Company Law, an S.R.L. must keep a shareholders register, where the identity of shareholders, the number of shares held by each of them and the transfer of shares are recorded.

**Joint Stock Companies**

A joint stock company (S.A.) can be set up by at least two shareholders. The share capital of an S.A. may not be less than RON 90,000. Every 2 years, the Government can change the minimum value of the share capital by reference to the exchange rate, to keep this amount at the RON equivalent of EUR 25,000. The share capital is divided into shares ("actiuni"), each with a value of at least RON 0.1. The initial capital paid by each shareholder may not be lower than 30% of the subscribed capital. The remaining 70% of the subscribed share capital must be paid over a period which must not exceed 12 months from the incorporation date, where the shares have been issued in exchange for contributions in cash and 2 years where the shares have been issued in exchange for contributions in kind.

The shares are marketable titles and they can be nominal or bearer shares. Unless otherwise specifically provided by the Acts of Incorporation, shares are considered nominal. Ownership of nominal shares can be transferred under a statement made in the shareholders' corporate register, with this transfer to be registered in the share certificate, whereas ownership of bearer shares can be transferred by simple remittance.

The General Meeting of Shareholders may be ordinary or extraordinary. The ordinary meeting is called at least once every year within a maximum five month term after the end of the financial year in order to: (i) discuss, approve and modify the annual financial statements after presentation of the report by the Board of Directors, or by the Management Board or Supervisory Board, by the censors or, as applicable, by the financial auditors and to establish the distribution of dividends; (ii) appoint and revoke the
members of the Board of Directors, or, as applicable, members of the Supervisory Board, and of the censors; (iii) set the remuneration of the Board of Directors’ members, or, as applicable of the Supervisory Board’s members and of the censors; (iv) evaluate the performance of the Board of Directors, or of the Management Board, as applicable; (v) establish the budget and business plan for the next fiscal year; (vi) decide with regard to the pledge, lease or dissolution of one or several of the company’s branches; (vii) discuss any other issues on the agenda. In the ordinary general meeting, resolutions are adopted if the shareholders attending the meeting represent a quarter of the share capital, and if supported by an absolute majority of the share capital represented in the meeting.

An Extraordinary General Meeting of Shareholders is called whenever it is necessary to adopt a resolution for the amendment of the company’s Acts of Incorporation or to debate any resolution which requires the approval of an extraordinary general meeting.

A resolution to amend the company’s main object of activity, to decrease or increase the share capital, to change the company’s legal structure or to merge, de-merge or dissolve the company is taken with a majority of at least 2/3 of the voting rights held by the present or represented shareholders, where a higher majority is not stipulated in the Acts of Incorporation.

The Company Law provides certain protective measures for shareholders such as:

i) The right to challenge in court the resolutions of the General Meeting of Shareholders if these involve irregularities (e.g. non-compliance with the procedures for the calling of the General Meeting of Shareholders, resolutions adopted without meeting the quorum requirements etc.).

ii) The right of the shareholders who vote against a resolution of the General Meeting of Shareholders to withdraw from the company and to require the purchase of their shares by the company, where the object of such a resolution is related to the amendment of the company’s main object of activity, relocation of the company’s registered office abroad, change of the company’s legal structure, merger or de-merger of the company.

iii) The right to consult, at the company’s registered office, the annual financial statements, the Board of Directors’ annual report, or, as applicable, the report of the Management Board and of the Supervisory Board, and also a proposal concerning the distribution of dividends,
starting with the calling date of the General Meeting. On request, shareholders can obtain copies of these documents.

iv) Shareholders holding at least 10% of the share capital may apply to a court for the appointment of an expert to analyze certain activities of the company and to present the conclusions to the Board of Directors, the Management Board or Supervisory Board, as well as to the censors or the internal auditors of the company, as applicable, in order to propose corresponding measures.

v) Shareholders holding at least 5% of the share capital may raise complaints to the censors or internal auditors about facts which, they believe, need to be checked. If the complaint is well founded, the censors, the Board of Directors, or the Supervisory Board, must call a General Meeting.

vi) Shareholders who, individually or together, represent at least 5% of the share capital may lodge a compensation claim in court in their own name, but on behalf of the company, against the founders, directors, and managers, or against the members of the Management Board and Supervisory Board, for any prejudice caused to the company.

Joint stock companies may now choose between two alternative management systems, i.e. the one-tier or the two-tier management system, according to which best serves their interests.

A) The one-tier management system

The company’s management is made up of a sole director or a board of directors who can delegate the company’s management to managers and/or the General Manager. The board of directors may be formed of non-executive members, i.e. those who have not been appointed as managers, as well as executive members, who thus combine two offices; that of a director with that of a manager of a company.

B) The two-tier management system

Management is ensured by a supervisory board and a management board. The management board bears exclusive responsibility for the management of the company and is formed of one or several members, with a minimum of 3 members for companies subject to a mandatory financial audit.

Where a director has been designated to hold such a position from among the company’s employees, the employment contract will be suspended during the director’s term of office.
The directors and the members of the Management Board or of the Supervisory Board must conclude professional liability insurance agreements.

The managers of joint stock companies in the one-tier management system and the members of the Management Board in the two-tier management system must be individuals. Legal entities can be appointed as directors or members of the Supervisory Board of joint stock companies, but in this case they must appoint a permanent individual representative.

The Board of Directors may delegate the executive management of the company to one or several managers, with one of them appointed as general manager. Where the actual management of a joint stock company is delegated to one or several managers, most of the Board of Directors members will be non-executive members.

The delegation of a company’s management is compulsory for companies whose annual financial statements must be subject to financial audit. Managers are responsible for the day-to-day operations of the company within the limits of the company’s object of activity.

The Supervisory Board may set up advisory committees formed of at least two members of the Supervisory Board who are in charge of making investigations and recommendations in areas such as audit, the remuneration of the Management Board and Supervisory Board members and of employees, or the nomination of candidates to management positions. At least one member of the Audit Committee should be an independent director and at least one member should have accounting-financial experience.

Joint stock companies whose annual financial statements are not subject to a financial audit by law or by resolution of the shareholders must appoint at least three censors and one deputy. Censors must certify the annual financial statements and present a report to the annual general meeting of shareholders.

The financial statements of companies subject to a financial audit must be verified and certified by financial auditors registered with the Romanian Chamber of Financial Auditors, and in this case the provisions on censors’ activity will no longer be applicable.
Self-employed individuals, individual undertakings or family-owned enterprises

A self-employed individual is merely an individual doing business independently. Such an individual is entitled to all the profits deriving from his or her business and is personally liable for all related debts and liabilities. The individual’s liability to the business is therefore not limited to the assets used for carrying out his or her business, but also includes the personal assets of the self-employed individual.

Government Emergency Ordinance 44/2008, (“the Ordinance”) sets out the conditions under which individuals - Romanian citizens or citizens of EU member states and the member states of the European Economic Area - can carry out business activities in Romania, either as self-employed individuals, individual undertakings or family-owned enterprises. The Ordinance does not apply to individuals performing their activity under a special law (e.g.: lawyers, public notaries, etc.).

To carry out business activities, self-employed individuals who act independently as well as family-owned enterprises must register with the Trade Registry Office and the relevant tax authorities.

The performance of activities in the absence of the relevant registration with the Trade Registry Office or prior to obtaining such registration is deemed as an offense and is penalized according to the law.

Representative Offices

According to Decree-Law 122/1990, foreign companies may set up representative offices in Romania. A Representative Office is not distinct from the parent company it represents, but rather acts in the parent company’s name and on its behalf with a specific mandate to do so.

The legal status of a Representative Office prevents it from having its own turnover, its revenues representing only the amounts transferred to Romania by the parent company to cover its local expenses.

Authorizations issued by the Ministry of the Economy limit the activities of Representative Offices to the promotion and technical support of the parent company’s business activities, without their having the right to carry out these activities.
Thus, in practice, a Representative Office is allowed to perform the following activities:

- Business operations such as: issuance and receipt of offers and orders, or participation in negotiations, without being allowed to conclude contracts
- Marketing and advertising
- Promotion
- Supervision of dealers’ activities
- Any other economic and commercial activities meant to develop international exchanges, but without having the authority to issue invoices directly.

In order to obtain an operating license, a Representative Office must pay a yearly fee of USD 1,200.

In addition, a tax of EUR 4,000 must be paid annually. If the license is issued during the year, the tax must be paid as a proportion of the period remaining until the year end.

**Branches and Subsidiaries of Foreign Companies**

A foreign company may do business in Romania through either a subsidiary or a branch. While a subsidiary has a legal status and is considered as a Romanian entity, the branch is just an extension of the parent company and therefore has no legal status and no financial independence.

The Romanian Civil Code, in line with generally accepted international practice, states that a corporation is governed by its incorporation law.

Therefore, in Romania, a branch of a foreign company is subject to the national law of the parent company. Legally, the branch has no separate status from the foreign company itself, but it merely does its business in Romania. The foreign company will be held liable to any creditors of the branch, employees included, as well as for any debts and obligations undertaken by its managers and agents on behalf of the branch. Branches can only carry out the activities for which the parent company has been authorized.

Unlike branches, a Romanian subsidiary of a foreign company is a Romanian legal entity and, consequently, subject to Romanian law.
In practice, subsidiaries must fulfill the same registration formalities as companies, i.e. registration of the Acts of Incorporation with the appropriate office within the Romanian Trade Registry. A subsidiary must comply with the minimum capital requirements imposed under the Romanian Company Law.

**Joint Ventures**

Under the Romanian Civil Code, a joint venture (in Romanian “Asocierea în participatie”) is defined as an agreement under which an individual or legal entity grants to one or several other individuals or legal entities a participation share in the profit and losses generated from one or more operations that he/she/it is carrying out. In accordance with the law, a joint venture cannot have legal status and, before third parties, it may not be deemed as an entity distinct from its partners. Partners (even when acting on behalf of the joint venture) execute contracts and undertake obligations on their own behalf before third parties. The term “joint venture” is a common term used to describe any forms of economic activity involving foreign investment, including:

- A joint stock or limited liability company whose shares are held by both Romanian and foreign investors.
- A partnership of two or more companies or individuals, including foreign investors.
- Cooperation agreements.

**Economic Interest Group (E.I.G. and E.E.I.G.)**

Law 161/2003 on measures to ensure transparency of public office, public positions and of the business environment and the prevention and penalization of corruption, introduced two new forms of association for economic purposes, i.e., Economic Interest Groups and European Economic Interest Groups.

**Economic Interest Group (EIG)**

An E.I.G. represents an association between two or more individuals or companies, set up for a fixed period of time for the purpose of facilitating or developing the economic activity of its members, and improving the results thereof.
The main characteristics of this form of association, as provided by Law 161/2003, are:

- An EIG is a profit-making legal entity, which may or may not be involved in business activities.
- An EIG may not have more than 20 members.
- The activities carried out by an EIG must be related to the economic activity of its members and must be an accessory thereto. An EIG may not carry out certain activities such as: (i) Managing or supervising, whether directly or indirectly, the activity of its members or of another legal entity, particularly in the human resources, finance or investments field; (ii) Holding shares, directly or indirectly, in any of the member business companies, with certain exceptions; (iii) Employing more than 500 staff, etc.

An EIG may be set up under a notarized agreement signed by all its members, (in the form of acts of incorporation), and becomes a legal entity as from its registration with the Trade Registry Office. An EIG can be set up with or without share capital. If the EIG members decide to allocate a certain amount of capital for carrying out the EIG activity, the contribution of its members need not have a minimum value and is not restricted to a certain type of contribution.

The operating authorizations of an EIG are issued by the Trade Registry’s special office in compliance with Law 359/2004, as amended. An EIG’s headquarters registered in Romania can be relocated abroad, by unanimous decision of its members.

The operation of an EIG is very flexible, with its structure and operation being set out under the Acts of Incorporation.

The members of an EIG are fully and jointly held liable for the EIG’s obligations assumed to third parties, unless otherwise agreed. The creditors of an EIG must first assert their claims directly to the EIG, and only if it does not make the due payments within a maximum of 15 days from notification of late payment, may they assert their claims against the EIG’s members.

EIGs may not generate profit for themselves. If profit is derived from an EIG’s activity as reflected in the annual financial statements, this profit must be distributed, in full, among its members, in the form of dividends in the amounts provided by the acts of incorporation, or in the absence of such a provision, in equal parts. Unlike business companies, EIGs may not allocate any part of their profits for the purpose of creating reserve funds.
If expenses exceed the income of an EIG, its members must cover the difference in the amounts provided by the Acts of Incorporation, or in the absence of such provisions, in equal parts. The amounts distributed to the members out of the EIG’s profit are deemed as dividends and are subject to tax in accordance with the law.

The financial statements are subject to the provisions of the Accounting Law (82/1991), as republished. The annual financial statements must be prepared in compliance with the rules applicable to general partnerships.

**European Economic Interest Group (EEIG)**

Under Law 161/2003, an EEIG is defined as an entity with legal status which is organized and operates in Romania under the requirements set forth under Council Regulation (EEC) 2137/85 of 25 July 1985 on the European Economic Interest Grouping (Regulation 2137/1985).

Under Regulation 2137/1985, members of an EEIG can only be the following:

- Companies as defined under art. 58 par. 2 of the consolidated version of the Treaty establishing the European Community.
- Public or private legal entities set up in accordance with the legislation of one of the EU member states whose headquarters or main office for the management and administration of their statutory activity is located in an EU member state.
- Companies or other legal entities which, according to the legislation of a member state, are not obliged to have a registered office and which, for the purpose of managing their statutory activity, can locate their main office in an EU member state.
- Individuals carrying out industrial, commercial, handcraft or agricultural activities or rendering professional or other services in an EU member state.
- Moreover, an EEIG must include at least:
  - Two companies or other legal entities, which have their central administrations in different Member States, or
  - Two individuals, who carry out their principal activities in different Member States, or
  - A company or other legal entity and an individual, of which the first has its central administration in one Member State and the second carries out his or her main activity in another Member State.
Further rules applying to EEIGs:

- The organization and operation of an EEIG is similar to that of an EIG.
- An EEIG registered in Romania cannot have more than 20 members.
- An EEIG registered in Romania cannot issue shares, bonds or other similar securities.
- An EEIG statutory office may be moved by unanimous decision of its members to another Member State.
- An EEIG established abroad may set up subsidiaries, branches, and representative offices in Romania as well as other entities that are not legal entities. The establishment of branches or subsidiaries in Romania is subject to all the requirements governing the incorporation, registration and publication of documents and details of a Romanian EIG without, however, being subject to the authorization requirements provided by Decree-Law 122/1990 on the authorization and operation in Romania of representative offices of companies and foreign economic organizations, as amended.
CHAPTER 3
Taxation in Romania

Summary of main taxes

Standard Corporate Tax: fixed rate of 16%

Tax for nightclubs and casinos: 5% of total revenue, or 16% of profit, whichever is higher.

Alternative tax on turnover, for micro-enterprises (turnover < EUR 100,000):
- 1% for companies that have at least 2 employees.
- 2% for companies that have one employee.
- 3% for companies with no employees.

Tax for representative offices: annual flat tax of EUR 4,000

Standard Individual Tax: flat rate of 16%

Social Security Contributions:

<table>
<thead>
<tr>
<th>Contribution Type</th>
<th>Employee</th>
<th>Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social security (CAS)</td>
<td>10.5% (applied to the salary fund) – capped at 5 times the average wage (RON 2,681 for 2016)</td>
<td>15.8% (applied to the salary fund) – capped at 5 times the average wage (RON 2,681 for 2016)</td>
</tr>
<tr>
<td>Social health insurance (CASS)</td>
<td>5.5%</td>
<td>5.2%</td>
</tr>
<tr>
<td>Unemployment fund</td>
<td>0.5%</td>
<td>0.5%</td>
</tr>
<tr>
<td>Holiday and social health insurance indemnity</td>
<td>-</td>
<td>0.85% (applied to the salary fund) – capped at 12 times the minimum wage (RON1,250 as from 1 May 2016)</td>
</tr>
<tr>
<td>Accidents insurance fund contribution</td>
<td>-</td>
<td>0.15% - 0.85% depending on the Romanian CAEN of the company</td>
</tr>
<tr>
<td>Salary guarantee fund</td>
<td>-</td>
<td>0.25%</td>
</tr>
</tbody>
</table>
Standard Withholding Tax: **16%**;

Withholding tax on payments to Romanian residents:
- Dividends to Romanian resident companies: **5%**
- Dividends to Romanian resident individuals: **5%**
- Interest to Romanian resident companies: **0%**
- Royalties to Romanian resident companies: **0%**

Withholding tax on payments to non-residents:
- Dividends to *non-resident* companies: **5%**
- Dividends to *non-resident* individuals: **5%**
- Interest to *non-resident* companies: **16%**
- Royalties to *non-resident* companies: **16%**

The withholding tax rates may be reduced by double taxation treaties or EU Directives.

Tax on capital gains from transfers of securities: **16%**

Standard VAT rate: **20%** starting from 1 January 2016 until 31 December 2016; **19%** starting from 1 January 2017.

Reduced VAT rates: **9%** and **5%**;

Operations exempt with credit;

Operations exempt without credit.

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1 Dividend payments are exempt from tax if the recipient company has owned at least 10% of the distributing company’s share capital continuously for 1 year.

2 By virtue of the EU Parent/Subsidiary Directive, profit distributions made by a subsidiary in Romania to its parent company located in an EU Member State are exempt from withholding tax, provided the parent company has had a holding of at least 10% for an uninterrupted period of at least 1 year.

3 Interest and royalty payments made to an associated company from an EU Member State are exempt from withholding tax (provided that one of the companies has a direct minimum holding of 25% in the other, or both have been held under more than 25% common ownership for a non-interrupted period of at least 2 years).

4 Income derived by a non-resident from the sale of shares held in Romanian companies is non-taxable provided that the non-resident has a minimum participation of 10% for 1 year, when the sale takes place. Similar fiscal treatment also applies for income from liquidation.
Fiscal procedures / administration

Rulings:

Non-binding rulings, advance tax rulings (ATRs) and advance pricing agreements (APAs) are available.

Statute of limitations

The statute of limitations period is 5 years, starting from 1 July of the year following the year for which the tax is due. However, in the case of fraud, the statute of limitations can be extended to 10 years, starting from the date when the criminal offence occurred. The statute of limitations is suspended during a fiscal inspection period.

Interest and late-payment penalties

A combined system of late-payment interest and penalties is currently applicable:
• Interest of 0.02% per day of late-payment.
• Penalties of 0.01% per day of late-payment.

Starting from 1 January 2016, undeclared tax liabilities identified during a tax audit are subject to non-compliance penalties of 0.08% per day, instead of regular late payment penalties of 0.01%.

Certification of tax returns

Certification of tax returns by a certified tax consultant (a member of the Romanian Chamber of Fiscal Consultants) is optional. However, certification could present some advantages for businesses, as it constitutes a criterion in the risk analysis carried out by the tax authorities when they select taxpayers for tax audits.

Corporate taxation

Standard rate: 16%

Corporate taxpayers

The following entities are subject to corporate tax in Romania:
• Romanian companies.
• Foreign companies which have their place of effective management in Romania.
• Foreign companies which have one or more permanent establishment(s) in Romania, on the profits attributable to the permanent establishment(s).
• Foreign companies which earn income in connection with immovable property located in Romania or from the sale of shares in Romanian companies. Most of the tax treaties entered into by Romania offer protection from Romanian corporate tax to non-Romanian companies earning revenues from the sale of shares in Romanian companies (even if the assets of the Romanian company whose shares are being sold mainly consist of immovable property located in Romania).
• Public institutions on income derived from economic activities.
• NGOs on income derived from economic activities exceeding EUR 15,000 in one year.

**Tax year and accounting period**

• The accounting and the fiscal year generally follow the calendar year. Taxpayers which opted for a financial year that is different from the calendar year, according to the accounting legislation, may also choose to have a tax year which corresponds to the financial year.
• Tax losses can be carried forward and deducted from taxable profits to be recorded in the following 7-year period on a first-in-first-out basis. No carry back of tax losses is available.
• Corporate tax is payable on a quarterly basis (for quarters I-III), by the 25th of the month following the relevant quarter. An annual corporate tax return must be filed by 25 March of the following year (or 25th of the third month after the end of the tax year, if different from the calendar year). Most taxpayers may opt for an advance payment system, i.e. paying corporate tax advances on a quarterly basis, based on the previous year’s results rather than current year results. For banks, the advance payment system is compulsory.

**Tax incentives**

• 50% additional CIT deduction for all eligible R&D costs and accelerated depreciation for equipment used in R&D activity.
• Corporate tax relief is available, under certain conditions, for profit reinvested in technical equipment produced/acquired and commissioned in the period 1 July 2014 – 31 December 2016.
**Taxable base**

The taxable profit of a company is determined based on the accounting result, which is adjusted for tax purposes by **deducting non-taxable revenues and adding back non-deductible expenses.**

**Non-taxable revenues**

The following types of income are **non-taxable** for corporate tax purposes:

- Dividends received by a Romanian company from another Romanian company.
- Dividends received by a Romanian company from its subsidiaries in another EU member state or a third country with which Romania has concluded Double Tax Treaties, if at least 10% of the shares have been held for at least 1 year.
- Revenues derived from the sale of shares/evaluation/revaluation and proceeds from liquidation, whether the legal entities in which the company holds shares are Romanian or foreign entities from states with which Romania has concluded Double Tax Treaties (including those outside the EU). In order for these revenues to be non-taxable, certain conditions must be met (at the time of the sale/transfer transaction or at the time when the liquidation process starts, the seller/transferor must have owned at least 10% of the share capital of the foreign legal entity for an uninterrupted period of 1 year).
- Income from revaluation of fixed assets, land, or intangible assets which compensate any previous decrease in the value of the asset.
- Income from the reversal of previously non-deductible provisions, as well as income from the reversal or recovery of expenses which were previously treated as non-deductible.

