



Investment in **ROMANIA**



2021

KPMG 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 labour force, abundant natural resources, geographical advantages that facilitate transportation of goods and one of the largest markets in Central and Eastern Europe 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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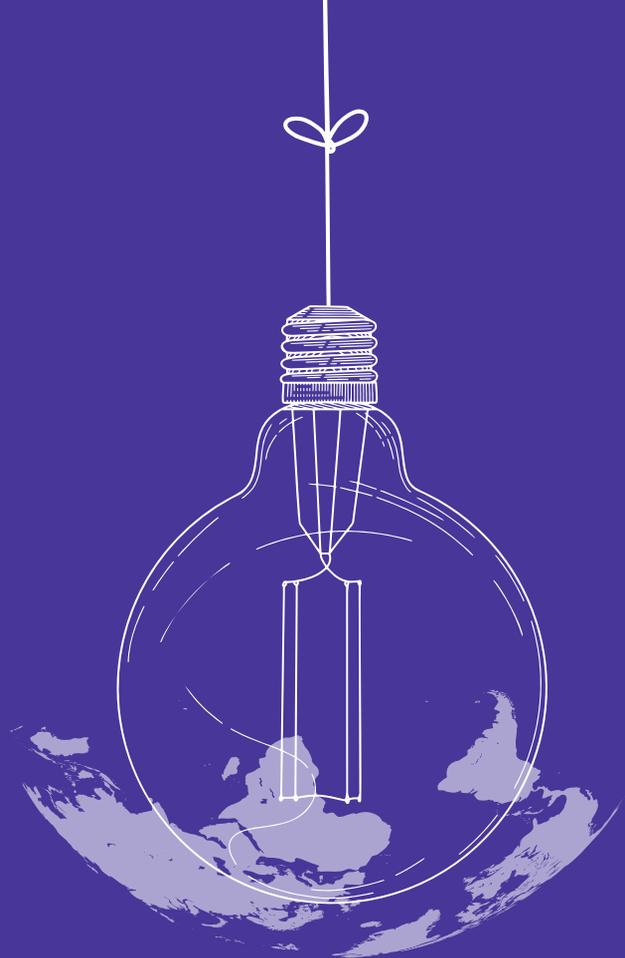
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Romania is a country of considerable natural beauty, with numerous attractions for the visitor. It has seen significant development in the last three decades, particularly since EU accession in 2007.

Romania enjoyed several years of strong economic growth before the pandemic, and there are already encouraging signs of a swift recovery and strong performance over the next few years. The information contained in this document was last updated on 21 April 2021.

CHAPTER 1

General Information about Romania



Passports, Visas and Residence Permits

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, Colombia, Chile, Costa Rica, El Salvador, Grenada, Guatemala, Holy See, Honduras, Hong Kong Special Economic Zone, Israel, Macao Special Economic Zone, Malaysia, Mauritius, Mexico, Moldova, Nicaragua, New Zealand, Panama, Paraguay, Saint Lucia, Saint Vincent and Grenadine, Saint Kitts and Nevis, San Marino, Seychelles, Singapore, South Korea, Tonga, Trinidad Tobago, Uruguay, United Arab Emirates, United Kingdom, Vanuatu and Venezuela, all of whom may stay in the country for 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. Proof of high-skills / qualifications is 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, assignment 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. 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 and by almost all retailers 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 national 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 and Ryanair.

In Bucharest, all flights now use Henri Coanda (formerly Otopeni), which is Romania's main international airport. (The smaller Bucharest Baneasa airport operates exclusively for private business travel). Other major airports in Romania include Bacau, Cluj, Iasi, Oradea, Satu Mare, Sibiu, Suceava and Timisoara. Some are served by international flights and most are connected to Bucharest by domestic services.

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 generally slow, although the Brasov-Bucharest-Constanta route has recently been upgraded and now offers competitive journey times. 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. It 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 most recent census, conducted in 2011, showed Romania's population to be 20,121,641, of which 88.9% 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 3.3% and a small percentage of other ethnic groups. (2011 census figures). The 2021 census has been postponed until 2022 due to covid.

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 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.

English is widely spoken as a second language, and many Romanians also speak other major European languages, e.g. French, Spanish, German etc.

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 synchronised 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 kilometres 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;
- 24 January;
- Good Friday (Orthodox);
- Easter Monday (Orthodox);
- 1 May;
- the Monday after Pentecost (normally 7 weeks after Orthodox Easter);
- 1 June (Children's Day);
- 15 August (Assumption Day);
- 30 November (St Andrew);
- 1 December (National Day);
- 25 and 26 December (Christmas).

Religion

Nearly all the population is Christian according to the 2011 census. Of those who declared a religion, a large majority is Orthodox (86.5%). 4.6% are Roman Catholic and 0.8% are Greco-Catholic. Around 6% belong to various Protestant denominations, the most important of which is the Hungarian Reformed Church (3.2%). Romania also has small Muslim and Jewish communities.