**Non-deductible expenses**

As a general rule, expenses are deductible only if they are incurred for the purpose of carrying out the economic activity. Certain expenses are specifically provided under the Fiscal Code as being **non-deductible**, for example:

- Corporate tax due in Romania or abroad.
- Withholding tax paid by a Romanian taxpayer on behalf of non-residents (i.e. tax which has not been withheld, but has been recorded as an expense of the Romanian income paying entity).
• Fines or penalties due to Romanian and foreign authorities, except for contractual ones.

• Expenses recorded in relation to the write-off of missing or damaged inventories and non-current assets (except in certain circumstances), as well as the related VAT.

• Expenses recorded in relation to bad debts written off (these may be partially or fully deductible under certain circumstances).

• Expenses related to non-taxable income. If these expenses cannot be directly linked to a specific source of non-taxable income, certain allocation keys will be used.

• Expenses related to management, advisory and other services rendered by a resident of a country with which Romania does not have an exchange of information treaty and the transactions are categorized as artificial according to the Fiscal Code.

• “Protocol” (entertainment) expenses exceeding 2% of gross profit.

• 50% of the expenses incurred in relation to functioning, maintenance and repairs of motor vehicles used for passenger transport with a maximum authorized weight of 3.5 tons and maximum 9 seats (including the driver’s seat) that are not used exclusively for business activities. Depreciation of the relevant vehicles is deductible up to RON 1,500 per month.

• Sponsorship expenses are non-deductible. However tax credit for sponsorship expenses may be granted, up to the lesser of: 0.5% of net turnover or 20% of the corporate income tax due. When sponsorship expenses exceed these limits, the unused tax credit can be carried forward over the next 7 consecutive years and recovered under the same conditions.

**Provisions and reserves**

Companies are required to set up a legal reserve which is calculated as 5% of the gross accounting profit, until this reserve reaches 20% of the paid in share capital. This reserve is deductible for tax purposes.

Specific provisions set up by credit institutions, non-banking financial institutions and other similar legal entities, as well as technical reserves set up by insurance and reinsurance companies (in accordance with specific legal provisions) are fully deductible for tax purposes.

Provisions for doubtful customers are deductible under certain conditions.
Depreciation

The following depreciation methods are available for tax purposes:

- Straight-line method.
- Reducing balance method (may be applied only to certain assets). When using this method, a coefficient of between 1.5 and 2.5 is applied to the straight-line depreciation rates, depending on the useful life of the assets.
- Accelerated depreciation method (applied in the case of technological equipment and patents). The accelerated method allows for a deduction of up to 50% of the cost of the asset during the first year of operation.

Ranges of acceptable depreciable useful lives for certain categories of assets:

- Buildings:
  - Office and industrial buildings - between 40 and 60 years.
  - Buildings used in trading activities (e.g. stores) - between 24 and 36 years.
- Motor vehicles - between 4 and 6 years.
- IT equipment - between 2 and 4 years.
- Furniture - between 9 and 15 years.
- Telecom equipment - between 4 and 6 years.

Thin capitalization rules

The following rules apply to the deductibility of interest expenses:

1. Interest expenses and foreign exchange losses recorded in relation to loans obtained from a financial institution (e.g. bank loans) are fully deductible.
2. Deductibility of interest expenses recorded in relation to loans obtained from non-financial institutions (e.g. shareholder loans) is subject to the following limits:
   - Interest rate limitation: deductibility of interest expenses may be claimed only up to a 4% interest rate for loans denominated in foreign currencies and up to the reference interest rate published by the National Bank of Romania for loans denominated in RON. Any
interest in excess of the relevant threshold is permanently non-deductible for corporate tax purposes.

• Debt-to-equity limitation: if the company’s debt-to-equity ratio (calculated as the ratio between borrowings obtained from non-financial institutions maturing after more than 1 year and the company’s equity) exceeds 3:1 (or is negative), interest expenses and foreign exchange losses recorded in relation to loans obtained from non-financial institutions should be treated as non-deductible for corporate tax purposes.

However, they may be carried forward over an indefinite period of time in order to be deducted against taxable profits of the company to be earned in future years, if and when its debt-to-equity ratio falls below the relevant threshold.

Interest expenses and net foreign exchange losses of taxpayers which cease their operations as a result of a merger or de-merger operation may be carried forward by the newly established taxpayers or those which take over the assets and liabilities of the absorbed or divided company.

Transfer Pricing

Transactions between related parties must respect the arm’s length principle. The criteria for companies to be considered related parties under Romanian legislation is a minimum 25% direct or indirect shareholding and/or economic control.

Starting January 2016, large taxpayers which carry out transactions with related parties over certain significance thresholds are required to prepare their transfer pricing documentation files on an annual basis, no later than the legal deadline for submitting the annual corporate tax return, for each fiscal year. In this case, the deadline provided by the law for presenting the transfer pricing documentation file to the Romanian tax authorities is a maximum of 10 days. Large taxpayers carrying out transactions with related parties below the thresholds mentioned above, and all other taxpayers which carry out transactions with related parties over certain (different) significance thresholds, are required to provide their transfer pricing documentation files to the Romanian tax authorities in the event of a tax audit. In this case, the deadline for presenting the transfer pricing documentation file to the Romanian tax authorities is between 30 and 60 days, with the possibility of extending it by another 30 days maximum.
Even though Romania is not part of the OECD, the OECD Transfer Pricing Guidelines are, in principle, recognized by Romanian transfer pricing legislation. Nevertheless, the Romanian legislation also contains a number of specific national elements related to transfer pricing, which prevail and which are carefully verified by the tax authorities during transfer pricing tax audits.

In terms of documentation, the EU Masterfile and Countryfile concept has been basically implemented into Romanian law.

Advance Pricing Agreements (APAs) and the Mutual Agreement Procedure (MAP) are also possible under Romanian legislation. These aim to reduce the risk of transfer pricing adjustments. However, their implementation in practice is quite difficult.

**Withholding tax on dividends to Romanian shareholders**

Romanian companies are required to withhold tax from dividends paid to resident shareholders by applying the following tax rates:

- 0% for dividends paid to corporate shareholders, provided that the dividend recipient has held at least 10% of the shares of the dividend paying entity for an uninterrupted period of at least 1 year.
- 5% for dividends paid to individuals or to corporate shareholders which do not fulfil the conditions mentioned above.

Dividends may be paid only out of profits reflected in annual financial statements, which must be approved by shareholders (no interim dividends may be paid by Romanian companies).

**Special regime for micro-enterprises**

Turnover tax is compulsory, instead of corporate income tax, for Romanian legal entities with a turnover of maximum 100,000 EUR and income from consultancy and management of maximum 20% of turnover. Taxpayers carrying out oil & gas, banking, insurance and reassurance, capital markets or gambling activities do not apply the tax on micro-enterprises, and must pay normal corporate income tax in all cases.

Depending on the number of employees, tax rates are:

- 1% for companies that have at least 2 employees.
- 2% for companies that have one employee.
- 3% for companies with no employees.
For newly established micro-enterprises with at least one employee, the tax rate applicable in the first 24 months may be 1%, subject to certain conditions.

**Personal income taxation**

Standard rate: **16%**

**Taxpayers**

Romanian tax residents are liable to Romanian tax on their worldwide income, whereas non-Romanian tax residents are liable to Romanian tax on their Romanian source income.

**Tax residence**

An individual is considered to be a Romanian tax resident if he/she meets at least one of the following conditions:

- The individual has his/her domicile in Romania (as proved by a valid ID card).
- The individual has his/her center of vital interests in Romania.
- The individual is present in Romania for a period (periods) exceeding 183 days during any 12-month period, ending in the fiscal year concerned.

Romania has concluded Double Taxation Treaties with almost 90 countries around the world (see *Taxation of non-residents* below). Most of these treaties are based upon the OECD Model Tax Convention on Income and Capital. If an individual qualifies as a resident of one of the two states, the relevant treaty can be applied.

The 16% tax rate applies to the following types of income:

- Income from independent activities
- Income from dependent activities
- Rental income
- Investment income (except for dividends – 5%)
- Pension income
- Farming income
- Prizes
- Income from transfer of immovable property
- Other income
For investment income and income from transfer of ownership of immovable goods, see below for applicable tax rates.

Income from independent activities is defined as:

- Income earned by freelancers
- Trade income
- Intellectual property rights

Income from independent activities (including freelancers, copyrights and similar revenue) is taxed at the 16% flat rate. The taxable base is calculated differently, as specific deductions are applicable, depending on the type of income.

An annual tax return for income from independent activities must be filed no later than 25 May for the previous tax year. After the annual tax return is filed, the tax authorities issue a tax assessment establishing the personal income tax due. The income tax must be paid within 60 days of the receipt of the tax assessment.

**Employment income**

Employment income includes income in cash and in kind. As a rule, all types of remuneration and benefits received by an employee for dependent activities are deemed as taxable regardless of where they are paid or received.

Monthly income from a salary is subject to a 16% flat tax rate, applied to a base determined by deducting from the gross income:

- Mandatory social security contributions.
- Personal deductions allowed, if any.
- Monthly trade union contribution, if applicable.
- Contributions to a voluntary pension scheme (up to EUR 400 per year), if applicable.
- Contributions to a voluntary health insurance scheme, according to Law 95/2006, (up to EUR 400 per year), if applicable.

Individuals earning only salary income under a local Romanian contract do not have to file a tax return. The employer withholds and pays all salary taxes and social contributions to the state budget.
Salary income earned by employees whose activity consists of computer software development is tax exempt, subject to certain conditions stipulated by Government Order.

**Rental income**

Rental income is subject to the 16% flat tax rate. However, a 40% notional deduction is available.

**Income from prizes and gambling**

Income from gambling is taxed as follows:

<table>
<thead>
<tr>
<th>Income</th>
<th>Income tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 66,750 RON</td>
<td>1%</td>
</tr>
<tr>
<td>66,750 RON – 445,000 RON</td>
<td>667,5 RON + 16% for the amount exceeding 66,750 RON</td>
</tr>
<tr>
<td>Over 445,000 RON</td>
<td>61,187,5 RON + 25% for the amount exceeding 445,000 RON</td>
</tr>
</tbody>
</table>

**Investment income**

Capital gains from the transfer of securities (including shares in limited liability companies) are taxed at 16%.

Dividends are taxed at 5%. Romanian resident legal entities paying dividends to individuals (residents or non-residents) are required to withhold tax.

Income derived from foreign exchange/interest rate transactions (e.g. currency forward, currency and interest rate swap and options) is taxed at 16%. Losses from these transactions may be offset against similar gains.

Income from liquidation of a company (i.e. distributions in cash or in kind in excess of the contribution to the share capital) is taxed at 16%, to be withheld by the legal entity distributing the income.

**Income from transfer of immovable property**

Gross proceeds earned from sale of real estate are subject to a tax of 3% of the value of the property if sold within 3 years of purchase or 2% if sold after 3 years or more. For sales with a value over RON 200,000, the tax payable for income above this threshold is reduced to 2% if the property is sold within 3 years of purchase and 1% if sold after more than three years.
Immigration rules for expatriates working in Romania

For the latest information on entry and immigration requirements see KPMG in Romania’s RoVisa Express iPad app, available in the Appstore. [http://bit.ly/12usWxH](http://bit.ly/12usWxH)

Immigration requirements

Generally, work permits are compulsory for foreign individuals working in Romania. Consequently, non-EU/EEA/Swiss individuals who work in Romania either as assignees of a non-EU/EEA/Swiss employer or as local employees of a Romanian employer must obtain the relevant type of work permit. A work permit for non-EU/EEA/Swiss individuals who are assigned to work in Romania is generally issued for a 1-year period within a 5-year interval. If the individual wishes to continue to work in Romania after the initial 1-year period of assignment, he or she must obtain another type of work permit and conclude a local employment contract with a Romanian employer. Highly-skilled employees (i.e. specialists in certain areas) will obtain a specific type of work permit for local hires. Proof of high-skills / qualifications and salary level (a minimum of four times the average wage) are mandatory. Simplified conditions are applicable to foreigners who change jobs or employer, provided their residence permit is valid and under certain conditions.

Nationals of EU/EEA member states and Switzerland do not require Romanian work permits. In addition, non-EU/EEA/Swiss individuals who are employed by EU/EEA/Swiss-based companies, who are assigned to work in Romania and have a valid residence permit in the relevant EU/EEA country or Switzerland, are not required to obtain Romanian work permits, but only residence permits from the local Immigration Office.

Taxation of non-residents

Non-residents are defined as: (i) Individuals who do not meet any of the residence conditions mentioned above (ii) Legal entities incorporated abroad and (iii) Undertakings for collective investment in transferable securities (UCITSs) which do not have legal status and are not registered in Romania.

Non-residents are liable for Romanian tax on Romanian-source income, which includes:

- Income attributable to a permanent establishment if the non-resident entity carries out independent activities through a permanent establishment in Romania.
• Income from dependent activities carried out in Romania.
• Income from services (including management or consulting services in any field).
• Dividends, royalties, and interest income derived from Romania.
• Income from independent activities carried out in Romania by doctors, lawyers, engineers, dentists, architects and auditors or income from other similar professions (in certain cases).
• Income representing remuneration received by non-residents who serve as administrators, founders or members of the Board of a Romanian legal entity.
• Income from prizes received in Romania.
• Income derived from sporting and entertainment activities carried out in Romania.

Foreign citizens earning salary income for activities carried out in Romania and who are liable to Romanian income tax must register with the fiscal authorities. Currently, the Romanian immigration authorities issue a personal number to each non-Romanian national applying for a registration certificate/residence permit, and the same number is also used for tax purposes, as the individual’s personal tax number.

Foreign individuals liable to Romanian income tax must submit monthly income tax returns and pay tax (16%) by the 25th of each month for the previous month.

In terms of social contributions, for EU/EEA individuals the EU social security regulations apply. For non-EU/EEA individuals, where no bilateral social security convention is in place, Romanian law applies.

**Withholding tax**

The following withholding tax rates are applicable to the gross income earned by non-residents from Romania:

- **16%** - the general withholding tax rate, applicable to payments made to non-Romanian entities in respect of interest, royalties, service fees (irrespective of the place of effective supply), liquidation proceeds, commission fees, capital gains etc.
- **5%** for dividends.
- 1% for income from gambling activities, with certain exceptions (e.g. online gambling or slot-machines), for which tax is declared and paid by the individual.

- 50% for interest, royalties, commissions, income from rendering services in or outside Romania as well as income from carrying out a liberal profession, if this income is paid to a non-resident from a state with which Romania has not concluded a treaty for the exchange of information and if the income is paid in relation to "artificial transactions" as defined under the Fiscal Code.

The tax rates mentioned above may be reduced (or eliminated) by virtue of a treaty for the avoidance of double taxation concluded between Romania and the residence country of the income recipient. For the purposes of applying the more beneficial tax treatment provided by tax treaties, a tax residency certificate should be obtained by the non-Romanian revenue recipient, issued by the tax authorities in its home country (and made available to the Romanian paying entity).

The following types of income are exempt from withholding tax in accordance with EU legislation:

- Dividends paid to an EU/EFTA company, provided that the recipient holds at least 10% of the shares of the Romanian company for an uninterrupted period of at least 1 year. If payment of the dividend is made earlier (i.e. the 1-year holding period has not been fulfilled), then the exemption does not apply; once the 1-year period elapses, the dividend recipient is entitled to claim a reimbursement from the Romanian tax authorities in respect of the withholding tax incurred in Romania;

- Interest and royalties paid to an EU/EFTA company, under the condition of direct minimum shareholding of 25% for at least 2 years.

Foreign legal entities that obtain income from immovable property (sale, lease) located in Romania or from the sale-assignment of participation titles in a Romanian legal entity are required to pay 16% profit tax.

Withholding tax is generally payable by the 25th of the month following that in which the payment was made abroad.
Double taxation relief

Relief from double-taxation for resident taxpayers may be provided by way of a tax treaty. Romania has concluded Double Taxation Avoidance Treaties with almost 90 countries around the world (please see the list below). Most of these treaties are based upon the OECD Model Tax Convention on Income and Capital.

Both the tax credit and the tax exemption methods can be used for double taxation relief, as provided under the relevant double taxation avoidance treaty.

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<tr>
<th>Albania</th>
<th>Indonesia</th>
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<tbody>
<tr>
<td>Algeria</td>
<td>Iran</td>
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<td>Cyprus</td>
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**Note:** Some treaties may not be applicable for residents of certain countries due to political or legal reasons.
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<th>Czech Republic</th>
<th>Macedonia</th>
<th>Syria</th>
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* Treaty concluded with F.S.R. Yugoslavia, in force since 1989, applies to Bosnia-Herzegovina

** Treaty concluded with F.R. Yugoslavia, in force since 1998, applies to Serbia and Montenegro

**Representative Offices**

Authorized Representative Offices of foreign legal entities are required to pay an authorisation fee of the RON equivalent of USD 1,200 (payable annually) and an annual tax of the RON equivalent of EUR 4,000.

The tax on representative offices is payable in two equal instalments, by 25 June and by 25 December. An annual return also needs to be filed with the
appropriate tax authority by 28 (or 29) February, covering the previous tax year up to 31 December.

**Value Added Tax**

Romanian VAT legislation is generally in line with the principles of EC VAT Directive 2006/112 (the recast of the Sixth VAT Directive).

Romanian VAT legislation uses three different VAT rates:
- **Standard VAT rate:** 20% (19% from 1 January 2017).
- **Reduced VAT rate:** 9% for certain goods and services, e.g. accommodation, foodstuffs, restaurant and catering services, orthopedic products, as well as medicines suitable to both human and animal use.
- **Reduced VAT rate:** 5% for school books, magazines, admission to shows, theatres, circuses, fairs, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities, as well as sale of real estate, as part of social policy, under certain conditions.

**Operations subject to VAT**

Local supplies and purchases of goods/services, intra-Community acquisitions/supplies of goods/services and imports/exports of goods made by taxpayers (i.e. entities that independently carry out business activities) fall within the scope of VAT.

**VAT registration requirements**

*Romanian entities*

The VAT registration process has become more complicated for taxpayers based in Romania. They must submit additional documents to the relevant tax office (e.g. appendix to the amendments registration form under which the taxpayer’s intention and ability to carry out economic activities is assessed, copies of the identity documents of the taxpayer’s directors, the contract covering the existence/location of their office, as well as several affidavits). Moreover, since 1 August 2010, Romanian VAT payers carrying out intra-Community transactions have also been required to register in the registry of intra-Community Operators (RIO) before carrying out these operations.

Romanian entities carrying out economic activities including taxable operations or VAT exempt operations with deduction right in excess of the
If the annual turnover is below EUR 65,000, the entity is not required to register for VAT purposes. However, the taxable person may opt for the application of the general VAT regime.

If a Romanian entity carries out exclusively operations which are VAT exempt without credit, it is not allowed to/required to register for VAT purposes.

Non-Romanian entities

Any foreign entity that is neither VAT established, nor VAT registered in Romania, that carries out taxable operations from a VAT perspective, which give rise to a VAT deduction right (except for operations for which the customer is liable to account for VAT) must register for VAT purposes in Romania before carrying out these operations.

If a non-Romanian entity is not registered for VAT in Romania, but sells and delivers goods from another EU Member State to customers in Romania which are not registered for VAT purposes (distance sales), where the value of those sales exceeds the threshold of EUR 35,000 per year, the non-Romanian entity is required to register and account for VAT in Romania.

Starting from 1 January 2012, a non-resident taxable person is entitled to opt to request a VAT registration if it carries out one of the following operations in Romania:

- Import of goods.
- Rental and leasing of immovable property, with certain exceptions, if the taxpayer has chosen to tax these operations.
- Supplies of buildings/parts of buildings and the land they are built on, if the taxpayer has chosen to tax these operations.

International supplies of goods and services

Goods

In general, if goods are sold to a customer which is registered for VAT purposes in another EU Member State (i.e. intra-Community supplies of goods) and the sale involves the dispatch of those goods from Romania (either by the supplier or the customer or by a third party on their behalf) to
that other Member State, then the supply is VAT exempt with credit in Romania.

If goods are sold to a customer in another EU Member State which is not registered for VAT purposes, the supplier would generally have to charge Romanian VAT.

The acquisition of goods, arriving in Romania from another EU country, represents an intra-Community acquisition of goods. Intra-Community acquisitions of goods are subject to VAT in Romania under the reverse charge mechanism.

Under the reverse charge mechanism, the taxpayer is required to account for the relevant VAT as output tax via the VAT return, recovering this VAT as input tax in the same return.

If goods are exported to a customer (business or private) outside the EU then no VAT is charged. Goods exported from Romania are VAT exempt with credit, but the seller should make sure that in all cases proof of actual dispatch/delivery (i.e. the fact that the goods actually left EU territory, and were transported either by the supplier or the customer, or by a third party on their behalf) is available to support the exemption.

When goods are imported into Romania from outside the EU, payment of import VAT is actually made to the customs authorities, except for those taxpayers who applied for and obtained import VAT deferment payment certificates.

This import VAT deferment payment certificate can be obtained by companies that are VAT registered in Romania and that in the previous calendar year / last 12 months carried out imports of goods (except for excisable goods) with a value exceeding RON 100,000,000 (i.e. about EUR 23,000,000), or that hold an AEO (“Authorised Economic Operator”) certificate or a customs authorization to apply the on-site simplified customs clearance procedure.

Services

The general rule is that the place of supply of services is the place where the beneficiary has established its business. However, there are some exceptions to this rule (e.g. services connected with immovable property, restaurants and catering, as well as passenger transport).
Moreover, the place of supply of services to a non-taxable person is where the supplier has established its business, except if the customer is based outside the EU. In the latter case, the services are taxable where the customer is located.

Generally, if a taxable person buys certain services from outside Romania and the services are deemed to be supplied in Romania according to the general rule, it will be required to apply the reverse charge mechanism in Romania.

**Returns**

**VAT returns**

A VAT return must be filed with the tax authorities as follows:

- On a monthly basis for businesses whose annual income giving rise to VAT deduction right exceeds EUR 100,000, by the 25th of the month following that when the VAT became chargeable.
- Quarterly, for businesses under this threshold, by the 25th of the first month following each quarter.
- Bi-annually/annually, under certain conditions (approval of the relevant tax authorities is required).

Taxpayers which carry out intra-Community acquisitions of goods in Romania must file monthly VAT returns, regardless of their turnover.

**EC Sales and Purchases Lists (so called “Recapitulative Statements”)**

EC Sales and Purchases Lists must be filed on a monthly basis, no later than 25th of the month following that when the VAT became chargeable and should include all intra-Community acquisitions / supplies of goods, as well as all acquisitions / supplies of intra-Community services.

**Local Sales and Purchases Lists (so called “Informative Statements”)**

Local Sales and Purchases Lists must be filed on a monthly/quarterly basis (depending on the VAT period), no later than 25th of the month following that when the VAT became chargeable and should include all the acquisitions / supplies of goods and services carried out in Romania to / from VAT registered persons in Romania.
**Intrastat returns**

Intrastat returns must be filed on a monthly basis no later than 15th of the month in which goods are dispatched from one EU Member State to another and must include all intra-Community dispatches / arrivals of goods from/in Romania.

**Deduction of VAT**

VAT was designed as a tax on consumer expenditure, rather than on businesses. Registered VAT taxpayers are entitled to deduct the input VAT incurred on purchases ("input VAT") from the VAT which they charged with respect to their customers ("output VAT").

In order to deduct VAT, the taxpayer must provide the following documentation:

- An invoice drawn up in accordance with Art. 319 (20) of the Fiscal Code or
- An import customs declaration (in the case of imports).

Whenever business outputs do not give rise to a VAT deduction right (e.g. VAT exempt without credit), input VAT paid cannot be deducted.

**VAT cash accounting system**

The VAT cash accounting system entered into force starting from 1 January 2013. However, from 1 January 2014 this system became optional, meaning that Romanian businesses which during the calendar year obtained a turnover lower than RON 2,250,000 are eligible to opt to apply the VAT cash accounting system (i.e. deduction/collection of input/output VAT at the time of payment/cashing of consideration to/from suppliers/customers and not at the date of receipt/issuance of an invoice).

**Invoicing**

With effect from 1 January 2013, the provisions of Council Directive 2010/45/EC on invoicing rules have been transposed into Romanian VAT law, according to which, any documents or messages on paper or in electronic format, if in compliance with Art. 155 of the Fiscal Code, are to be considered invoices.

**VAT simplification measures**
Current Romanian VAT legislation, allows the consolidation of the VAT returns of a group of companies. These groups may be formed by at least two taxable persons based in Romania if more than 50 percent of their shares are held directly or indirectly by the same shareholders.

**VAT warehouses**

A location situated in Romania which complies with certain conditions as defined by law. In the case of excisable products, a tax warehouse is automatically also considered to be a VAT warehouse. For other cases, only certain goods qualify to be placed in a VAT warehouse (e.g. various foodstuffs, metals, and products of the chemical industry).

**Excise Duties**

**Harmonized excisable goods:**

- Alcohol and alcoholic beverages.
- Processed tobacco.
- Energy products (e.g. leaded and unleaded gasoline, diesel, kerosene, liquefied petroleum gas, natural gas, etc.) and electricity.

Starting 1 January 2016, the total excise duty for cigarettes is RON 430.71.

The level of excise duties applicable to main energy products is as follows: RON 2,035.40/1,000 liters for unleaded gasoline, RON 2,327.27/1,000 liters for leaded gasoline, RON 1,897.08/1,000 liters for diesel and RON 2,112.73/1,000 liters for kerosene used as motor fuel,

Since 1 January 2015, excise duties have been set in RON and starting 1 January 2016 excise duties will be annually adjusted by the annual consumer price index.

Also, starting 1 January 2016, non-harmonized excise duties are eliminated for coffee, gold and/or platinum jewelry, natural fur garments, yachts and other leisure boats and engines for them, vehicles with an engine capacity of 3000 cm3 or more, weapons and ammunition.

However, new non-harmonised excise duties will apply to:

- Liquids containing nicotine for inhalation by means of an electronic device (“electronic cigarettes”).
• Heated tobacco products which, by heat, release an aerosol that can be inhaled, without the combustion of tobacco blend

The tax on crude oil from domestic production is also eliminated.

**Payment procedures**

Excise duties are payable by all companies, legal entities, family associations and authorized individuals, which hold, produce or import products subject to excise duties.

Excise duties are also due by authorized warehouse keepers, registered consignees or any other legal entity or individual releasing the excisable goods from the excise duty suspension arrangement. If an irregularity is noticed during the movement of excisable goods under an excise duty suspension arrangement, the legal entity or individual liable to pay the excise duties is the authorized warehouse keeper, the registered consignor or any other legal entity or individual which has guaranteed the payment of the excise duties.

The guarantee is 6% of the excise duties related to the goods to be produced within a year, based on the production capacity of a newly-established tax warehouse. For existing tax warehouse keepers, the value of the guarantee is calculated by applying the 6% to the value of the excise duties related to the excisable output amounts from the last year, but may not be less than 6% of the value of the excisable goods which should result based on the production capacity.

Nevertheless, minimum and maximum thresholds are set in relation to the guarantee to be provided by economic operators, depending on the nature of the excisable products.

The Commission for the authorization of economic operators for harmonized excisable goods may approve, on request, the reduction of the guarantee for a tax warehouse keeper or registered consignee, as follows:

• By 50%, if they have not had outstanding fiscal obligations for 2 consecutive years.

• By 75%, if they have not had outstanding fiscal obligations for 3 consecutive years.

However, the reduced guarantee level cannot be less than the minimum threshold set by law.
Excise duties are generally payable by 25th of the month following that when they become chargeable. However, the supply of energy products like diesel gas, petrol, kerosene and liquefied petroleum gas can only be made if the supplier holds a document confirming the payment by the buyer, on the supplier’s behalf, of the excise duties related to the goods that will be dispatched.

Excise duty is generally chargeable at the moment of release for consumption (e.g. removal from an excise duty suspensive arrangement, production occurring outside the excise duty suspensive arrangement, or use of excisable products for purposes other than raw materials inside a fiscal warehouse).

Chargeability of excise duties on import occurs at the time of registration of the import customs declaration, unless the excisable products are placed under a customs suspensive regime or under an excise duty suspensive arrangement (e.g. they are dispatched by a registered consignor from the customs office of import to, and introduced into, a fiscal warehouse).

Excisable products are not subject to excise duties upon export if they are delivered from a tax warehouse directly to a non-EU country, based on adequate supporting documentation.

**Tax warehouses**

A tax warehouse system is in operation in Romania in relation to harmonized excisable products.

A tax warehouse is a place under the control of the relevant tax authorities where harmonized excisable products are produced, transformed, held, received or dispatched under an excise duties suspension regime, by the authorized warehouse keeper, in carrying out its activity, under conditions set out in the Fiscal Code and its Implementing Norms.

It is illegal to produce excisable products outside tax warehouses, or to hold these goods outside tax warehouses if excise duty has not been paid, except in certain specific cases.

A tax warehouse may operate only on the basis of a valid authorization issued by the appropriate tax authority and may be used only for production and/or storage of excisable products.

Production and/or storage of excisable products for which excise duty has not been paid, is possible only in a tax warehouse.
A tax warehouse cannot be used for retail sale of excisable products, except for delivery of energy products (e.g. fuel) to airplanes, supplies of excise goods which take place in tanks, supplies of energy products to be used for certain purposes (e.g. energy products used as fuel for vessels intended for sailing in EU waters or inland waterways, including vessels used for fishing) and sales from duty-free shops.

**Customs Duties**

Inside the EU there are no customs controls and no customs charges, so Community goods may be moved freely between Romania and other EU Member States. Romania, like any other Member State, applies the Community Customs Legislation, as well as the Common Customs Tariff and the EU commercial measures on imports and exports.

With the exception of certain agricultural products, for which specific duties apply, customs duties are established as a percentage, generally ranging between 0 and 22%.

The customs regimes under which goods may be placed until 1 May 2016 are the following:

1) Export
2) Release for free circulation
3) Inward processing relief
4) Processing under customs control
5) Temporary admission
6) Outward processing
7) Customs warehousing
8) Transit

Release for free circulation and export are so-called “definitive” regimes, for which import/export duties must be paid. The other customs regimes mentioned under points 3) - 8) above are considered to be temporary (i.e. suspensive or economic) customs arrangements.

The customs duties should be paid in customs (i.e. before the goods are released by the customs authorities) if the goods are released for free circulation or placed under the inward processing relief – drawback system.

If the goods are placed under temporary admission with partial relief, a portion of 3% of the customs duties become due for each month the goods remain under the arrangement, and should be paid upon placement of the goods.
under the temporary admission regime. Starting 1 May 2016, these customs duties will be paid upon the discharge of the arrangement.

Under suspensive customs arrangements no import duties are payable for the period while the regime lasts. However, the customs authority requires a guarantee to ensure that it collects customs duties and other taxes due on import, which become payable if the goods are released for free circulation.

The temporary customs arrangements come to an end when the goods are given a “definitive” customs use (i.e. release for free circulation or export) or when they are assigned another customs approved treatment.

In addition, the importer should pay the import VAT in customs if the goods are released for free circulation or placed under temporary admission with partial relief or inward processing relief – drawback system arrangements.

Nevertheless the import VAT is not payable in customs but through the reverse charge mechanism by importers registered for VAT purposes in Romania that in the previous calendar year /last 12 months carried out imports with a value of at least RON 100,000,000 (around EUR 23,000,000) and obtained an import VAT deferment payment certificate.

Moreover, economic operators which are registered for VAT purposes in Romania and which are either certified by customs as Authorized Economic Operators (AEOs) or authorized for the use of the on-site simplified customs clearance procedure in Romania, may also obtain an import VAT deferment payment certificate (which offers them a cash-flow benefit, as they are no longer required to pay the import VAT in customs but instead can use the reverse charge mechanism).

In addition, AEO companies which perform imports of goods followed by intra-Community supplies of the imported goods are also no longer required to guarantee the import VAT.

From 1 May 2016, Union Customs Code (Regulation (EU) No. 952/2013 of the European Parliament and of the Council) will become applicable, along with two related pieces of legislation, i.e. the Implementing Act and the Delegated Act of the Union Customs Code.

Once the Union Customs Code and the related Implementing and Delegated legislation enters into application, the current customs legislation, i.e. Regulation (EEC) No. 2913/1992 establishing the Community Customs Code and Regulation (EEC) No. 2454/1993 setting out provisions for the
implementation of Council Regulation (EEC) No. 2913/1992 establishing the Community Customs Code, will be canceled.

Some of the most important amendments made by the Union Customs Code are the following:

Introduction of new concepts and definitions such as permanent establishment, holder of the goods, as well as the self-assessment procedure enabling the customs authorities to transfer some of their powers to traders, for example certain verifications/checks or the calculation of customs duties.

The customs regimes will be restructured as follows: release for free circulation, export and special regimes such as transit, storage (bonded warehouse and free zone), special usage (temporary admission and end use) and processing (inward processing and outward processing).

Some customs operations will no longer be available, such as free zones type 2 and destruction of goods under customs supervision, as well as some customs regimes with an economic impact such as type D bonded warehouses, inward processing – the drawback system, and processing under customs control.

Communication between traders and the customs authorities, including the submission of documents and declarations, will be made exclusively by electronic means. The Union Customs Code provides some situations in which the fulfilment of the criteria/conditions for obtaining AEO authorization, or even holding AEO certification, are required- for instance to obtain authorization to apply simplified customs clearance procedures.

New criteria and requirements will be imposed for obtaining AEO authorization, i.e. criteria on practical standards of competence and professional qualifications.

**Local taxes**

*Tax on buildings*

Since 1 January 2016, the tax on buildings has been calculated based on whether the building is used for residential or non-residential purposes (until then, a differentiation in taxation rules was made only based on whether the building was owned by an individual or a legal entity).
The following standard tax rates are applicable starting from 1 January 2016; (These may be increased by local authorities by up to 50%, similarly to all other local taxes):

- Tax on residential buildings: between 0.08% and 0.2% of the taxable value of the building.
- Tax on non-residential buildings: between 0.2% and 1.3% of the taxable value of the building.

For buildings used both for residential and non-residential purposes, the tax on buildings will be calculated proportionally in relation to the area used for each purpose, using the appropriate tax rate.

Taxable value varies depending on whether the building is owned by an individual or a legal entity and on the use of the building:

- For legal entities, the taxable value is determined based on a valuation for tax purposes. If a re-valuation has not been carried out in the preceding 3 years, the tax rate increases to 5%.
- For individuals, the taxable value for residential buildings is a notional value calculated based on certain indicators provided in the Fiscal Code, e.g. location, construction materials used and facilities available. For non-residential buildings, the taxable value may be either determined based on a valuation report or, in the absence of a valuation report, the taxable value is the notional value determined as in the case of residential buildings, but in this case the applicable tax rate is 2%.

**Tax on land** is calculated per sqm and varies according to the location of the land and its use.

**Tax on vehicles**: Cars are taxed on a rising scale for every 200cc, with varying rates depending on the type of vehicle. Tax on other types of means of transportation varies depending on the type and weight of the vehicle.

Tax on land, buildings and vehicles is payable twice a year, by 31 March and 30 September.

**Other local taxes** include:

- Tax on shows: organizers of artistic events, sports competitions and entertainment activities must pay a tax on shows, determined using a rate of up to 5% applied to the income from tickets/subscriptions.
- Advertising tax:
- For advertising services: between 1\% and 3\% of the value of the services provided.
- For displaying advertising signs: up to RON 23 or RON 32 (if the sign is displayed at the location where the activity is carried out) multiplied by the number of square meters of the sign.

**Tax on constructions**

The tax on constructions will be eliminated starting from 2017, according to the new Fiscal Code. The tax was introduced starting from 1 January 2014, at a rate of 1.5\%, and this has been reduced to 1\% starting from 1 January 2015.

**Taxpayers**

- Romanian legal entities, other than public institutions, national research and development institutions, non-profit entities and sports clubs.
- Foreign legal entities which carry out activity through a permanent establishment in Romania.
- Legal entities which have their headquarters in Romania, established according to European legislation.

For financial leasing, the taxpayer is the lessee, while for operational leasing transactions this status is attributed to the lessor.

**Tax rate and taxable base**

The tax rate of 1\% is applied to the inventory value of constructions owned by taxpayers as at 31 December of the previous year, from which the following are deducted:

- The value of buildings for which building tax is owed.
- The value of reconstruction, modernization, consolidation, change or extension work carried out on constructions used under a rental, administration or usage agreement.
- Agricultural constructions.
- The value of constructions that are state property or about to be transferred into the property of central or local state authorities (including the value of reconstruction, improvement, consolidation, modification, or extension of these constructions).
• The value of constructions outside the state border of Romania, including those located in Romania’s territorial waters and exclusive economic zone.

Declaration and payment

The tax must be calculated and declared no later than 25 May of the year to which it relates and payment takes place in two equal instalments, no later than 25 May and 25 September.

Other taxes

Environmental taxes

The most common environmental taxes due in Romania are in relation to:

• Waste involving packaging materials, as well as tires placed on the Romanian market (i.e. produced, imported or acquired from another EU Member State), only for the difference between the quantities collected/recycled and the collection/recycling targets set by law (i.e. 2 RON/kg).
• Oils (i.e. produced, imported or acquired from another EU Member State), for the quantities placed on the Romanian market (i.e. 0.3 RON/kg).
• Emissions of pollutants from fixed sources (e.g. factories, energy plants), which depend on that particular type of pollutant.
• Carrier bags made of non-biodegradable materials, supplied to customers (0.1 RON per bag).
• The first registration of a motor car or motor vehicle in Romania, calculated based on the vehicle’s emission standard, cylinder capacity and age.

Companies placing EEE (electrical and electronic equipment), and B&A (batteries and accumulators) on the Romanian market are required to register with the environmental authorities and finance collection and recovery of the related EEE / B&A waste.

Special taxes are imposed on companies in certain lines of business:

• Insurance and reinsurance.
• Energy (Electricity, Oil & Gas).
• Natural Resources.
• Pharmaceuticals.
• Media & Telecommunications.
• Gambling.

**Investment incentives**

A private investor in Romania may benefit from business aid from both national and EU sources, within the limits allowed by the State Aid regulations. The aid may be obtained for activities including, but not limited to, the following: employment and training, investment in processing activities, services in high technology related fields, R&D, energy, health and agriculture.

Local incentives (i.e. exemption from the local tax on buildings and from the local tax on land) may be granted by local authorities, provided that the local authority issues a specific regional state aid scheme. Moreover, investments located in industrial parks may be granted exemption from taxes for the conversion of agricultural land into land belonging to the industrial park, exemption from the tax on buildings and land, etc.
CHAPTER 4
Banking and Finance

Romanian Banking System

The Romanian banking system entered the recession well capitalized and with good profitability and liquidity levels, which allowed it to absorb the various economic shocks and remain relatively stable. The IMF/EU support package put in place during 2009 eased the macroeconomic pressures and concerns about the liquidity and solvency of local banks, the vast majority of which are subsidiaries of larger European banking groups.

System profitability has come significantly under pressure in the past few years as loan defaults has risen sharply and credit growth slowed considerably as a result of a significant contraction in economic activity and increased aversion to risk by banks, following several years of rapid growth of loans in both local and foreign currency.

In the short to medium term, the stability of the Romanian banking system depends on banks’ ability to monitor and strengthen the quality of loan portfolios, as well as on their shareholders’ commitment to maintaining adequate funding and capital levels.

The banking system is supervised by the central bank, the National Bank of Romania.

National Bank of Romania

The National Bank of Romania (“NBR”) was restructured in 1991, and since then, considerable effort has been devoted to developing an appropriate institutional infrastructure for a modern central bank. The NBR’s activity is governed by Law 312/2004 on the Statute of the National Bank of Romania. As an independent public institution, the NBR is run by a Board of Directors consisting of nine members appointed by Parliament. Its primary objective is to ensure and maintain price stability.

The NBR works on a permanent basis with the International Monetary Fund, the European Central Bank and specialized consultants from the World Bank, as well as with other organizations, in developing banking policies and procedures. From 1 January 2007, when Romania joined the European Union, the NBR became part of the European System of Central Banks (ESCB), and the NBR’s Governor, became a member of the General Council of the European Central Bank (ECB).
Regulations on Credit Institutions

Romanian law applies the main provisions of European Directives on credit institutions.

The NBR issued regulations transposing the provisions of Directive no. 2013/36/EU at the end of 2013 and the beginning of 2014. The national legal framework is currently compliant with the capital and corporate governance requirements provided under the aforementioned Directive and Regulation 575/2013, together, the CRD IV legislative package.

Credit institutions that are Romanian legal entities, may be set up and operate as: (i) banks, (ii) credit co-operatives, (iii) housing savings banks, (iv) mortgage loan banks and (v) electronic money institutions.

Domestic Credit Institutions

Credit institutions that are Romanian legal entities may be established only as joint stock companies with at least two shareholders, (individuals or legal entities, either resident or non-resident) and may operate only with the authorization and under the supervision of the NBR.

To be authorized, Romanian banks must have a minimum initial capital of RON 37 million, i.e. approximately EUR 8.2 million. Banks which grant mortgage loans and housing savings banks must, upon authorization, have a minimum initial capital of RON 25 million, i.e. approximately EUR 5.5 million.

The shareholders’ contribution to the share capital must be fully paid, in cash, at the subscription date.

All banks must open current accounts with the NBR and are required to maintain minimum reserves.