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). Approximate official rates in April 2021:

1 EUR = 4.93 RON 1 USD = 4.10 RON

Sources:

- [The Romanian Statistical Yearbook](#)
- [The official Web site of the National Bank of Romania](#)
- [The official Web site of the Ministry of Transport](#)

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 company:

Limited liability company; (in Romanian, “societate cu raspundere limitata” or “SRL”) whose obligations are secured with the company's assets. The shareholders' liability towards third parties is limited to their contributions to the company's share capital. Only under certain exceptional circumstances (e.g. in the case of fraud of the company's creditors if the shareholders abuse their limited liability and the distinctive legal status of the company), may they become liable without limitation (“piercing the corporate veil”).

Joint stock company; (in Romanian, “societate pe actiuni” or “SA”) 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; (in Romanian, “societate in nume colectiv” or “SNC”), whose obligations are secured with the company's assets and the unlimited and joint liability of the partners.

Limited partnership; (in Romanian, “societate in comandita simpla” or “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; (in Romanian, “societate in comandita pe actiuni” or “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.



CHAPTER 2

Forms of Business Organisation

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 organised under a contract of association and by-laws (which may be concluded as a single document "Constitutive Deed" or "Articles of Incorporation").

According to the Company Law, as republished and subsequently amended, the notarisation of the Articles of Incorporation is compulsory only in the following instances: (i) when real estate is brought as a contribution to the company's share capital; (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, under the simplified registration procedure adopted by Law 359/2004, and they acquire a legal status as of their registration date. The setting-up is acknowledged through (i) the registration certificate issued by the Trade Registry, which specifies the individual registration code granted by the Ministry of Public Finance, and (ii) the ascertaining certificate reflecting the activities which the company is authorised to carry out at its registered address or, as appropriate, at its places of business or those activities which may be carried out by third parties. The latter authorisation is issued based on a statement given by the applicant taking responsibility for legally carrying out the declared activities from the following standpoints:

- environmental protection,
- labour protection,
- health and veterinary health protection.

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 mandatory for the incorporation of any type of company. The shareholders of each type of company must hold at least one meeting per year,

within a maximum of five months after the end of the financial year, to approve the financial statements for the fiscal year which has just closed.

In general, 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 timeframe.

Companies, irrespective of type, are managed by one or several directors. In joint stock companies, if there is more than one director, the directors will form the Board of Directors. In limited liability companies, a Board of Directors will be organised only if the Articles of Incorporation provide for this.

Directors can be individuals or legal entities, appointed either under the Articles of Incorporation, or by the general meeting of shareholders.

Generally, in joint stock companies, directors and members of the Management Board and Supervisory Board may have a maximum 4-year term of office and they can be re-elected if the Articles of Incorporation do not state otherwise. The mandate of the first directors or members of the 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 law;
- (iv) to ensure the enforcement of the resolutions adopted by the meetings of shareholders;
- (v) to fulfil all the duties required by law and by the Articles of Incorporation.

There are no special requirements with respect to the citizenship of a company's

director. However, individuals convicted of certain criminal offences, such as the offences listed under the Law for the prevention and prosecution of money laundering as well as for the adoption of measures for preventing and fighting against the financing of terrorist acts may not be directors, managers, members of the Supervisory Board, members of the Management Board, founders, censors or financial auditors and if they have been appointed to such positions, they will be deprived of their rights.

All types of company 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 from the end of the financial year.

Companies with an annual turnover exceeding RON 10,000,000, representing the equivalent of approximately EUR 2,150,538, are required to publish in the Official Journal of Romania, Part IV, a notice confirming the registration of their financial statements as mentioned above.

For companies with an annual turnover not exceeding RON 10,000,000 the Trade Registry Office will publish for free on its website a notice concerning the registration by companies of their financial statements. 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 company and therefore we will present below the characteristics of these two.





Limited Liability Companies

A limited liability company (LLC, or SRL in Romanian) 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 sole shareholder in more than one LLC. Furthermore, an LLC with one shareholder may not be the sole shareholder of another LLC.

On 2 July 2020, Law no. 102/2020 came into force and amended the Company Law (no.31/1990). It removed the prohibition on legal entities or individuals having the status of sole shareholder in more than one LLC, as well as the prohibition on an LLC with a sole shareholder being a sole shareholder in another LLC.

Further significant changes were made by Law. no. 223/2020, which removed the prohibition on an LLC having a share capital of less than RON 200 (the equivalent of approximately EUR 41), and also removed the obligation to divide the share capital into shares (in Romanian, "parti sociale") with a registered value of at least RON 10 each. Instead, Law 223/2020 imposed a new requirement that an LLC must divide the share capital into shares with equal value.

Both of the aforementioned laws aim to simplify the procedures and conditions for the registration of companies in order to stimulate the business environment. They also included further simplification measures, such as removal of the ban on more than one company operating from the same headquarters, as well as the removal of the requirements to register in advance with the National Agency for Fiscal Administration, to provide a document proving the right of use of the registered office, to register with the Trade Registry or to provide proof of the transfer of shares.

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; to revoke them and to decide upon contracting a financial audit where this is not compulsory according to 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 Articles of Incorporation.