Romanian banks are mainly involved in the following activities: (i) Acceptance of deposits and other repayable funds, (ii) Lending, including, inter alia: consumer credits, mortgage credits, factoring with or without recourse, financing of commercial transactions, including forfeiting, (iii) Financial leasing, (iv) Payment services, (v) Issue and administration of payment means such as cheques, bills and promissory notes and other similar means of payment (v) Issue of guarantees and undertaking of commitments, (vi) Trading of financial instruments on their own behalf and on behalf of clients, (vii) Keeping in custody and managing financial instruments, (viii) issuing electronic money etc.
Romanian banks are expressly prohibited from carrying out activities, such as:
(i) Pledging the bank’s own shares to secure its liabilities, (ii) Granting loans secured with the bank’s own shares, etc., (iii) Acceptance of deposits and other repayable funds when the bank is insolvent.

Supervision of the liquidity risk is ensured both by banks and the NBR. As such, all banks must submit financial statements to the NBR and other requested data under the terms and in the form established under current legal provisions.

In order to limit the liquidity risk, for each financial year banks must establish:
(i) A strategy for liquidity management, which must be reconsidered whenever the business environment makes it necessary and (ii) A strategy for liquidity risk in the event of a potential crisis, and appropriate solutions for resolving the crisis. In order to meet these objectives, banks must have procedures in place for monitoring and limitation of liquidity risk.

**Foreign Credit Institutions**

Following Romania’s EU accession, any credit institution licensed and supervised in an EU or an EEA member state is entitled to operate in Romania, through a branch or by directly rendering services, without any NBR license being required, provided that certain notification formalities are met and that the branch thus established operates within the framework set out in the banking license issued by the regulatory body in the credit institution’s home-country.

Non-EU credit institutions may operate in Romania through branches, subject to NBR authorization and within the framework set out in the banking license granted by the regulatory body in the home-country. Generally, foreign banks operating in Romania have the same rights and obligations as domestic banks.

**Licensing**

Upon applying for a license, foreign and domestic banks are subject to the same NBR licensing requirements. The main requirements involve:

- Maintenance of a minimum share capital (endowment capital for branches).
- Reputation and financial reliability of significant shareholders.
- Evidence of a strong and professional management team.
- Presentation of a comprehensive three-year business plan.
Generally, the NBR authorization process includes 3 stages:

- NBR approval for the setting up of the bank
- Incorporation of the bank (registration with the Trade Registry) and,
- NBR authorization for starting operations.

Individuals or legal entities or a group of individuals and/or legal entities which intend to become significant shareholders of an already existing credit institution, e.g., have a contribution to the share capital or voting rights in the bank equal to or more than 10%, must obtain NBR approval.

To ensure the stability of the banking system, the NBR has introduced certain requirements to be met by the shareholders of a bank (individuals or legal entities), as follows: (i) Sound reputation, analyzed in terms of integrity and professional competency, including experience as a controlling shareholder or a director/manager of a financial institution (ii) Stable financial situation (the NBR has the authority to analyze the source of the funds used by individuals or legal entities to gain the position of a significant shareholder), (iii) Supply of the necessary information related to the group they belong to; (iv) Adequate supervision ensured by the relevant authorities in the country of origin of the individual or the legal entity.

**Accounting Regulations**

Starting 1 January 2012, credit institutions carrying out activities in Romania, including Romanian branches of foreign credit institutions and foreign branches of Romanian credit institutions, are required to apply International Financial Reporting Standards (IFRS) as a basis for accounting and reporting of financial statements.

**Privatization of State-Owned Banks**

Most banks have now been privatized, and CEC Bank (in the top 10 banks by assets) is the only commercial bank still in state hands (100%). Although the government is committed in principle to the eventual privatization of CEC, this has been postponed indefinitely. The state also owns EXIMBANK, which supports Romania’s foreign trade through specialized financial-banking and insurance instruments, both on the bank’s behalf and account as well as on behalf of and for the benefit of the Romanian State.
Non-Banking Financial Institutions

Non-banking financial institutions are regulated by Law no. 93/2009. To qualify as a non-banking financial institution and to be authorized to conduct credit operations, a company is required to include in its main objects of activity only the activities permitted under Law no. 93/2009, e.g. granting of credits, financial leasing or pawnbroking activities. Non-banking financial institutions must have a minimum share capital in RON equivalent of EUR 200,000, or EUR 3,000,000 if it grants mortgage loans.

Non-banking financial institutions may also provide auxiliary and advisory services in relation to their main object of activity and may carry out operations on behalf of other non-banking financial institutions and credit institutions.

Law no. 93/2009 states that non-banking financial institutions must be registered with the NBR and included in a General Registry as well as, if applicable, in a Special Registry (depending on certain criteria relating to turnover, credit volume, debt-to-equity ratio, total assets and own capital - as established under NBR regulations). As a general rule, non-banking financial institutions are allowed to carry out the activities included in their object of activity only after they have been recorded in the General Registry maintained by the NBR.

Payment Institutions

Payment institutions are licensed and regulated by the NBR. The legal framework is provided by Government Emergency Ordinance no.113/2009 on payment services and NBR Regulation no. 21/2009 on payment institutions which implement the provisions of Directive 2007/64/EC on payment services within the internal market.

Regulation no. 21/2009 establishes the requirements for the provision of payment services in Romania and sets out the rules for the supervision of payment institutions by the regulatory authorities. It also lists the rights and obligations of users and providers of payment services.

Foreign Currency Regime

The main provisions currently regulating foreign currency operations are incorporated in NBR Regulation no. 4/2005, on the foreign currency regime and as supplemented by Regulation no. 6/2012.
Currency Convertibility

The national currency, (leu, pl. lei) has been convertible since 1998. In 2005, a currency reform took place by which four zeroes were removed from the old leu (ROL) to form the new leu (RON).

Inter-bank Foreign Exchange Market

The leu’s exchange rate is determined on the inter-bank foreign exchange market which was established in August 1994 as a permanent market, where foreign currency can be bought and sold in exchange for lei, at spot or forward exchange rates freely determined by the credit institutions authorised by the NBR. Based on the currency exchange rates used on the inter-bank market, the NBR establishes the daily exchange rate.

Foreign Currency Operations

According to the applicable regulations, current and capital transactions between residents and non-residents may be performed in both foreign and domestic currencies. As a general rule, payments made between residents, related to the trade of goods and services must be carried out in RON. In certain situations, such as those presented below, payments can also be made in foreign currency by the following categories of residents:

- Legal entities, for payments and cash receipts from cross-border trade of goods and services.
- Any individual or legal entity, for trading operations inside harbors, airports, customs or on external routes of international trains, ships or airplanes.
- Any individual or legal entity, for operations related to the organization or supply of cross-border services.
- Individuals, for incidental operations.
- Any individual or legal entity, for operations performed abroad.
- Any individual or legal entity, for operations not related to the trade of goods and services.
Residents and non-residents may hold financial assets in both foreign currency and lei. Non-residents may repatriate or transfer, locally and abroad, financial assets held in Romania.

However, where short-term capital movements of exceptional magnitude impose severe strains on the foreign exchange market and lead to serious disturbances in the conduct of monetary and exchange rate policies, which are reflected in particular in substantial changes in domestic liquidity and severe imbalances in the balance of payments, the NBR may take safeguarding measures with respect to capital transactions. NBR regulations provide notification obligations with respect to certain transactions concluded between residents and non-residents, for statistical purposes, for the monitoring of the external private debt and the balance of payments at national level.

Thus, capital transactions causing external obligations arising out of commitments longer than one year, other than those qualifying as external public debt, must be notified to the NBR. These operations include (i) financial credits granted by non-residents to residents with reimbursement periods longer than 1 year (e.g., standard financial loans, syndicated loans, credit lines, financial leasing, mortgage loans); (ii) foreign trade loans with reimbursement periods longer than 1 year granted by non-residents to residents and (ii) primary trading with financial instruments with the initial reimbursement period longer than 1 year (bonds or other financial instruments) issued by residents on a foreign capital market.

These notifications are made for statistical purposes only, i.e. for the monitoring of external private debt at national level, and do not require NBR authorization.

Also, under the NBR norms regulating the balance of payments, transactions concluded between residents and non-residents as mentioned above, transactions carried out by residents through accounts opened with foreign credit/financial institutions abroad, participations owned by residents in foreign companies exceeding 10% of the share capital and the branches or other entities without legal status set up by resident companies abroad, must be notified to the NBR for statistical purposes and do not require NBR authorization.

**Giving in payment**

This year the draft law on giving in payment (in Romanian “legea dării în plată”) is expected to enter into force. This regulates the debtor’s right to extinguish a full claim and its accessories, arising from a credit agreement by
transferring real estate ownership which has been mortgaged to the lender.
The draft is currently under intensive public debate.

**Romanian Mortgage Credit Law**

A draft law has been issued on credit agreements for consumers secured with immovable assets. The law transposes the provisions of Directive no. 2014/17/EU of the European Parliament on credit agreements for consumers relating to residential immovable property.

The draft law will apply to all credit agreements for consumers on the sale and acquisition of immovable assets, credit agreements backed up by immovable mortgages, as well as credit agreements which involve a right related to an immovable asset.

The draft law regulates the parties’ rights and obligations with regard to credit agreements for consumers on the sale and acquisition of immovable assets, loan agreements backed up by mortgages over immovable assets, aspects of the credit worthiness assessment, certain prudential and supervisory requirements, including for the establishment and supervision of credit intermediaries and companies which are specialized in debt recovery, as well as aspects of the provision of accessory services.

**Recovery and resolution of credit institutions and of investments firms**

Law no. 312/2015 on the recovery and resolution of credit institutions and of investments firms, as well as amending and supplementing certain normative acts within the financial sector, is in line with the rules under Directive no. 2014/59/EU. The law establishes the setting up of a banking resolution fund similar to the one existing under the current national legislative framework, established by Government Ordinance no. 39/1996 on the setting up and operation of the Deposit Guarantee Fund within the banking system, as republished.

Thus, in order to ensure the necessary funds for financing the resolution measures, and to avoid the use of public budgetary funds for these purposes, the law establishes the necessity of establishing a resolution fund by correlated contributions from the financial sector, in principal prior and independently to any resolution operations (ex-ante financing, with a minimum mandatory level at least until reaching a critical ceiling of available resources) and, if such financing shall prove to be insufficient, by supplementary contributions.
The banking resolution fund resources must reach 1% of the covered deposits of credit institutions authorised by the National Bank of Romania by 31 December 2024.

Covered Bonds

According to Law 304/2015 on issuance of covered bonds, banks are allowed to issue covered bonds under new rules. In order to perform each mortgage bond, the issuer must obtain the approval of the NBR. In assessing an application for approval, the NBR considers whether the following conditions are met, among others: (i) the issuer must have the capacity to ensure compliance with the requirements of the law for the issuance of covered bonds and the current and future financial situation is likely to ensure the premises of protecting the interests of its investors and other creditors; (ii) the issuance of covered bonds does not have a negative effect on financial stability.

Romanian Insurance Market

The Romanian insurance market has seen significant M&A activity in recent years, with all large players in the region now having a local presence, including Germany’s Allianz, France’s Groupama and Austria’s Uniqia and Vienna Insurance Group.

The market is regulated by the Financial Supervision Authority (“ASF”). The ASF was established in 2013 and took over the prerogatives of the former Insurance Supervision Commission, the National Securities Commission and the Private Pensions Supervision Commission. Currently, the former Insurance Supervision Commission is a branch of the ASF.

Insurance activities may be performed only by insurance companies set up and operating according to the general provisions of the Company Law (Law 31/1990), Law 136/1995 on insurance and reinsurance and Law 32/2000 on insurance undertakings and insurance supervision which was amended by Law 237/2015 on the authorization and supervision of insurance and reinsurance activities. As such, the setting up of an insurance company is subject to the following main rules:

- Insurance companies set up as Romanian legal entities must be organized as joint stock companies registered with the appropriate Trade Registry Office, whose shareholders can be resident or non-resident individuals or legal entities
- Currently, the minimum share capital must be RON 8 million (approximately EUR 1.8 million) for general insurance activities except for
compulsory insurance activities and RON 12 million (approximately EUR 3 million) for general insurance activities including compulsory insurance activities and for life insurance activities. These limits may be modified by the Insurance Supervisory Commission.

- As a consequence of Romania’s EU accession, insurance companies established in an EU or an EEA member state may operate in Romania under a license issued by the supervisory authorities in their home-countries, by setting-up a branch or by providing services directly, in accordance with the right of establishment and freedom to provide services.
- Non-EU insurance companies may perform insurance activities in Romania by setting-up branches, subject to authorization by the ASF and subject to supplementary requirements.

Insurance activities are divided into two categories: life and non-life, each with subsequent classes. Generally, an insurance company may not perform both categories of insurance activities. However, life insurance activities can be cumulated with certain classes of non-life insurance.

The registration of an insurance company with the appropriate Trade Registry Office is subject to prior authorization by the ASF. Once registered with the Trade Registry Office, insurance companies must obtain their operating license from the ASF.

The former Insurance Supervisory Commission has issued regulations on matters such as:

- Internal control and risk management of insurance companies
- Fees for insurance companies and insurance brokers
- Evaluation criteria for approval of significant shareholders and for authorizing the setting up of insurance companies. Insurance companies must have adequate financial resources and insurance must be their sole object of activity. They must have a corporate name which is not misleading to customers, as well as meeting minimal conditions related to share capital and reserves. They must present comprehensive reinsurance and feasibility programs, while foreign insurance companies must present evidence of similar activities performed for at least 5 years in the country of origin. Companies must also meet requirements on significant shareholders and management.
- Categories of insurance coverage that can be offered
- Minimum solvency margin for insurance companies performing general insurance activities
- Portfolio transfer
Also, Law no. 246/2015 on the recovery and resolution of insurers sets forth recovery and resolution planning measures, to the effect that insurers which play a significant role in the national insurance system must develop their own recovery plans and are subject to individual resolution plans:

(a) In terms of recovery plans, the insurers mentioned above must develop and maintain such a plan providing measures to be taken for restoring their financial situation in the event that the insurer’s financial indicators undergo a significant deterioration;

(b) The resolution plan for an insurer is to be prepared by the FSA and will provide the resolution measures that can be undertaken by the FSA in the event that the insurer meets the conditions required for the initiation of a resolution procedure.

Insolvency of insurers is regulated under Law no. 503/2004 on the recovery and bankruptcy procedure of insurance companies.

**Private Pension System**

In 2007 the Romanian pension system underwent major restructuring based on the World Bank’s multi-pillar model. Law 204/2006 on voluntary pensions and Law 411/2004 on mandatory pensions form the regulatory framework of the private pension system. Additional norms and regulations are issued by the former Private Pension System Supervisory Commission. The new system became mandatory for all employees aged under 35 and voluntary for employees aged 35-45.

Participation in a mandatory pension fund is only open to employees paying social security contributions (CAS). Contribution collection is centralized by the National Pensions Authority which collects and directs the contributions towards the pension funds. Since 2008, part of the social security contribution due by individuals has been redirected from the state budget to the chosen private fund. The redirected contribution was 2% in 2008 and it will gradually increase to 6% by 2016, while the social security contribution to the state system will diminish accordingly.

Mandatory pension funds are managed by pension management companies (administrators) which can manage no more than one fund.

Participation in a voluntary pension fund is open to everybody earning income - from employees to the self-employed (those with independent activities in liberal professions). For employees, collection of contributions is made by the employer, who must send the money to the voluntary pension funds. In all
the other cases (self-employed, etc.), the participant can pay his or her own contributions directly to the private pension fund.

Voluntary pension funds are managed by pension management companies (administrators), life insurance companies or asset management companies. However, there is only one type of product - 3rd pillar voluntary pension fund - regardless of the nature of the pension management entity. Each pension/ life insurance/ asset management company can manage as many funds as they wish.

A pension fund (either mandatory or voluntary) is unitized and functions similarly to an investment fund but its investments are strictly regulated (the law imposes percentage ceilings for different classes of assets). Before starting their activity on this market, operators must obtain several licenses from the ASF.

Currently, there are only 7 mandatory pension funds (following several mergers in the last few years) and 11 voluntary pension funds.

**Capital Markets**

The development of Romanian capital markets is closely linked to privatization. The Bucharest Stock Exchange ("BSE"), initially established in 1864, was re-established in April 1995, but transactions started only in November 1995. Trading volumes were not significant until 2003-2004.

In addition, RASDAQ became operational in October 1996 and it was dismantled in October 2015, following Law 151/2014 clarifying the legal status of this market. The companies listed on RASDAQ had to make preparations to be transferred to a regulated market, an alternative trading system or become closed companies.

**Regulatory mechanisms and bodies**

The Financial Supervision Authority ("ASF") is the regulatory and supervisory body of the capital market. The ASF was established in 2013 and took over the prerogatives of the former National Securities Commission ("NSC"), the Insurance Supervision Commission and the Private Pensions Supervision Commission. Currently, the former NSC is a branch of the ASF called the Financial Instruments and Investment Sector. The ASF has certain extended prerogatives to the effect that it authorizes investment firms, management companies and undertakings for collective investments in transferable securities and also provides the general listing requirements for issuers and regulates the securities exchange, including trading and settlement mechanisms.
In 2004, as a result of the Government’s efforts to harmonize Romanian capital market legislation with EU directives, the legal framework governing capital markets was significantly amended by the enactment of Law no. 297/2004 on the capital markets ("Law 297/2004").

Besides the provisions concerning market operations and investors’ protection, Law 297/2004 also contains provisions on:

- Intermediaries
- Collective investment undertakings
- Management companies
- Regulated markets
- Clearing, settlement, deposit and registry systems for financial instruments.

**Intermediaries**

Generally, securities transactions may be performed only through intermediaries, i.e. (i) Investment firms authorized by the ASF, (ii) Credit institutions authorized by the NBR and (iii) Similar institutions authorized in an EU/EEA Member State to provide investment services.

**Investment Firms (Societăți de Servicii de Investițiilor Finanțare)** are set up in Romania as joint stock companies whose object of activity is to perform investment services. In 2015, the FSA issued a regulation allowing investment firms to render other activities such as insurance intermediation or credit intermediation.

Investment firms, authorized and supervised in a Member State may perform in Romania the investment services they have been authorized for by the appropriate body in their country of origin, either directly or through branches set up for this purpose, without the ASF’s authorization.

Non-EU investment firms are allowed to set up branches in Romania subject to the ASF’s authorization.

The minimum initial capital of an investment firm is set at three levels, depending on the type of investment services it performs, i.e. the RON equivalent of (i) EUR 50,000, (ii) EUR 125,000 and (iii) EUR 730,000. Additionally, Regulation no. 32/2006 issued by the former NSC details the licensing conditions and procedure as well as other operating requirements. Investment firms must periodically submit their financial statements to the ASF, certified by financial auditors. Additionally, Regulation no. 3/2014 issued
by the ASF implements measures for the application of the CRD IV legislative package in the specific case of investment firms.

**Credit institutions**, authorized by and acting under the supervision of the National Bank of Romania (NBR), may provide investment services on the regulated markets, on their own account or on the account of third parties. At the same time, these institutions can set up distinct investment companies.

**Advisory services** related to investments in financial instruments (i.e. analysis of financial instruments, selection of the portfolio, and expressing opinions with regard to the sale or purchase of financial instruments) can be performed only by authorized investment advisors (individuals or legal entities).

**Issuers**

According to Law 297/2004, the main listing conditions are: (i) The issuer should have had a foreseeable market capitalisation of at least the RON equivalent of EUR 1 million for its capital and reserves, including profit and loss, in the last financial year (ii) The company should have been operating over the last 3 years prior to its application for admission and should have communicated all financial statements, according to current legislation.

An eligibility condition is that shares must be fully paid and freely negotiable. Additionally, a sufficient number, as defined by Law 297/2004 (no less than 25%) of shares must be distributed to the public, unless the distribution is made through transactions on the regulated market.

Admission to a regulated market requires that an application should be addressed to the market operator after the publication of an information sheet approved by the ASF. All actions undertaken in this respect are made via intermediaries.

Law 297/2004 and other regulations also set forth provisions with regard to investors’ protection, information requirements, procedures to be followed where public offers for sale or purchase of shares are made, etc.

**Regulated markets**

Law 297/2004 provides the conditions and procedures for setting up a regulated market, including provisions with respect to market operators. Thus, a market operator must be a joint stock company with a minimum share capital of EUR 5 million in RON equivalent. None of the shareholders of this company can directly or indirectly have more than 20% of the total voting
Both the market operators and the regulated market must be authorized by the ASF.

**Bucharest Stock Exchange**

The Bucharest Stock Exchange was established as a legal body in April 1995 by decision of the former NSC, with technical and financial assistance from the Governments of Romania and Canada, the NBR and the British Know How Fund. Initially, the BSE was a self-financing, non-profit institution of public interest. Law 297/2004 on capital markets required the BSE to turn into a joint stock company.

Until August 2006, companies listed on the BSE were grouped into two standard listing tiers, a 'first tier' and a 'second tier'. A “plus tier” (virtual tier) had also been established for companies which had already been listed on the first or second tier and which have decided to adopt more transparent behaviour.

Currently, according to the new BSE rules, the BSE regulated markets are: (i) The regulated spot market and (ii) The regulated derivative market (futures).

The regulated spot market operated by the BSE is structured as follows:

A. Equity sector
B. Debt sector
C. Collective Investment Undertakings Sector
D. Structured Products Sector
E. Other International Financial Instruments Sector.

A. The equity sector is divided into: (i) Premium Tier shares, (ii) Standard Tier shares, (iii) International Tier shares.

Premium Tier shares include the best performing companies. For example, in order to be admitted to the Tier 1 shares category, an issuer must have the free-float value must be of at least EUR 40 million.

In order to be listed in the Standard Tier shares, a company must have the value of own capitals from the last financial year of at least the equivalent in RON of EUR 1 million or the foreseeable capitalization must be at least the equivalent in RON of EUR 1 million. Also, the free-float must be at least 25%.

The 10 most liquid and active shares, except for financial investments companies ("SIFs"), are included in the “BET” index and all other listed companies, except for SIFs, are included into the composite index “BET-C.”

SIFs are included in the BET-FI index. SIFs were set up in 1996 under special privatization legislation and cannot be assimilated to other collective investment undertakings (investment funds or investments companies). According to the BSE, the BET-FI index is dedicated to all listed investments funds.

In March 2005, another index was set up based on the cooperation of the BSE with the WBAG (Vienna Stock Exchange), the Romanian Trading Index (ROTX). Only blue chip shares listed on the BSE are included in the ROTX index.

The BSE Registry keeps records of listed securities issued by companies that have an agreement concluded with the BSE.

In June 2007, the NSC authorised the derivatives market to be operated by the BSE. The trading of derivative instruments commenced in September 2007.

The derivatives market started with futures on BET indexes. Further on, new products will be developed with various underlying BSE indexes, shares and bonds.

**Monetary Financial and Commodities Exchange (MFCE)**

In addition to the two merging markets, an independent derivatives market operates in Sibiu, the Monetary Financial and Commodities Exchange (MFCE), Romania’s second largest financial market.

The MFCE focuses almost exclusively on the exchange of derivative financial products. However, the MFCE has recently started to operate a spot market as well. It is Romania’s first and largest market for Futures and Options contracts to date. Contracts are based on the Romanian stock index, currencies, cross rates, interest rates, and the price of gold.

**Bonds and other debt securities**

The bonds market is currently developing, in terms of both corporate and municipal bonds. In this respect, regulations have been adopted governing the securitization of receivables and mortgage-backed securities.
Additionally, the Ministry of Public Finance is empowered to issue treasury bills in national or foreign currency, for short, medium or long term periods. These treasury bills can be issued in materialized or dematerialized form. Dematerialized treasury bills with a maturity in excess of 12 months can be traded on the regulated market and can be bought by individuals and companies. The Ministry of Public Finance, together with the NBR and the former NSC have issued Regulations governing the performance of these transactions.

At present, municipal bonds are the fastest growing as city halls have started to use this financing method mainly in relation to infrastructure projects. Currently most bonds of this type are traded on the BSE.

**Alternative Trading System (ATS) - AeRO**

In 2010, the former NSC approved the establishment of the ATS under the administration of the BSE, as system operator. Also, the former NSC approved the ATS Rulebook which has a general, obligatory normative character.

On 25.02.2015, a new improved alternative trading system called AeRO was launched.

According to the presentation of the BSE of this market, the alternative trading system is not a regulated market in the sense of the European Directives as well as European and the Romanian capital market law, but it is regulated by the BSE’s rules and obligations. The alternative system was established by the BSE in order to provide a market with less reporting obligations from issuers, but at the same time with sufficient transparency for investors to encourage them to trade.

The AeRO market is dedicated to financing the companies that do not meet the size or history criteria for being listed on the regulated market.

According to the new provisions, there may only be one share trading category for Romanian companies on AeRO.

AeRO also provides an International category for shares and for other rights.

In order to be admitted to trading on AeRO, there are minimum criteria to be met, which include:

- Having an foreseeable capitalization of at least the RON equivalent of EUR 250,000;
Having a free-float of at least 10% out of the issued shares or the number of shareholders is at least 30.

The procedure for admission to trading on AeRO requires the company to contract an Authorized Adviser which performs the specific services for the company in order to be admitted to trading. The Authorized Adviser continues to provide the specific transaction services after the company is admitted to trading.

The BSE published a lists of Authorized Advisers which could be either BSE participants or other entities authorized in this respect by the BSE.

Collective Investment Undertakings


UCITSSs (Open-end Investment Funds and Investment Companies)

Open-end investment funds are non-incorporated collective schemes authorized by the ASF and managed by a management company that has the exclusive prerogative to set up an open-end investment fund. The funds issue fund units but are not allowed to issue other financial instruments.

A management company can be set up as a joint stock company, with an initial capital of at least the RON equivalent of EUR 125,000.

The object of activity of a management company is to manage UCITSSs and/or, subject to ASF prior approval, other collective investment undertakings. Under certain conditions, management companies can also manage individual investment portfolios (including those of pension funds) on a discretionary basis, as well as other non-core services.

Subject to prior approval by/notification to the ASF, management companies are allowed to delegate to third parties the managing activities related to collective investment portfolios.

Investment companies (i) Are joint stock companies issuing nominative shares, fully paid upon subscription and (ii) Are managed either by a Board of Directors, according to their Acts of Incorporation (self-managed investment companies) or by management companies. Their sole object of activity is to make collective investments in liquid financial instruments.
The minimum initial capital of self-managed investment companies is the RON equivalent of EUR 300,000. Additionally, an investment company needs to apply to be listed on a regulated market within 90 days of having been licensed.

The common feature of UCITSs is that their units (fund units or shares, as appropriate), must be repurchased from their owners, upon request.

**Alternative investment funds managers (AIFM)**

Law no. 74/2015 on Alternative Investment Fund Managers entered into effect in May 2015.

The law’s key objective is the transposition of the Directive on Alternative Investment Fund Managers (AIFMD) into Romanian law.

The Directive aims to achieve a harmonized legal framework at EU level, for the authorization and supervision of alternative investment fund managers.

To this extent, the transposition aims to regulate the activity of all alternative investment funds managers (AIFMs), other than undertakings for collective investment in transferable securities (UCITS) and who especially distribute titles to professional investors.

In this respect, authorization/registration conditions, capital requirements, operational requirements regarding liquidity management and risk management, structural requirements including those relating to the evaluation of the assets of Alternative Investment Funds (AIFs) portfolios, depository requirements, conditions for the delegation of alternative investment fund managers’ responsibilities, as well as requirements relating to transparency, are established.

The law also provides certain exceptions from authorization, if the AIFM manages assets below a certain level. In this case, these entities only come under the registration requirement.

For the implementation of the law, the FSA issued Regulation no. 10/2015 on alternative investment funds management. The regulation’s provisions include rules on:

- authorization, registration and operation of alternative investment fund managers;
- appointment and duties of a depositary for alternative investment funds;
necessary conditions for a registered AIF to manage AIF intended for retail investors.

Other collective investment undertakings (OCIUs)

Law 297/2004 provides specific provisions with respect to OCIUs, depending on different criteria such as: (i) Whether or not they raise funds from the public, (ii) Whether or not they address/target qualified investors, (iii) The minimum nominal value of the units.

Specific provisions are set out under Law 297/2004 with regard to OCIUs which raise funds from the public (individuals and/or companies) and which are set up as (i) Closed-end investment funds or (ii) Closed –end investment companies. These entities must register with the ASF and must entrust their assets to a depositary. Closed-end investment funds registered with the ASF must be managed by an authorized management company.

Former NSC regulations provide supplementary obligations (e.g. reporting obligation, investment limits, types of financial instruments that can be invested in, etc.) for each type of other collective investment undertaking.

Depositaries

The assets of UCITSs must be entrusted to a depositary. According to current legislation, only Romanian credit institutions or branches of credit institutions registered in an EU Member State may provide depositary services. To perform such activities, an operating permit from the ASF is required. The competences and obligations of depositaries are set out under Government Emergency Ordinance 32/2012 and Regulation no. 15/2004 issued by the former NSC.
CHAPTER 5
General commercial rules

Domestic Commercial Transactions

Commercial Law

The contractual and commercial ("professional") rules are mainly set out under the Romanian Civil Code.

The main principle applicable to contractual matters is that contracting parties can freely choose the specific clauses that govern their relationship, except for those considered to be of public interest such as, for example, the legal status of the contracting parties.

To guarantee their contractual obligations, debtors and creditors may enter into suretyship contracts, issue letters of guarantee and comfort letters as well as set mortgages on immovable assets, which are valid only if registered in the land book (registration in the land book was used to ensure enforceability of the mortgage before third parties) and mortgages on movable assets and pledges. Additionally, creditors may introduce prior claims with regard to contract related receivables.

According to the Romanian Civil Code and Government Emergency Ordinance 99/2006 on credit institutions and capital adequacy (the “Banking Law”), mortgage or pledge agreements as well as any other agreements concluded for the purpose of securing credit agreements are deemed as writs of foreclosure (Romanian: titluri executorii). As such, in order to enforce a pledge on a movable asset, the Law grants creditors the right to use the procedures governed by the Civil Procedure Code in relation to the enforcement of pledges.

Finance and Bankruptcy

Law no. 85/2014 on Insolvency Procedures (referred to as the “Insolvency Law”) for to all professionals defined under article 3 of the Civil Code, excepting those who exercise a liberal profession and those for which special legal provisions related to their insolvency, exists. Thus, the following entities may be deemed as professionals: companies, agricultural producers, economic interest groups, individuals who undertake commercial activities either individually or in family associations, to any private legal entity carrying out economic activities that can no longer meets its
commercial debts/obligations and to certain others (hereinafter referred to as the ‘debtor’).

Thus, the Insolvency Law sets out a reorganisation procedure which enables debtors in financial distress to continue their business or, if that is not possible due to their financial situation, a bankruptcy procedure which aims to liquidate debtors’ assets so that the outstanding debts can be paid. These procedures may be initiated at the request of the debtor or of its creditors, provided that their receivables meet certain requirements, mainly related to their value. Debtors are legally required to file for insolvency if they are insolvent.

Once the insolvency procedure has been initiated, any actions, either judicial or extra judicial, to recover the receivables held against a debtor or its assets are suspended. All creditors must register their receivables against the debtor with the courts of competent jurisdiction and recover such amounts only after the sale of the debtor’s assets, according to the rules set out in the Insolvency Law regulating priority of creditors.

The Insolvency Law states that after the closure of bankruptcy proceedings, individual debtors are discharged from their obligations, provided they are not guilty of any fraudulent payments, fraudulent transfers or fraudulent bankruptcy. With respect to corporate debtors, closure of bankruptcy proceedings will trigger the end of the corporate debtor’s legal existence by its deregistration from the relevant trade registry. To protect creditors whose receivables are not covered by a debtor’s assets, the syndic judge may rule that any outstanding obligations must be partially paid by the management/supervisory team members of corporate debtors or by any other legal entity that is liable for causing the insolvency of that entity.

With respect to commercial banks, the Banking Law states that the National Bank of Romania is entitled to impose special monitoring and administrative measures before bankruptcy is officially declared.

**Disputes between professionals**

The Civil Procedure Code does not make any distinction between civil disputes and business disputes (e.g. between “professionals”). As such, under the current legislative framework, no mandatory procedure for amicable settlement of disputes between professionals is regulated.

The New Civil Procedure Code sets out the possibility for the parties to pursue an alternative dispute resolution procedure.
Alternative Dispute Resolution (ADR) procedures

The Civil Procedure Code states that a court before which an action has been brought may invite the parties to use an alternative dispute resolution procedure or mediation. Moreover, the court invites the parties to attend a preliminary mediation briefing meeting on the use and benefits of mediation.

Law no. 192/2006 on mediation, as amended in 2012; (the "Mediation Law") states that any civil, commercial or even criminal minor disputes may be settled amicably by the parties through mediation. Mediation is defined as a private procedure, conducted by a mediator, whose purpose is to facilitate the settlement of a dispute under private and confidential terms, upon the parties' agreement. The Mediation law also sets out the judges’ obligation to inform the parties, at the beginning of each trial, that they can settle their dispute through mediation. If the parties choose mediation, the court case is suspended and, if the parties reach an agreement, the court will only confirm their agreement under a decision that can be appealed only for procedural reasons. Although the western world has applied the ADR procedure for the past 60 years, given that it ensures confidentiality, speed and reduced costs by comparison with traditional dispute resolution before public courts, the Romanian business environment is only just starting to use this method.

Efficiency of procedures

The Civil Procedure Code gives special consideration to the specific nature of relations between professionals, which require speedier resolution of disputes than in civil cases. It is therefore stipulated that lawsuits and claims between professionals should be given priority, with the court having the duty to ensure that the parties’ procedural rights and obligations have been met, and also that the efficiency of the trial is ensured.

Written evidence

Under the Civil Procedure Code, documentary evidence plays, in principle, a more significant role. When filing an action in court, the complainant can be required to file any document invoked to support his/her case (e.g. commercial registers may be used as evidence when the other party is also a professional).
Formal procedure for receivables collection

According to the Civil Procedure Code, the formal procedure for receivables collection is an alternative solution to the general applicable rules for asserting a financial claim, having the advantage of being less time consuming than normal judicial proceedings and subject to a small-value, fixed stamp duty. Thus creditors may choose between the special procedure of payment ordinance (in Romanian “ordonanță de plată”) and filing an action in court. Nevertheless, creditors who are unsuccessful in this formal procedure for the collection of receivables will be given the opportunity to continue to pursue their case in accordance with the general applicable rules.

The procedure for receivables collection begins with a mandatory notice of delay (sent through the enforcement officer or by registered letter) whereby the debtor is advised to pay the amount owed in a 15 day-period as of its receipt. Moreover, under the Civil Procedure Code, this notice of delay will suspend the statute of limitations. Moreover, the action in court for receivables collection must be submitted within 6 months of the date the creditor sent to the debtor the notice delay.

The above mentioned procedure on a preliminary mediation briefing meeting is also required to be performed when litigation proceedings are initiated for receivables collection.

The formal procedure for receivables collection initiated by a creditor will be accepted provided that the receivables in question meet certain requirements, as follows. They must:

- Be certain (their existence should be legally unquestionable), liquid (their value should be accurately determined) and payable (should have become due).
- Represent an obligation to pay.
- Be stated in a written document such as an agreement, by-laws, regulation or another similar document, signed or undertaken by the parties in another manner accepted by law
- Derive from the performance of services, works or other activities.

This procedure is also applicable for receivables deriving from agreements concluded with consumers. If the debtor does not challenge the amount of the receivable claimed by the creditor, the payment ordinance should be issued within 45-days of the
submission of the action in court by the creditor, given the rapid character of the payment of ordinance procedure.

The payment ordinance issued by the court represents a legal writ of execution and is immediately enforceable.
CHAPTER 6
Real Estate in Romania

According to the Romanian legal system, private property may belong to individuals, legal entities and the state (or local administrative units), while public property may belong exclusively to the state or the local administrative units (counties and municipalities). Public property may not be transferred to other legal entities or individuals and generally cannot be subject to any commercial transactions, but it may be granted for management purposes to state autonomous companies and public institutions under concession or it can be leased to legal entities or/and individuals, subject to the provisions of the Public Property Law (no. 213/1998, as amended), Government Emergency Ordinance no. 54/2006 on the legal status of public property and concession agreements and Government Emergency Ordinance no. 34/2006, as amended, on public procurement and concession agreements.

Publicly owned land may not be transacted, while private land belonging to the state or to local administrative units can be traded provided that relevant procedures are performed.

Transfer of real estate

Real estate in Romania may be freely transferred, subject to certain procedural formalities and legal restrictions.

On 1 October 2011, Law 287/2009 on the New Civil Code came into force. As of that date, a new rule was established in relation to the transfer of real estate in Romania. Thus, the right of property or to any immovable assets may be acquired via registration in the Land Book (with certain exceptions expressly stipulated under the law).

The registration should be based on (i) Notarized written agreements attesting transfer of ownership, (ii) Irrevocable court rulings, (iii) An inheritance certificate or (iv) Other documents issued by the administrative authorities.

However, under Law 71/2011 on the implementation of the New Civil Code, these provisions on ownership registration in the Land Book become applicable only after completion of cadastral measurements in each territorial unit and after the creation of land books for the relevant immovable assets.
If real estate rights, other than a property right, are acquired, such as easements, usufruct, right of superficies etc, these rights may also be granted only under notarized documents and further to their registration in the Land Book.

Property rights may also be acquired: (i) By “accession” i.e. anything that is added by another party to a landowner’s property, for instance, planted in or built on the land in question, will be presumed to belong to that landowner (ii) By prescription, following the lapse of a certain period of time.

According to the Romanian Constitution, foreigners and legal entities are allowed to own land in Romania under the conditions set out following Romania’s EU accession or resulting from international treaties, on a reciprocity basis, under the terms and conditions set out by internal laws, as well as via legal inheritance.

Since 1 January 2014, foreign individuals and legal entities from EU member states have been entitled to acquire and own farming land, forests and forest land in Romania (based on Law no. 312/2005, which stated that this right would apply seven years after Romania’s EU accession).

On 1 January 2012, the 5-year term prohibiting the acquisition of land for secondary residences or offices by individuals and legal entities from EU member states who are not residents of Romania lapsed.

Nevertheless, it is still a common practice for foreign individuals/legal entities to acquire land indirectly through corporate vehicles set up in Romania.

Following the lapse of the prohibition on the acquisition of agricultural land by individuals and legal entities from EU member states on 1 January 2014, the Romanian Parliament adopted a law on the measures governing the sale of agricultural land (Law no. 17/2014). The law stipulates that individuals and legal entities from EU/EEA member states and Switzerland may acquire agricultural land. The law also states that the sale of land should be made in accordance with the provisions of the Civil Code, as well as with the observance of the pre-emption right of co-owners, lessees, neighbours, and the state under equal price and in equal conditions. However, there are no restrictions on the acquisition of buildings by foreign individuals and legal entities and consequently, they have a right of use of the land on which the building has been erected (under the New Civil Code the right to use the property may be granted for at most 99 years). In addition, foreigners may also benefit from a usufructuary right to land located in Romania.
Land registration

As mentioned above, under the New Civil Code provisions, ownership right over any immovable assets (with certain exceptions expressly stipulated under the law), is acquired via registration in the Land Book. Similarly, ownership right over an immovable asset is extinguished via de-registration from the Land Book.

However, until the rule above becomes applicable, registration with the Land Registry is made for enforceability purposes. Thus, registration of property titles in the Land Books kept by the local offices of the Agency for Cadastre and Land Registration makes the ownership right public and enforceable against third parties, i.e. registration is presumed to be accurate and complete until otherwise proven. Registration with the Land Registry does not guarantee a potential invalidation/nullity of a deed of transfer.

Another role played by the Land Registry is to keep a record of all mortgages and other real estate collaterals and liens covering a certain property. Under Law no 7/1996 on real estate publicity, any interested person is entitled to obtain a land book excerpt from the Land Registry for information purposes (“open door policy”). In order for sale purchase agreements to be notarised, authentication excerpts issued by the Land Registry must be obtained. This document, which is valid for only 10 working days after it has been requested, typically provides such information as to who the owner is, the assets and surface owned, whether there are any mortgages, privileges, easements or encumbrances, etc. However, this excerpt is not an absolute proof of ownership. Therefore, the performance of a legal due diligence to validate title to the property to be acquired is strongly advisable.

Fiduciary agreements

As of 1 October 2011 (the date when the New Civil Code came into force), a new institution became applicable in Romania – Fiduciary Agreements.

Fiduciary agreements create the possibility for any person to transfer rights, property rights included, to one or several fiduciaries to exercise such rights for a predetermined purpose, for the benefit of one or several beneficiaries. In order to be validly concluded, the agreement must be signed in notarized form and must give details about the rights transferred, term of transfer, identity of the parties involved, as well as the purpose of the fiduciary agreement and the extent of the fiduciary’s powers of administration and disposition of property.
The obligation to register the fiduciary agreement with the relevant tax authorities to enable them to assess the amounts due to the state budget falls to the fiduciary.

In order to be opposable to third parties, fiduciary agreements must be registered with the Electronic Archive for Secured Transactions. Property rights forming the object of fiduciary agreements must also be registered in the Land Book.

**Restitution of land**

Following the enforcement of the restitution laws, currently around 90% of the agricultural land in Romania is privately owned and, according to some sources, the percentage is even higher for land located inside city limits.


The legislative framework for land restitution saw significant amendments during 2013 through the entry into force of Law 165/2013 on the measures for the finalization of the restitution process, in kind or in equivalent, of immovable property abusively taken over during the communist regime in Romania, subsequently amended. (The last amendment was on 31 December 2015). As a general rule, former owners benefit from restitution in kind of their former properties. However, if restitution claims may no longer be solved by restitution in kind, the following compensatory measures apply: compensation through points (one point is valued at 1 RON) or compensation with assets of equivalent value. The Ordinance also states that all restitution claims must be solved by 1 January 2017, and that possession of the land must be granted and ownership titles issued by that date.

Even if claimants potentially entitled to file restitution claims under specific restitution laws (such as Law no. 10/2001) have not asserted such claims, under the Romanian Civil Code they are theoretically entitled to reclaim their former properties, without any statute of limitations being applicable. Nevertheless, a high burden of proof is required in such legal actions and according to general rules; such claims are not admitted if previous claims have been filed by the same individuals/their successors under specific restitution laws.

Another solution adopted by the Romanian Government for property restitution was the establishment, under Title VII of Law No. 247/2005 and
Concession of Public Property

According to Government Emergency Ordinance no. 34/2006 and Government Emergency Ordinance no. 54/2006, public works, services and/or assets representing public property of the state or its administrative units can be subject to concession.

Such concession rights can be acquired under a public tender or by direct negotiation and can be granted for a period of up to 49 years (in the case of assets), during which the concession beneficiary must make investments and develop the property under concession. A concession agreement may be extended for a maximum period equal to half of the initial concession term.

By way of exception and only for a limited period, public authorities may grant non-profit making legal entities or public service companies the right to use public property, free of charge, under certain conditions.

Financing Real Estate Investments - Law 190/1999 on mortgage loans, as amended

Aimed at encouraging real estate developers, this law lays down special rules on loans for real estate investments, derogating from the common rules. However, the provisions of the New Civil Code and the New Civil Procedure Code remain applicable as a general regulatory framework governing credits and security interests. Also, since the entry into force of Government Emergency Ordinance 50/2010 on consumer credit agreements, Law 190/1999 is wholly applicable only to agreements concluded with legal entities, only some of its provisions still being applicable to credit agreements concluded with individuals.

Thus, mortgage loans are granted by institutions authorized in accordance with the provisions of Law 190/1999.
Loans must be secured by a mortgage set on the building which is being financed or on equivalent properties. Moreover, a mortgage may also be set over future real estate. This mortgage may be registered in the Land Book provided that the building permit have previously been registered in the Land Book.

The law also sets out specific protection rules for borrowers, such as the possibility of an advance repayment or negotiation of the interest rate.

**Developing Real Estate**

Development of real estate projects is subject to specific legislation (mainly Law no. 50/1991 on the authorization of construction works and its Application Norms) under which certain authorizations must be obtained from public authorities. Thus, in the case of construction sites, developers must obtain an urban planning certificate and a building permit. The urban planning certificate must be obtained before the building permit. In general, the urban planning certificate contains the list of special permits and/or approvals to be obtained before starting the project, as well as information concerning the location, current landowners, rights in favour of public utilities, zoning conditions and general conditions concerning the constructions to be built (such as air rights etc). Among such requirements it is also stated that the builder should, as a general rule, perform an assessment of the environmental impact of the project (including organizing a public consultation). However, the law stipulates that this assessment is not required to obtain a demolition permit.

Once the conditions provided under the urban planning certificate have been met, a building permit must be obtained. The permit is issued by the local authorities and lays down the specific conditions for the construction site in question.

In addition, depending on the activity to be carried out in the built area, specific authorizations may be required (for utilities etc).

**Other legislation with potential impact on the real estate market**

According to Law 372/2005 on the energy performance of buildings, which took effect on 1 January 2011, a sale/acquisition/lease of buildings can be made only provided that an energy performance certificate is obtained. Absence of such a certificate may invalidate the sale agreement. In general, the certificate is valid 10 years as of its issuance date. In November 2008, Law 260/2008 on the mandatory insurance of buildings against earthquakes, landslides and floods, was published in the Official Journal of Romania. Even
though this law became applicable only in 2011, currently all owners of buildings are required to conclude these mandatory insurance agreements. If a person is also interested in concluding an optional insurance policy, this policy cannot be concluded if the interested person does not also have a mandatory insurance policy.
CHAPTER 7
EU Funding

Since joining the EU in 2007, Romania has had access to Structural Funds (ERDF and ESF), Cohesion Funds and agricultural and fisheries funds of around EUR 33.5 billion in total (out of which approximately EUR 19.2 billion came under the Convergence objective, EUR 8.3 billion were for agricultural and fisheries funds, and EUR 455 million came under the European Territorial Cooperation objective).

By the end of January 2016, Romania reached an effective absorption rate of Structural and Cohesion Funds (SCF) of about 59%, with interim reimbursements from the European Commission (without advance payments) of EUR 11.21 billion. In a country-by-country comparison, Romania ranked last but one among EU Member States in terms of EU funds absorption. The SCF absorption rate by operational programs (OPs) as at 31 January 2016 is outlined below:

<table>
<thead>
<tr>
<th>Program</th>
<th>Effective absorption rate (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase of Economic Competitiveness SOP</td>
<td>59.07</td>
</tr>
<tr>
<td>Human Resources Development SOP</td>
<td>49.26</td>
</tr>
<tr>
<td>Regional OP</td>
<td>63.91</td>
</tr>
<tr>
<td>Environment SOP</td>
<td>57.93</td>
</tr>
<tr>
<td>Administrative Capacity Development OP</td>
<td>82.00</td>
</tr>
<tr>
<td>Technical Assistance OP</td>
<td>72.72</td>
</tr>
<tr>
<td>Transport SOP</td>
<td>61.12</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>58.86</strong></td>
</tr>
</tbody>
</table>

*Source: Ministry of European Funds*

Better results have been achieved in case of EU funds available for rural development and agriculture, where the absorption rate currently stands at 88%.

Although the overall performance is poor, it should be noted that there is still room for improvement as the current level of interim payment claims submitted by the Certifying Authority to the European Commission has already reached around 70%. We expect further improvement by the end of June 2016.

In addition, the Romanian authorities have already prepared a list of major projects to be phased out for the next programming period to ensure availability of the financing sources for their complete implementation.
Furthermore, a list of retrospective projects (initially financed under national schemes, to be subsequently included in EU-funded programs) has been prepared by the Romanian authorities in order to increase the absorption rate of SCF corresponding to the 2007-2013 framework.

**European Structural and Investment Funds**

With a Common Strategic Framework to provide the basis for better coordination between the European Structural and Investment Funds (ERDF, Cohesion Fund and ESF as the three funds under the Cohesion Policy, as well as the Rural Development and Fisheries funds), the EU’s strategy is to achieve better inter-connection with other EU instruments like Horizon 2020, the Connecting Europe Facility, as well as the Programme for Employment and Social Innovation.

The newly reformed Cohesion Policy, which will make available up to EUR 340 billion, will target innovation and research, the digital agenda, support for small and medium-sized businesses (SMEs) and the low-carbon economy (energy efficiency and renewable energy), priority Trans-European transport links and key environmental infrastructure projects, as well as employment (through training and life-long learning, education and social inclusion), etc.

The ex-ante conditions (or, more specifically, the conditions to be met before funds can be channelled) represent a new feature in the EU’s approach to improving efficiency in the use of funds. According to the regulations, for each of the conditionalities, a strategy and related action plan(s) must be provided no later than 31 December 2016.

The macroeconomic conditionality provides additional leverage for the EU to ask Member States to modify programmes to support key structural reforms, with the possibility to suspend access to EU funds if serious and repeated breaches in respecting economic recommendations are noticed.

**Romania. Allocation of funds, Partnership Agreement and OPs**

During the current programming period (2014-2020), Romania will receive an indicative total allocation of approximately EUR 32.96 billion from Structural and Cohesion Funds, Rural Development and Fisheries funds and from Cross-border cooperation programs and the Connecting Europe Facility. Out of this, EUR 22.98 billion will be allocated to the operational programs financed from the Cohesion Policy and EUR 8.13 billion will relate to the National Program for Rural Development.

The indicative financial allocation for the 2014-2020 period is outlined below:
Several priorities were identified in the Partnership Agreement, in correlation with the conditionalities brought in by the regulations: transport infrastructure, environment infrastructure, business environment, risk management and climate change, education, social inclusion as well as land registration.

The Partnership Agreement approved by the European Commission in August 2014 has already established a set of simplifying measures to facilitate the absorption of EU funds. Thus, the institutional configuration corresponding to the 2014-2020 framework has been compressed:

- The Ministry of European Funds is the managing authority for the Large Infrastructure OP, the Competitiveness OP, the Human Capital OP and the Technical Assistance OP.
- The Ministry of Regional Development and Public Administration is the managing authority for the Regional OP, the Administrative Capacity OP, as well as for the European cross-border territorial cooperation programs;
- The Ministry of Agriculture and Rural Development is the managing authority for the National Program for Rural Development and the Fisheries OP.

The key features of several operational programmes covered by the Cohesion Policy are summarized below:

**OP Competitiveness**

This programme is intended to increase the efficiency of Romanian companies, bringing them closer to the EU average. This is an operational programme which can be accessed as well by private companies. OP Competitiveness particularly supports research, technological development, innovation, and e-economy.
**OP Human Capital**

The general objective of this programme is to develop human capital and increase competitiveness on the labor market. Companies and particularly suppliers of training may be eligible for funds under OP Human Capital.

**OP Large Infrastructure**

The Programme will bring together environmental projects, road and other transport modes and major energy projects. Eligible applicants for the environment and transport sectors are public authorities and state companies (for example, for road projects, the beneficiary would be the National Company for Motorways and National Roads in Romania in its capacity as administrator of the road transport infrastructure). For energy, private companies are also eligible to apply for funding. However, clear eligibility criteria will be provided to potential beneficiaries which seek funding under this OP.

Interdependence between different sectorial interventions is a sine-qua-non condition. For example, ESI funding should not duplicate other types of interventions like granting green certificates or the cogeneration bonus for energy efficiency or low-carbon energy production.

**Regional Operational Programme**

This programme fosters the steady development of Romanian regions and the reduction of economic differences between them by improving the business environment and infrastructure. In general, these funds are intended for public authorities.

**Agriculture Funds**

Two agriculture funds are available to support the Common Agricultural Policy, as follows:

- The European Agricultural and Rural Development Fund (EARDF), contributing to structural reform of agriculture and development of rural areas; and
- The Operational Programme for Fisheries and Maritime Affairs (OP FMA) supporting structural measures in this field and “accompanying measures” of the Common Fisheries Policy (CFP).

The interventions proposed for the agriculture sector will be integrated with the competitiveness strategy in supporting the economic growth model. One
example is the development of ITC infrastructure in rural areas, to be financed from agricultural funds.

By the end of January 2016, the European Commission had already approved all financing programs through which Romania will receive EU Funds corresponding to the 2014-2020 programming period. However, more than two years of the current programming period have passed with no results in terms of absorption, which puts an incredible amount of pressure on the Romanian authorities. Only a limited number of calls for proposals were launched in 2015, most of them being expected to be opened by the end of December 2016.
CHAPTER 8
Labor regulations and employment standards

Relationships between employers and employees are governed by the Labor Code and by collective bargaining agreements. In addition, there are other labor regulations on specific issues such as work protection, the social security system, social dialogue, etc.

Employment documentation

Employment contracts

Generally, work in Romania is performed under individual employment contracts concluded for an indefinite term (with prior notice periods for both parties). These contracts usually contain clauses setting out duties, work hours, overtime (if applicable), benefits, holiday entitlement etc. The contract also stipulates the gross monthly salary and any guaranteed bonuses or incentives. In addition to these clauses, the parties can negotiate and include other specific clauses in the contract, such as: professional training, mobility, confidentiality and non-competition.

Work can also be performed under employment contracts concluded for a fixed term, contracts with a temporary job placement agency (staff hiring), part time employment contracts and work-at-home contracts. However, such contracts can be concluded only under certain specific conditions as provided by the Labor Code, republished and further amended.

Registration formalities

According to Decision 500/2011, every employer is required to establish and send to the local Labour Inspectorate a General Employees’ Registry and to present it to the labour inspectors, if so required. This Registry is kept in electronic format at the employer’s headquarters.

Specific employees’ data (such as date of employment, position, type of employment contract, etc.) must be entered in the General Employees’ electronic Registry and sent to the local labour inspectorates within certain legal deadlines.

Otherwise, non-fulfilment of this obligation leads to fines for the employer ranging between RON 5,000 and 10,000 (approximately EUR 1,130- 2,270).
Employers must also have a personal file for each employee, keep it in good condition at their headquarters and present it to labor inspectors, if required.

For the latest information on entry and immigration requirements see KPMG in Romania’s RoVisa Express iPad app, available in the Appstore. http://bit.ly/12usWxH

Work Permits

All foreign nationals, except citizens of EU/EEA member states and Switzerland, require a work permit to be employed in Romania. The permits are issued by the Romanian General Inspectorate for Immigration in accordance with Government Ordinance no. 25/2014 on the employment and secondment of third-country individuals in Romania, amending and supplementing certain legislative acts concerning the status of foreigners on the territory of Romania (“GO 25/2014”). However, there are certain categories of foreigners listed under GO 25/2014 who may work for Romanian individuals and/or legal entities without obtaining a work permit.

A work permit is a document under which a national of a non-EU/EEA member state or Switzerland is entitled to work in Romania for a specific position, for one employer only, for up to twenty-four-month period and can generally be renewed. The validity of the work permit is given by the employment contract and/or residence permit / EU blue card. However it cannot exceed 1 year, when the foreigner holds a residence permit, or 2 years, when the foreigner has an EU blue card. The work permit will be automatically extended along with the residence permit or EU blue card. The work permit is also automatically cancelled when the employment contract ceases.

Moving from one company to another involves obtaining a new work permit even if the existing one has validity remaining, except for work permits granted to seconded employees, seasonal employees as well as nominal work permits.

There are different types of work permits issued to non-Romanian nationals, depending on their employment structure while in Romania. Specifically, work permits for permanent employees are issued for indefinite or definite periods of time to non-Romanian nationals who intend to conclude employment contracts with only one Romanian employer. Highly-skilled qualified foreign workers will be granted specific work permits for highly-skilled workers, which grant the right to be employed in Romania in a highly-skilled position based on a valid employment contract concluded for a minimum of one year. Work permits are also issued for seconded
employees who are non-Romanian nationals and are nationals of non-
EU/EEA member states or Switzerland, employed by non-Romanian
employers and seconded to work in Romania. This type of work permit is
issued for a maximum of one year at a minimum time interval of 5 years
based on a secondment decision issued by a foreign employer.

If a non-Romanian individual who is a national of non-EU/EEA member
states or Switzerland wishes to continue to work in Romania after the initial
twelve-month period of secondment, then he or she must obtain a work
permit for permanent or highly-skilled employees and conclude a local
employment contract with a Romanian employer.

Nationals of EU/EEA member states or Switzerland are not required to
obtain Romanian work permits to carry out dependent activities in Romania.

Under current Romanian immigration legislation, individuals who are
nationals of non-EU/EEA member states or Switzerland who are employed
by EU/EEA/Swiss-based employers and are assigned to work in Romania are
no longer required to obtain work permits, provided that they are issued
residence permits in the EU/EEA member state from which they have been
assigned to Romania (or in Switzerland).

The documents required to obtain a work permit include a formal
application, original degree certificates/diplomas, medical certificate, clean
police record, travel documents with a long-stay visa for employment or
other purposes and numerous other formal documents. Once the filing
formalities have been completed, an application for a work permit is
normally approved within 30 days of its registration.

**Employment Standards**

Employees’ rights, i.e. working hours, minimum wages, statutory holidays,
paid holidays and paid maternity leave are governed by the applicable
Romanian legislation.

The normal working program is 8 hours/day and 40 hours/week. There are
12 legal holidays, although additional days off can be legally granted on a
yearly basis (e.g. the Monday after Christmas if the statutory holiday falls on
a weekend day). The legal holidays are 1, 2 January, 1 May, Easter Monday
(Orthodox), the Monday after Pentecost (normally 7 weeks after Orthodox
Easter), 15 August (Assumption Day), 30 November (Saint Andrew), 1
December (National Day), 25 and 26 December (Christmas).
At present, the minimum gross base salary is RON 1,050 (approximately EUR 235). This amount is consistent with a full-time working program of approximately 170 hours per month, representing approximately RON 6.17/hour. From 1 May 2016, the minimum gross base salary will be RON 1,250 (approximately EUR 280), RON 7,382/hour. The establishment by the employer of a monthly base salary for its employees below the minimum wage can lead to fines of between RON 1,000 and 2,000 (approximately EUR 227-454).

Full-time employees over the age of 18 must be granted a minimum of 20 days paid holiday per year.

**Occupational health and safety**

The regulations on occupational health and safety were issued in 2006 (Law 319/2006 and the corresponding application Norms), clarifying employers’ obligations to assess the risks posed to workers’ occupational health and safety and to develop a prevention and protection plan.

Under the Labor Code, an employer is legally required to periodically ensure the training of employees in work protection, health and safety. This training is mandatory for new employees, employees changing their place of work/function or for those who begin their activity after a work interruption of longer than 6 months. Under the law, the establishment of an Occupational Health and Safety Committee is mandatory for employers which have more than 50 employees.

For employers with less than 50 employees, the law states that the duties specific to the Occupational Health and Safety Committee should be fulfilled by a person designated for this purpose by the employer.

There are a number of regulations applicable to specific fields of activity. These regulations ensure the implementation of relevant European directives and cover various areas of activities and risks (i.e. the extracting industry, fishing, risks posed by chemical agents, risks generated by electromagnetic fields, etc.)

**Termination of individual employment contracts**

According to the Romanian Labor Code, employment contracts can be terminated only in cases specifically provided by law. The provisions of the Labor Code governing employment contracts restrict the contractual freedom of the parties in certain cases, e.g. termination of agreement by the employer.
If an individual employment contract is terminated by the employer (for reasons not pertaining to the employee and when the employee is deemed physically or mentally unfit or professionally unsuitable), employers are required to give the employee a minimum of 20-working days prior notice. In some circumstances set out under an individual employment contract and/or the applicable collective bargaining agreement, employers may also be required to give the employee additional severance payments. Also, in accordance with the Labor Code, employees dismissed for reasons not pertaining to their individual professional performance are entitled to benefit from active measures aimed at reducing unemployment.

**Protective measures for employees subject to collective layoffs**

The Labor Code as well as the applicable collective bargaining agreements and secondary legislation provide some specific measures aimed at protecting employees whose individual employment contracts are terminated due to collective layoffs.

In addition, Law 67/2006, in effect as from 1 January 2007, ensures employees’ protection where the undertaking, or a unit or part of it is transferred to another employer.

According to Law 67/2006, a transfer does not represent in itself a valid reason for individual or collective dismissals by either the transferor or the transferee. The rights and obligations arising from the employment contract or employment relationship existing at the date of transfer are also transferred to the transferee.

**Collective Bargaining Agreements and Trade Unions**

Companies with more than 21 employees must negotiate collective bargaining agreements with their employees on an annual basis although they are not required to actually conclude collective bargaining agreements. The duration of collective negotiations cannot exceed 60 calendar days, except otherwise mutually decided by the parties.

Refusal by the employer to initiate negotiation of the collective bargaining agreement may trigger fines ranging between RON 5,000 and RON 10,000 (approximately EUR 1,100-2,200).

Collective bargaining agreements can also be concluded at different levels (i.e. unit level, group of units, business sector).
Usually, collective bargaining agreements set out the mutual obligations and rights in connection with the following issues:

- Salaries.
- Working conditions.
- Social security.
- Dispute settlement mechanisms.
- Protection of trade union leaders.
- Miscellaneous rights and obligations of employers and employees.

Collective bargaining agreements also focus on other benefits, such as ticket/canteen meals and employees’ events.

A collective bargaining agreement is concluded for a fixed period of minimum 12 months and cannot exceed 24 months. Upon expiry of the agreement, the parties may decide to extend its term only once within at most 12 months, or may work out an entirely different arrangement. Collective agreements and addendums to these contracts are always concluded in written form, are registered with the local labor authorities and are applicable as of their registration with the appropriate authority or as of a subsequent date as established by the parties.

A collective bargaining agreement cannot be unilaterally terminated.

Trade unions in Romania can be organized by reference to an industry or an employer, based on the labor union concept, or by reference to jobs classification, organized as craft unions.

**Labor disputes**

Law 62/2011 on Social Dialogue sets out the procedure to be followed in labor disputes. According to this law, labor disputes are now divided into collective labor conflicts and individual labour conflicts.

The procedure for solving collective labor conflicts involves three steps as follows:

- When a conflict of interest has been openly declared, conciliation procedures are initiated by a representative of the Ministry of Labor, Family, Social Protection and the Elderly or of the local labour inspectorate.
- If the conciliation attempt fails, mediation can be sought, subject to the parties’ mutual agreement.
- Arbitration can be resorted to at any time during a collective labour conflict, by mutual agreement of the parties.

The first step is compulsory, while the other two are left to the parties' choice. Nevertheless, mediation and arbitration of a collective labor conflict are mandatory if the parties have agreed to them, prior to initiating a strike or during a strike.

As long as a collective bargaining agreement is in force, employees cannot initiate collective labor conflicts.

A strike (defined as a collective and voluntary work stoppage within a unit), can be declared only if the mandatory procedures provided by law for the settlement of a collective labor conflict have been exhausted, after the initiation of a warning strike and if the starting date of the strike has been communicated to the employer at least 2 working days in advance. According to the law, there are 3 types of strike: warning strike, full strike and solidarity strike.

Individual labor conflicts are settled by the courts of competent jurisdiction.

Employees' demands are assessed under a special emergency procedure (the hearing term cannot exceed 10 days).

**Social contributions**

The components of social security costs, in accordance with Romanian legislation, are outlined below.

According to the Law on the Social Security Budget, social security contribution rates are as follows:

- 26.3% (15.8% paid by the employer and 10.5% paid by the employee) for normal work conditions.
- 31.3% (20.8% paid by the employer and 10.5% paid by the employee) for difficult work conditions.
- 36.3% (25.8% paid by the employer and 10.5% paid by the employee) for exceptionally difficult work conditions.

The rates apply to the salary fund, capped at 5 times the average gross salary multiplied by the number of insured employees during the month in question (currently, the average gross salary is RON 2,681).

Employees under 35 years of age must register with a mandatory private pension fund. In 2016, a 5% contribution corresponding to a privately
administered pension fund is included in the employees’ social security contribution of 10.5%.

**Social Health Insurance System**

The current contribution to the health insurance fund is due by both employers and employees. The health insurance contribution is currently 5.2% for employers, whereas the employees’ health insurance contribution is 5.5%.

**Unemployment Benefit Insurance**

The Romanian government administers a national unemployment insurance system which provides short-term benefits for employees made redundant. Employers contribute 0.5% of the total monthly gross salaries fund and employees contribute 0.5% of their monthly gross salary. Employers are required to collect employees’ contributions and remit them to the State fund on behalf of their employees.

**Work Accidents and Occupational Diseases Insurance**

Law no. 346/2002 governs a system aimed at covering the risks of loss/reduction of work capacity or death related to work accidents and occupational diseases.

The insurance contributions due by employers or individuals (optional insurance) are set in relation to tariffs and risk categories so as to cover (i) Cost of services rendered; (ii) Expenses incurred for prevention of work accidents and illness; (iii) Administrative expenses.

The contribution rates due by employers range between 0.15% and 0.85% of the gross income, depending on the risk category.

**Medical Leave and Allowance**

The current contribution rate for medical leave and allowances (due by employers) is 0.85% of the salary fund, capped at 12 times the minimum gross salary multiplied by the number of insured employees during the month in question (the minimum gross salary will be RON 1,250 as from 1 May 2016).
Salary Guarantee Fund
To ensure employees’ protection in the event of an employer’s insolvency, Law no. 200/2006 provides for the creation of a fund to be used to guarantee the payment of salary debts. The contribution rate due by employers is 0.25% of the monthly gross income.
CHAPTER 9

The legal system

Broadly, the Romanian legal system stems from the Roman branch of law, but it is also partly influenced by the Anglo-Saxon branch. Moreover, Romanian legislation has been mostly aligned with EU legislation, considering the country’s accession to the EU as a Member State as from 1 January 2007.

The Constitution

The Romanian Constitution took effect in December 1991 and was revised in 2003, in preparation for EU accession. The Constitution provides strong support for the fundamental principles of private property and free market exchange, as well as explicit limitation and control of powers vested in public authorities. The amendments made in 2003 include the guarantee of private property as well as recognition of the rights of foreign citizens and stateless persons to privately own land in Romania under certain conditions, as well as by way of lawful inheritance.

Citizens’ rights and duties set out in the Constitution are generally typical of those applying in democratic countries, such as freedom of speech, freedom of religion and movement as well as protection against arbitrary arrest and imprisonment. The Constitution states that citizens of national minorities with a significant population in local administrative units are entitled, under special circumstances, to use their mother tongue in their relations with local public administration authorities and local public service providers. The constitutionality of parliamentary legislation (i.e. laws, parliamentary regulations and government ordinances) and international treaties and/or agreements is subject to control by the Constitutional Court.

Body of Laws

(a) Civil Law

The Civil Code, which came into force on 1 October 2011, is based on multiple sources of inspiration from many systems of law, e.g. civil codes of France, Italy, Quebec, Switzerland, and Unidroit Principles. For the first time in Romania, the 2011 Civil Code regulates certain institutions, such as trusts, parties’ permission to set prescription terms for their obligations etc., and modifies the effects of certain legal actions.

The 2011 Civil Code also repeals the distinction between civil and commercial matters, encompassing regulations for legal entities insofar as their
establishment and operation are concerned, along with other important commercial rules.

Romanian law also closely follows the provisions of the Geneva Convention of 1930 with respect to negotiable instruments such as checks, drafts/bills of exchange and promissory notes. Since 1989, Romania has extensively expanded its body of laws concerning civil and commercial matters to ensure greater flexibility in the country’s private law system and to adapt it to the market economy.

A new Civil Procedure Code took effect on 15 February 2013. This includes significant amendments to the procedural practices regulated by the former code, aiming to improve efficiency and the speed of legal proceedings. Significant amendments include: (i) Amendments to courts’ jurisdiction (ii) Extension of the second/final appeal terms to 30 days, (iii) Compulsory enforcement cases, with the possibility for various categories of creditors, expressly provided under law, to intervene in the relevant procedure initiated by another creditor.

(b) Criminal Law

The new Criminal Code (Law 286/2009) came into force on 1 February 2014, replacing the former code that was adopted in 1968. The new Criminal Code creates a more coherent legal framework by avoiding duplication of rules through norms set out under the special laws as well as by transposing the regulations adopted at European Union level into national criminal legislation, thus harmonizing criminal legislation with the systems existing in other European Union member states.

The main issues which are regulated under the new Criminal Code include: (i) The regulation of house arrest, (ii) The replacement of the former system of punishment for criminal offences committed by legal entities with the system of penalty per day (Romanian: sistemul zilelor amendă), (iii) The introduction of the possibility of plea bargaining for legal entities as well as for individuals etc.

The new Criminal Procedure Code (Law 135/2010) also came into force on 1 February 2014. The new Criminal Procedure Code includes significant amendments to the procedural practices regulated by the former code, aiming to reduce the length of trials, simplify criminal judicial procedures, and protect fundamental human rights, observing the principles of fair criminal trial in line with international standards and the requirements of European Court of Human Rights case-law.
One significant amendment which has been included by the new Criminal Procedure Code involves the separation of judicial functions in a criminal trial, by introducing the notions of preliminary chamber judge as well as of judge of rights and freedoms, mainly with regard to the situations when preventive measures need to be taken.

However, from the entry into force moment of the Criminal Procedure Code, the Constitutional Court of Romania issued several decision setting that several provisions of the Code are unconstitutional, such as unconstitutionality of enforcement proceedings authorization by bailiffs.

**Judicial System**

According to the Constitution and the Civil Procedure Code, the Romanian judicial system comprises: local courts (Romanian *judecătorii*), tribunals (Romanian *tribunale*), tribunals of specialized jurisdiction (Romanian *tribunale specializat*), courts of appeal (Romanian *curți de apel*) and the High Court of Cassation and Justice. As a general rule, local courts and tribunals act in first instances depending on the type and value of the dispute, while the courts of appeal judge first or final appeals. The High Court of Cassation and Justice is Romania’s Supreme Court. It deals with final appeals to decisions made by the courts of appeal in first or second instances, as well as having a relevant role in providing a unitary and unifying interpretation of legislation at national level.

Under the new legislation on the judicial system, tribunals of specialized jurisdiction are constituted for specific matters by Order of the Ministry of Justice. Upon the legal incorporation of these tribunals, all pending legal cases on matters which fall under their jurisdiction are sent *ex officio*.

**Commercial Arbitration**

Romania is a signatory party to the New York Convention of 1958 on the recognition and enforcement of foreign arbitration awards. The International Commercial Arbitration Court functions in Bucharest and applies rules similar to the Arbitration Rules or rules agreed by the litigating parties. Arbitration in Romania is regulated by the Civil Procedure Code, which is adjusted to the current requirements on arbitration initiation and organization, imposed by European Union legislation.
Recognition and enforcement of foreign courts’ decisions

Since Romania’s accession to the European Union on 1 January 2007, the recognition and enforcement of foreign judgments depends on whether they have been made inside or outside the European Union.

Judgments given in civil and commercial matters in another EU member state are recognized in Romania in accordance with Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters as well as Council Regulation 805/2004 creating a European enforcement order for uncontested claims. A judgment made in an EU Member State, enforceable in that state is also enforceable in Romania, subject to fulfilment of certain specific procedures.

For judicial actions initiated after 10 January 2015 and the ensuing court rulings, there will be an automatically recognition of the capacity of writ of execution, as per the provisions of Regulation (EU) 1215/2012 (which has repealed former Regulation (CE) 44/2001), whereby the rulings of any court of an EU Member State are deemed to be directly enforceable throughout the EU, without any further formalities.

The procedure for recognition and enforcement of judgments made in a non-EU country is set out under the specific provisions on international private law under the Civil Code and Civil Procedure Code. Under these legal provisions, Romanian courts may not examine a case or amend foreign awards issued by foreign judicial or arbitration courts. A Romanian court may only verify the fulfilment of the conditions for recognition or enforcement of such awards.
CHAPTER 10
Protection of intellectual and industrial property rights

Romania is a signatory to international conventions on intellectual and industrial property rights. The EU Accession Treaty lays down specific provisions that reaffirm Romania’s commitment to internationally agreed rules in this field.

Copyright

Romania is a member of the Bern Convention on Copyrights and a signatory party to the WIPO Copyright Treaty. The Romanian copyright framework is governed by Law 8/1996. These regulations ensure a uniform framework for copyright and related rights, laying down certain limits in the application of protective measures. Law 8/1996 has undergone significant amendments in recent years, as several European Union Directives have been transposed into national legislation, further to which the legal framework has been restructured and redefined. Several issues have been addressed, such as rights of database creators, technical measures for protecting the rights recognized by law as well as measures to combat the manufacture, import, or distribution of pirated merchandise.

Law 8/1996 governs copyright issues relating to literary, artistic, scientific or other similar works, including software, scientific projects and documentation, audio-visual works, architecture, graphic and plastic art works, digital art works, etc.

In 2015, Law no. 210/2015 was introduced, which transposed the EU legal framework regarding orphan works, laid down under Directive 2012/28/EU. Within the meaning of this law, works and phonograms are considered as orphan works if none of the right holders of the work or phonogram is identified or, even if one or more of them is identified, none of the right holders is located despite a diligent search for the right holders having been carried out and recorded in accordance with the legal provisions of the law. Copyright is assigned to the author of a work and involves moral and patrimonial rights, with copyright protection taking effect as from the creation of the work. The patrimonial rights related to copyright last for as long as the author lives and, generally, after the author’s death they are transmitted to his/her heirs for an additional 70-year period. The New Civil Procedure Code, in effect since 15 February 2013, has amended several procedural aspects, while the New Criminal Code, in force since 1 February
2014, made some amendments with respect to the crimes and offences set out under Law 8/1996.

Patents

Romania is a party to the 1883 Paris Convention for the Protection of Industrial Property, having ratified all the amendments, and to the 1973 European Patent Convention. In order for an invention to benefit from legal protection, the inventor must obtain a patent certificate, issued by the State Office for Inventions and Trademarks (OSIM). The procedure for registering patents with OSIM, as well as the rights and obligations deriving from these patents are governed by Law 64/1991.

Patents have a 20-year validity. Law 255/1998 provides a special legal framework for the protection of plant species, also based on a patent certificate. The provisions of Regulation no. 2100/94/EC on Community plant variety rights are also applicable. Certain procedural aspects have been amended through the adoption of the New Civil Procedure Code, while the New Criminal Code, in force since 1 February 2014, has amended some issues related to the crimes and offences provided under the law.

Utility models

The legal framework governing the protection of industrial property has been supplemented, with the introduction under Law no. 350/2007 of a new tool intended to ensure the protection of inventions, i.e. the utility model.

The utility model ensures the protection of technical inventions only, and only products benefit from such protection. Consequently, inventions consisting of procedures or methods are not covered. According to Art. 7 of Law no. 350/2007, a utility model can be protected for a maximum of 10 years consisting of a first 6-year term followed by renewal of protection for at most two consecutive 2-year terms. Several procedural aspects have been amended by the New Civil Procedure Code, while the New Criminal Code amended some aspects related to the crimes and offences provided under the law.

Trademarks

Romania is a signatory party to the 1894 Madrid Agreement on International Registration of Trademarks, to the 1883 Paris Convention for the Protection of Industrial Property, and a party to the Community Trademark System administered by the Office for Harmonization in the Internal Market. Trademarks and their protection are regulated under Law 84/1998, which
transposes into national law Directive 2008/95/EC to approximate the laws of the Member States relating to trademarks and which sets out the procedure for registering trademarks with OSIM, the priority rights recognized and the rights and obligations deriving from trademark protection.

Such protection can also apply to international trademarks registered under the Madrid Protocol and the Madrid Arrangement. Likewise, trademarks registered in Romania may benefit from international and EU protection.

A trademark is generally protected for 10 years, and its validity may be subsequently extended for equal periods.

Drawings and models

The protection of drawings and models in Romania is governed by Law 129/1992, which has undergone significant amendments, especially with regard to certain procedural aspects, (e.g. procedural time limits or examination procedure). This Law transposes the provisions of Directive 98/71/EC on the legal protection of designs. Council Regulation (EC) no. 6/2002 on Community designs is also applicable, ensuring the protection of Community designs and models in Romania. Under the regulations, community protection of a design / model can be obtained via the filing of an application directly with the Office for Harmonization in the Internal Market or via OSIM.

Drawings and models are protected for 10 years from the registration date. The term may be extended for three consecutive 5-year periods. The registration of drawings and industrial models is similar to the registration procedure provided in respect of trademarks.

On-the-job inventions

A legislative novelty in this field was the adoption in 2014 of Law no. 83/2014 regarding on-the-job inventions (in Romanian, “inventii de serviciu”).

The Law applies to inventions designed by an individual inventor or a group of inventors, provided that the individual inventor or at least one member of the group of inventors is an employee of a private or public legal entity. Furthermore, the Law is applicable where either (a) the technical solution is the result of work performed by the inventor in the exercise of duties under an inventive mission, or (b) the technical solution has been developed by
using the employer’s resources, as a result of the inventor’s professional
training and qualification at the employer’s cost, etc.

The provisions of the Law will be applicable to technical solutions that can
be protected under an invention patent or utility model.

Under the Law, employers are required to establish, under specific internal
regulations, the criteria for setting inventor employees’ remuneration.
Moreover, where on-the-job inventions have been developed by employees
working for public legal entities whose object of activity includes research-
development, the Law states that the inventor employee is entitled to a
percentage of the revenues generated by the employer which may not be
lower than 30%.
CHAPTER 11
Accounting

Changes in Romanian accounting rules over the last few years have moved Romanian accounting closer to International Financial Reporting Standards (IFRS), although there are still some significant differences.

The Romanian accounting system is based on Law no. 82/1991, republished in the Official Journal of Romania no. 454 of 18 June 2008 (the “Accounting Law”). The provisions of the Accounting Law are applicable to:

- Private companies
- State companies, *regii autonome*, as well as national research and development institutes
- Cooperatives
- Public institutions
- Non-profit organizations
- Other legal entities
- Individuals authorized to carry out independent activities
- Foreign branches and representative offices of Romanian legal entities
- Romanian branches and representative offices of foreign entities

The Accounting Law serves as a framework while detailed guidance, including on the content and form of the financial statements, applicable accounting principles, recognition and measurement rules for financial statement items as well as the chart of accounts to be used by legal entities, is provided by Order of the Ministry of Public Finance no.1802/2014 (“Order 1802”) which approves the accounting regulations on annual individual financial statements and annual consolidated financial statements. Order 1802 partially transposes European Directive 2013/34/EU of the European Parliament and of the Council and took effect from 1 January 2015.

Order 1802 is applicable to all companies, except for entities operating in financial services and entities whose securities have been admitted for trading on a regulated market, for which specific accounting regulations have been issued as follows:

- Accounting regulations compliant with IFRS approved by Order of the National Bank of Romania no.27/2010, applicable to credit institutions.
- Accounting regulations compliant with IFRS approved by Order of the Ministry of Public Finance no.1286/2012, applicable to entities whose securities have been admitted for trading on a stock exchange.
Accounting regulations compliant with European Directives approved by Order of the National Bank of Romania no. 6/2015 applicable to non-banking financial institutions, payment institutions, electronic money institutions and to the Guarantee Fund for Bank Deposits.

Accounting regulations compliant with European Directives approved by Norm of the Insurance Supervisory Commission no. 41/2015 applicable to entities in the insurance/reinsurance industry.

Accounting regulations compliant with European Directives approved by Norm of the Private Pension System Supervisory Commission no 14/2015, applicable to entities in the private pension system.

Accounting regulations compliant with International Financial Reporting Standards approved by Norm no. 39/2015 applicable to entities authorized, regulated and supervised by the Financial Supervisory Authority.

**Accounting Records**

The main accounting principles are as follows:

- Double-entry bookkeeping is generally applicable.
- As an exception, single-entry bookkeeping is maintained by certain categories of entities such as representative offices of foreign entities and individuals authorized to carry out independent activities. However starting 2015, these entities can apply for double-entry bookkeeping.
- In principle, the financial year starts on 1 January and ends on 31 December, with the exception of the first year of operation when the financial year begins on the date of formation.
- Branches or subsidiaries of a foreign company may adopt the financial year of the parent company, except for credit institutions, non-banking financial institutions, insurance and reinsurance companies and other entities operating under the supervision of the Financial Supervisory Agency.
- Accounts are maintained in the Romanian language and in RON; foreign currency transactions are accounted for both in RON and in the foreign currency.
- Accounting records are stored for a ten year period, starting from the closing date of the financial period for which the documents were prepared, except for payroll records which are maintained for fifty years.
- Order 1802 details a specified chart of accounts to be used by legal entities and includes directions for the mapping of individual accounts to the balance sheet and income statement templates. The accounts are grouped in the following categories:
Annual Financial Statements

The Accounting Law states that the preparation of annual financial statements is compulsory. The form and content of the annual financial statements is prescribed by the Ministry of Public Finance or by the other regulators for the entities under their supervision.

In general, companies are required to prepare their annual financial statements and to submit them to the local offices of the Ministry of Public Finance, on paper and in electronic format, or only in electronic format, within 150 days of the closing of their financial year.

Order 1802 establishes a set of size criteria according to which entities are required to submit either regular or abridged financial statements. The entities defined by Order 1802 in terms of size are:

- Microentities are those that, at the date of the financial statements, do not exceed the limits of at least two out of the following three criteria:
  - Total assets – EUR 350,000
  - Net turnover – EUR 700,000
  - Average number of employees – 10

These entities are required to submit only abridged financial statements.

- Small entities are those that, at the date of the financial statements, do not exceed the limits of at least two out of the following three criteria:
  - Total assets – EUR 4,000,000
  - Net turnover – EUR 8,000,000
  - Average number of employees – 50

These entities are required to submit an abridged balance sheet, extended income statement and explanatory notes. The presentation of the statement of changes in equity and the statement of cash flows statement is optional.
• Medium-sized and large entities are those that exceed the limits of at least two out of the following three criteria:
  - Total assets – EUR 4,000,000
  - Net turnover – EUR 8,000,000
  - Average number of employees – 50

These entities and public interest entities are required to submit extended financial statements that also include information about payments towards the Government and other specific information requested by the Ministry of Public Finance.

Public interest entities are national entities/ companies, entities controlled by the state and autonomous administrations.

In all cases, the annual financial statements are accompanied by the administrators’ report. This report provides comments on the entity’s current year activities and on its financial position, as well as a description of the main risks and uncertainties faced by the entity.

The principles of going concern, consistency, prudence, accrual based accounting, separate measurement of asset and liability items, intangibility, non-offsetting between asset and liability items, materiality, measurement at purchase price or production cost and substance over form must all be observed in preparation of statutory financial statements. Any departure from these principles is seen as being exceptional and requires disclosure in the explanatory notes, indicating the reason for departure and its impact on assets, liabilities, financial position and profit or loss for the period.

**Consolidated Financial Statements**

The requirements for preparation of consolidated financial statements are set out in Order 1802.

An entity is required to prepare consolidated financial statements and a consolidated administrators’ report if that entity (a parent entity) is part of a group of entities and meets one of the following conditions:

(a) Has a majority of the shareholders’ or members’ voting rights in another entity named subsidiary.

(b) It is a shareholder in or member of a subsidiary and has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of that subsidiary.
(c) It is a shareholder in or member of a subsidiary and has the right to exercise a dominant influence over that subsidiary, under a contract entered into with that entity or to a provision in its memorandum or articles of association, where the law governing that subsidiary permits its being subject to such contracts or provisions.

(d) It is a shareholder in or member of a subsidiary and the majority of the members of the administrative, management or supervisory bodies of that subsidiary who have held office during the financial year, during the preceding financial year and up to the time when the consolidated financial statements are drawn up, have been appointed as a result of the exercise of its voting rights or,

(e) It is a shareholder in or member of a subsidiary and controls alone, pursuant to an agreement with other shareholders in or members of that subsidiary, a majority of shareholders’ or members’ voting rights in that subsidiary.

A parent entity is exempt from the preparation of consolidated financial statements if the entity is part of a small and medium-sized group as defined below:

- Small and medium-sized groups are groups that include a parent company and its subsidiaries that will be included in the consolidation process and, on a consolidated basis, do not exceed the limit of at least two out of the following three criteria:
  - Total assets – EUR 24,000,000
  - Net turnover – EUR 48,000,000
  - Average number of employees – 250

The exemption above does not apply where one of the companies to be consolidated is a public interest entity.

However, a parent entity, including a public interest entity, unless the public interest entity has issued securities admitted to trading on a regulated market, which is also a subsidiary of a parent company headquartered in Romania, is exempted from preparation of consolidated financial statements in the following two cases:

a) Where the parent company of the exempted entity holds all of the shares in the exempted entity. The shares in the exempted entity held by members of its administrative, management or supervisory bodies as pursuant to a legal obligation or an obligation in its memorandum or articles of association are ignored for this purpose;
b) Where that parent company of the exempted entity holds 90% or more of the shares in the exempted entity and the remaining shareholders in or members of the exempted entity have approved the exemption.

Consolidated financial statements are prepared within 8 months of the end of the financial year. Consolidated financial statements approved by shareholders must be submitted to the Ministry of Public Finance within 15 days of their approval.

**Application of IFRS in Romania**

Application of IFRS as the basis of accounting and preparation of financial statements compliant with IFRS is compulsory for credit institutions. Entities whose securities have been admitted for trading on a regulated market, except for entities under the supervision of the Romanian Financial Supervision Authority, apply IFRS as approved by Order 1286/2012 as the basis of accounting and in preparation of their individual/separate financial statements.

Entities authorised, regulated and under the supervision of the Financial Supervision Authority apply IFRS as the basis of accounting and in the preparation of financial statements as approved by Norm no. 39/2015.

Entities whose securities have been admitted to trading on a regulated market, as well as entities under the supervision of the National Bank of Romania or of the Romanian Financial Supervision Authority, are required to prepare their consolidated financial statements in accordance with IFRS, where applicable. All other public interest entities may prepare their consolidated financial statements in accordance with IFRS or with the European Seventh Directive as transposed by Order of the Ministry of Public Finance no. 1802/2014. This is applicable also for the entities, other than public interest entities, that are required to prepare consolidated financial statements.

The relevant legislation includes:

- Accounting regulations compliant with IFRS approved by Order of the National Bank of Romania no. 27/2010, applicable to credit institutions.
- Accounting regulations compliant with IFRS approved by Order of the Ministry of Public Finance no. 1286/2012, applicable to entities whose securities have been admitted for trading on a stock exchange.
- Accounting regulations compliant with IFRS approved by Norm no. 39/2015, applicable to entities authorized, regulated and supervised by the Financial Supervisory Authority.
CHAPTER 12
Competition in Romania - Main legal issues

Relevant legislation

Since Romania’s accession to the European Union, competition has been governed by both domestic and EU legislation.

The relevant domestic legislation on merger control (control of economic concentrations), anti-competitive agreements, concerted practices and abuse of dominant position includes the Competition Law (no. 21/1996, as republished and further amended), as well as the secondary legislation issued by the Competition Council. The main regulatory document regulating national state aid procedures is Government Emergency Ordinance no. 117/2006, as further amended.

The Competition Law applies, subject to certain conditions, to all companies (regardless of their nationality) in connection with activities performed in Romania or outside Romania, if these activities have an effect on competition in Romania, as well as to central or local public administration authorities involved in economic operations and influencing, directly or indirectly, competition on a certain relevant market.

Competition Authority

The Competition Council is an autonomous administrative authority responsible for secondary legislation in the competition field, and the enforcement of competition regulations in Romania. The Competition Council has been very active over the past few years, issuing a significant number of regulations and guidelines, frequently opening ex officio investigations on various competition related issues.

Main issues

The main issues to be considered with respect to competition matters are:

1. Merger control (control of economic concentrations)
2. Cartels and collusion (anti-competitive agreements between undertakings, decisions by associations of undertakings and concerted practices)
3. Abuse of dominant position
4. State aid
Merger control (control of economic concentrations)

The underlying principle is the prohibition of economic concentrations that would raise any significant obstacles to effective competition on the Romanian market or on a substantial part thereof, especially by way of creating or consolidating a dominant position.

According to the Competition Law, an economic concentration involves a lasting change of control resulting from operations such as the merger of two or more previously independent undertakings or part thereof, or the acquisition of direct or indirect control by one or more undertakings or by individuals who already control at least one undertaking over other undertaking/s via shares/assets/contracts/etc.

Control may be exercised by one entity (sole control), or by two or more entities that agree to adopt important decisions in connection with the entity they control (joint control).

An internal restructuring within a group of companies/undertakings does not represent an economic concentration for the purposes of the Competition Law.

Concentrations exceeding certain turnover thresholds must be notified to, and assessed by the Competition Council. The current thresholds, the level of which is periodically subject to amendment by the Competition Council depending on market development, are as follows: (i) a worldwide aggregated turnover of EUR 10,000,000 in RON equivalent generated by the undertakings involved and (ii) a turnover of EUR 4,000,000 in RON equivalent generated in Romania by each of at least two of the undertakings involved in the operation. International transactions that produce effects in Romania must also be notified to the Competition Council if the above criteria on turnover thresholds are met. Turnover is assessed for the year preceding that in which the operation was performed and the applicable exchange rate is that published by the National Bank of Romania for the last day of the same year. As a general rule, a concentration which exceeds the above turnover thresholds may not be set up until the Competition Council has approved it.

Where there is an obligation to notify the Competition Council, this notification must be made:

- By each of the parties involved, in the case of mergers;
- By the party acquiring control, in any other case.
Economic concentrations are authorized to operate, provided that they are proved to be compatible with a normal competitive environment and the Competition Council has adopted a non-objection decision in this respect. The criteria for evaluating this compatibility are: (i) the need to protect, maintain and develop effective competition on the Romanian market or part of it, (ii) the position on the market of the parties to the concentration and their financial and economic strength, (iii) the alternatives available to providers and users, their access to supply sources or markets and any other legal or other barriers to market entry, etc.

Economic concentrations may also be approved under certain conditions, subject to commitments to be undertaken by the parties involved, such as the assignment of an undertaking’s activity to an adequate buyer, termination of an undertaking’s contractual relationships with its competitors, termination or amendment of exclusive clauses in certain contracts etc.

Additional procedural rules are enforced under regulations issued by the Competition Council.

**Cartels and collusion (with reference to anti-competitive agreements and concerted practices)**

As a rule, agreements between undertakings, decisions by associations of undertakings and concerted practices that are aimed at or result in the restriction, prevention or distortion of competition on the Romanian market or on significant parts thereof (such as price fixing, limitation of or exercising control over production, technical development or investments, market sharing, etc.) are prohibited.

**Exemptions**

As a general rule, anti-competitive prohibitions do not apply in certain cases, for example:

- If the cumulated market share of the parties to an agreement does not exceed 10% in any of the relevant markets affected by the agreement, when the agreement is concluded between undertakings that are competitors or potential competitors on one of these markets;

- If the market share of each of the parties to an agreement does not exceed 15% in any of the relevant markets affected by the agreement, when the agreement is concluded between undertakings that are neither competitors nor potential competitors on any market, etc.
In addition, certain agreements, decisions and concerted practices can benefit from block-exemptions provided under the applicable EU regulations (e.g. certain categories of research and development agreements containing restrictions of competition falling within the scope of Article 101(1) of the Treaty, certain categories of specialisation agreements, etc.).

However, some categories of agreements between undertakings which would qualify for certain exemptions under the Competition Law, are prohibited, regardless of the cumulated market share held by the parties to the agreement in question, if they contain restrictions which, according to the Competition Law, are deemed to be serious (e.g. agreements between competitors to set the selling price of products to third parties; agreements between non-competitors imposing restrictions in terms of territory to be covered or clients to whom the buyer may sell goods or services, etc.)

**Abuse of dominant position**

Holding a dominant position on the Romanian market or on a substantial part thereof is not prohibited by the Competition Law, but only the abusive use of this position through certain practices, such as the direct or indirect imposition of unfair purchase or selling prices or other unfair trading conditions and refusal to deal with certain suppliers or customers, the application of dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, or making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the object of these contracts etc.

According to the Competition Law, an undertaking is presumed to hold a dominant position if its market share on the relevant market, in the period subject to investigation, exceeds 40%.

**State Aid Control**

Following Romania’s accession to the European Union, the EU legal framework on state aid has become directly applicable in Romania. Therefore, as a general rule, granting and implementing state aid in Romania is now subject to the European Commission’s prior approval, inasmuch as the state aid falls under the legal notification requirements. The Competition Council plays the role of liaising authority between the European Union and the authorities/beneficiaries of state aid and provides professional assistance in the field of state aid (by drafting documents to ensure that the specific conditions are met, etc.).
According to Romanian legislation and EU law, state aid consists of any supportive measure that meets all of the conditions below:

- It is granted by the state from state resources, irrespective of form.
- It is selective.
- It ensures a benefit to the enterprise in question.
- It distorts or threatens to distort competition or affects trade among the European Union Member States.

In principle, state aid is provided in a variety of forms such as grants, interest and tax relief, guarantees or the provision of goods and services on preferential terms etc.

The Treaty on the Functioning of the European Union generally prohibits state aid unless, for instance, it is justified by reasons pertaining to general economic development. In this respect, state aid granted in Romania is subject to the notification of and prior approval by the Commission (notification is made via the Romanian Competition Council).

However, not all state aid is subject to the notification requirements and the prior approval of the Commission. Thus, according to the *de minimis* rule, state aid not exceeding the equivalent of EUR 200,000 over three fiscal years is not subject to the notification of and prior approval by the Commission. (In the road transport sector the threshold is EUR 100,000).

The *de minimis* rule does not apply to undertakings acting in certain fields set out under the EU regulations, such as fishery aquaculture, the coal sector and primary production of certain agricultural products. In addition, certain categories of state aid may be exempted from the notification and authorization requirements, provided that the conditions set out under the block exemption regulation are met. This regulation creates exemptions for the following types of state aid: aid for small and medium-sized enterprises, aid to promote employment, aid in the form of risk capital, aid for environmental protection, aid for research, development and innovation, as well as aid for disabled and disadvantaged workers.
Penalties provided by law for non-compliance with legal provisions on competition

Deliberate or negligent failure to notify economic concentrations or the implementation thereof without obtaining clearance from the Competition Council may lead, among other things, to fines of up to 10% of the total annual turnover for the year preceding the penalty.

Deliberate or negligent failure to comply with the rules on anticompetitive agreements, decisions of undertakings and concerted practices may trigger fines of up to 10% of the total annual turnover for the year preceding the penalty. In addition, individuals with management positions within a company who have a significant role in creating/implementing an anticompetitive agreement, a decision of an association of undertakings or a concerted practice may become subject, under certain conditions, to criminal penalties (leading possibly to up to 3 years imprisonment).

Deliberate or negligent failure to comply with the rules on the abuse of dominant position may trigger fines of up to 10% of the total annual turnover of the year preceding the penalty.

Any state aid illegally granted or abusively used must be reimbursed along with related interest.
CHAPTER 13
Environmental protection

General provisions

Environmental legislation was first introduced in 1991. Since then, it has been developed to comply with the standards imposed by the European Union. Some of the Romanian environmental norms (e.g. the quality of wastewater discharged into surface water sources) are stricter than the EU rules, to protect the already existing polluted environment. Currently, EU environmental regulations have been transposed into Romanian legislation and any new EU norm is automatically applicable in Romania, as an EU Member State. However, the Romanian Government negotiated and obtained the EU’s approval for transition periods (3 to 12 years from Romania’s accession to the EU) in relation to 11 Directives on the environment, but these concern major environmental matters at national level (e.g. water and wastewater quality, waste management, Integrated Pollution Prevention and Control – IPPC, currently the Industrial Emissions Directive 2010/75/EU – IED also transposed into Romanian legislation) and do not apply to companies set up after 1990.

Environmental legislation

Romanian environmental legislation consists of framework laws and specific laws that regulate various environmental protection aspects.

The main environmental law is Emergency Ordinance (EO) 195/2005 on Environmental Protection, approved under Law 265/2006, which sets out the general responsibilities and obligations of companies operating in Romania and also of the environmental authorities.

According to current legislation, legal entities must obtain an environmental authorization to perform certain activities considered to have an environmental impact, which are established under a Ministerial Order. This authorization sets out companies’ obligations to comply with applicable environmental norms. In the event of non-compliance, an environmental compliance program (applicable only in connection with the topics covered by the Directives in respect of which Romania obtained transition periods) is agreed with the environmental authorities, including measures to be implemented during a certain timeframe. If the related measures are not implemented within the agreed period, the local authority sends a notification to the company in question and if the problem is not resolved within the following 30 days from receipt of the notification, the authority
suspends the environmental authorization for up to 6 months. During this period, the company may not carry out its activities and if it still fails to resolve the situation within this time interval, the environmental authority may suspend the company’s operations. Companies which do not benefit from transition periods, and which have not agreed compliance programs with environmental authorities, should comply with environmental laws and regulations, as no operation is allowed in the case of non-compliance.

The environmental authorization is issued about 90 days after the application. However, environmental regulations also require other permits and authorizations to be obtained (e.g., water management authorization, fire permit, declaration on toxic substances, etc).

Additionally, the environmental law states that a company that is involved in sale of shares stocks, or assets, merger, spin off, concession, dissolution, or liquidation should notify the local environmental authority about the potential transaction. The environmental authority sets the environmental obligations for the company and if that transaction takes place, the environmental obligations can be negotiated between the two parties involved. Within 60 days of the transaction being concluded, the environmental authority should be notified as to the environmental obligations undertaken by each party.

According to Romanian environmental protection regulations, there are two main types of environmental permits for companies:

- **Environmental permit** – a regulatory paper for a proposed project (including an area development plan and program) or for a change or extension of an existing activity. The procedure for obtaining the environmental permit may be simple or complex, depending on the environmental impact of the project in question. Where the project is considered to have a significant environmental impact, an environmental impact assessment report must be prepared by a third party (accredited by the Ministry of Environment, Waters and Forests) as part of the complete procedure. If a new project or the extension of an existing activity is subject to the IED, the related project holder should obtain an integrated environmental permit.

- **The Environmental Authorization** is a regulatory paper for an activity in progress. It must be obtained after a company has been commissioned and it sets out the company’s environmental discharge limits. For the activities subject to the IED, an Integrated Environmental Authorization (IEA) must be obtained instead, which sets discharge limits, as well as the company’s obligation to implement the Best Available Techniques in the industries in which it operates.
The Water Law (No. 107/1996, subsequently amended, is another framework law on environmental protection governing Romanian water resources management.

According to Law 107/1996, the use of water resources (underground and surface water) as well as waste water discharged into a river or lake is regulated under a special permit/authorization (Water Management Authorization) issued by the Romanian Water Authority. The Water Management Authorization sets out the quantity of fresh water required by a company as well as the wastewater quality parameters to be met where a company discharges its waste water into surface water.

A significant number of specific environmental regulations are also in force in Romania that have been updated or developed according to EU regulations and mainly relate to:

- The procedure for the issuance of environmental authorizations and permits: Environmental Permits are issued for projects as well as for significant changes made to activities in progress whereas Environmental Authorizations are issued for activities in progress.
- The procedure for obtaining a Development Consent permit for public and private projects with a potential significant environmental impact, based on the Environmental Impact Assessment (EIA) report.
- The procedure for the development of environmental impact assessment reports on activities with a significant environmental impact.
- Various regulations on waste management (temporary storage deposits, final storage landfill development, collection and disposal of hazardous waste).
- Packaging and packaging waste regulation setting out the recovery and recycling targets for packaging waste, in line with EU Directives in this field. Producers and importers of packaged goods and disposable packaging have annual recovery and recycling targets (annual percentage of packaging put on the Romanian market) that can be met either by companies setting their own collection system or by transferring these obligations to special collection organizations certified in this respect. If the targets are not reached, companies are required to pay an environmental tax of about 0.45 euro/kg of packaging waste not recovered/recycled.
- Regulations on materials containing Polychlorinated Biphenyls (PCBs) as well as materials containing asbestos that are considered hazardous in
terms of human health and the environment and should gradually be disposed of.

- Management of dangerous chemical substances (classification, labelling, packaging, notification, control of activities posing a major accident risk involving dangerous substances); the REACH Regulation on Registration, Evaluation and Authorization of Chemicals effective as from 1 June 2007 in the EU is also applicable in Romania. Where the quantity of manufactured or imported chemicals is 1 ton or more per year, pre-registration with the European Chemicals Agency is compulsory and significant registration fees must be paid. Non-registered chemicals (in quantities specified by REACH) may no longer be produced and used and high penalties are imposed for non-compliance with REACH rules.

- Noise level (outside and inside an industrial area and in residential areas); noise maps have been developed for residential areas and stricter noise level limits have been imposed on companies.

- Emergency Ordinance no. 5/2.04.2015 on electrical and electronic equipment waste (WEEE) transposes into national legislation the requirements of Directive no. 2012/19/EU and repeals Government Decision no 1037/2010. EEE producers must organize the separate collection of WEEE from private households so as to reach an average collection rate at national level of at least 4 kg/inhabitant/year by 31 December 2015. From 1 January 2016, the minimum collection rate is calculated as a percentage ratio between the total weight of WEEE collected in the relevant year and the average weight of EEE placed on the market over the three previous years. The minimum collection rates will be 40% for 2016, 45% for 2017-2020, and 65% after 2020. The Ordinance also sets out EEE producers’ obligation to meet their recovery and recycling targets. The recovery targets range between 70% and 85% of the average weight of equipment while the recycling targets for WEEE range between 50% and 80% of the average weight of equipment, depending on the EEE categories. Producers must ensure the financing of the collection, treatment, recovery and final disposal of WEEE from private households and other users. A producer can choose to fulfil this obligation either individually or by joining a collective scheme. The former obligation of EEE producers to be registered in the National Register of EEE producers, managed by the National Environmental Protection Agency (NEPA), remains valid and also extends to producers supplying EEE by means of distance communication technologies.

- Batteries and accumulators management; the separate collection target (45% by 2016) for batteries and accumulators put on the Romanian
market by producers is set as an obligation by the related regulation (GD 1132/2008). There is also a registration procedure in a special registry of battery and accumulator producers. Special reports on batteries and accumulators must also be provided to the environmental authorities.

- Waste oil management; a requirement for oil producers/importers to pay to the Environmental Fund Administration (EFA) an environmental tax of around 0.07 euro/litre for the quantity of oil placed on the Romanian market is regulated by Emergency Ordinance (EO) 196/2005, with subsequent modifications, on the Environmental Fund.

- GD 170/2004 on waste tires management, requires tire producers/importers to recover and recycle 80% of used tires (expressed as a proportion of their weight). If this target is not met, an environmental tax of about 0.45 euro/kg for the quantities not recovered/recycled must be paid to the EFA.

- Wastewater quality requirements to be met for discharges into municipal sewerage and for discharges into rivers or lakes.

- Discharges into the atmosphere (limits for air emissions and limits for different types of pollutants acceptable in residential areas).

- Drinking water quality (according to the relevant EU Directive).

- Soil quality in sensitive areas (agricultural and residential areas) and industrial areas. This norm regulates the normal, warning and intervention limits for different soil quality parameters. Where the intervention limits are exceeded, the owner of the land may be required to carry out a soil clean-up.

- Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage, transposed into Romanian legislation under EO no.68/2007 as approved by Law no. 19/2008, which sets out the application of “the polluter pays” principle. Government Decision (GD) no. 1408/2007 regulates the assessment of soil and subsoil pollution levels to identify the damage caused and to establish environmental rehabilitation liabilities.

- The revised Emission Trading Scheme (ETS) Directive 2003/87/CE establishing a scheme for greenhouse gas emission allowance trading within the EU and amending Council Directive 96/61/EC, which introduces fully harmonized and EU-wide rules for emission allowances distribution, is applicable also to Romania as an EU Member State. For the third trading period (2013 – 2020) auctioning of allowances is a general rule in the EU rather than an exception. No free allowances are allocated for electricity production (except electricity based on combustion of waste gases). However, Romania is one of the ten Member States (Bulgaria, Czech Republic, Cyprus, Estonia, Latvia,
Lithuania, Malta, Poland, Romania and Hungary) which benefit from limited and temporary options (related to modernization processes or technology improvement – clean technology) for derogation from this rule. Thus, electricity production partly received a free allocation of certificates, but these will be gradually decreased to zero in 2020.

**Environmental Authorities**

The environmental authority at central governmental level is the Ministry of Environment, Waters and Forests (MEWF), in charge of national environmental policy and strategy development. The Romanian environmental legal framework is also developed by the MEWF. The central implementation authority is the National Environmental Protection Agency (NEPA) which coordinates the local environmental authorities and ensures the necessary training process for all parties involved in environmental matters. The Local Environmental Protection Authorities (42 LEPAs) are located in each of Romania’s 41 counties and in Bucharest City. Each LEPA is responsible for the environmental regulatory (authorizing) process of companies doing business in that county. A special authority has been established for the Danube Delta area, the Danube Delta Biosphere Reserve Administration.

The National Environmental Guard (NEG) is the national environmental protection enforcement institution, subordinated to the MEWF. The NEG is represented by a Local Environmental Guard (LEG) in each county and in Bucharest. The LEGs verify compliance with applicable environmental regulations and norms by companies located in the relevant county. For non-compliance, LEGs impose penalties, according to the amount of environmental damage or risk caused by the non-compliance.
The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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