Directors may undertake any operations required for the business of the company, except for the restrictions or limitations set out in the Articles of Incorporation or by the general meeting of shareholders. The Articles 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 in certain cases (e.g. if the company has more than fifteen shareholders). According to the Company Law, an LLC must keep a register of shareholders, to record the shareholders' identity and any share related issues.

Joint Stock Companies

A joint stock company (JSC, or SA in Romanian) can be set up by at least two shareholders. The share capital of a JSC 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 (in Romanian, "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.

Before Law no. 129/2019 on the prevention and combatting of money laundering and terrorist financing came into force, there were two types of shares (marketable titles): nominal or bearer shares. After 21 June 2019 (i.e. the date the aforementioned law entered into force) Romanian companies were required to convert the bearer shares into nominal shares. Ownership of nominal shares can be transferred under a statement made in the corporate register of shareholders, and this transfer must be registered in the share certificate.

The General Meeting of Shareholders may be ordinary or extraordinary. An ordinary meeting is called at least once every year and no more than five months after the end of the previous 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 on the pledging, leasing or dissolution of one or several of the company's business units;

(vii) discuss any other issues on the agenda. In an ordinary general meeting, resolutions are adopted with the majority of the votes cast, on condition that the shareholders, whether present or represented at the meeting, represent at least $\frac{1}{4}$ of the share capital. The Articles of Incorporation may contain a higher quorum and majority. If an ordinary general meeting is unable to adopt the resolutions because the minimum quorum has not been met, the meeting is called for the second time and may then decide irrespective of the quorum, with the majority of the votes cast. For the second calling, the Articles of Incorporation may not contain a minimum quorum or higher majority.

An Extraordinary General Meeting of Shareholders is called whenever it is necessary to adopt a resolution for the amendment of the company's Articles 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, spin-off or dissolve the company can only be taken with a majority of at least $\frac{2}{3}$ of the voting rights exercised by present or represented shareholders, if a higher majority is not stipulated within the Articles 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 irregularities have taken place (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, or a merger or spin-off 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, as well as any proposal concerning the distribution of dividends, starting from 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 analyse 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 appropriate 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, as applicable, 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, depending on 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 (at least 3 directors for companies subject to a mandatory financial audit) who can delegate the company's management to managers and/or the General Manager.

The board of directors may be formed of nonexecutive 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.

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 mandatory for companies whose annual financial statements must be subject to financial auditing. 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 financial accounting 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.

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



Self-employed individuals, individual undertakings or family-owned enterprises

A self-employed individual is merely an individual doing business independently. This 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 and 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 carrying out 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 carrying out of activities in the absence of the relevant registration with the Trade Registry Office or prior to obtaining registration is an offence and is penalised 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 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.

Authorisations 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 may carry out 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 RON, according to the exchange rate of the National Bank of Romania.

A tax on representative offices is payable by any foreign legal entity with a representative office authorised to operate in Romania. The tax is paid on an annual basis. The amount to be paid for a fiscal year is RON 18,000. The representative office of a foreign legal entity is required to declare and pay the tax to the state budget by the last day of February of the tax year.

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 a Romanian entity, the branch is just an extension of the parent company and therefore has no legal status and no financial independence.

Legally, the branch has no separate status from the foreign company itself, but merely carries out its business in Romania. The foreign company is 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 authorised.

Unlike branches, a Romanian subsidiary of a foreign company is a Romanian legal entity and, consequently, subject to Romanian law.

In practice, subsidiaries must fulfil the same registration formalities as companies, i.e. registration of the Articles of Incorporation with the appropriate office within the Romanian Trade Registry.

A subsidiary must comply with the minimum capital requirements set out in the Romanian Companies Law.

Joint Ventures

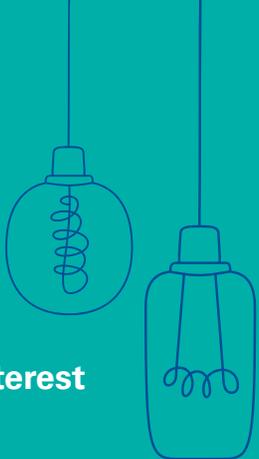
Under the Romanian Civil Code, a joint venture (in Romanian, "Asocierea in participatie") is defined as an agreement under which an individual or legal entity grants to one or several other individuals or legal entities a participation share in the profit and losses generated from one or more operations 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) fulfil 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 in public office, public positions and the business environment and on the prevention and penalisation of corruption, introduced two new forms of association for economic purposes, 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 E.I.G 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; (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 notarised agreement signed by all its members, (in the form of articles 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's activity, the contribution of its members does not need to have a minimum amount and is not restricted to a certain type of contribution.

The operating authorisations 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 Articles of Incorporation.

The members of an EIG are fully and jointly liable for the EIG's obligations assumed towards 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 Articles of Incorporation, or in the absence of such 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 Articles of Incorporation, or in the absence of such provisions, in equal parts. The amounts distributed to the members from 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 organised and operates in Romania under the requirements set out under Council Regulation (EEC) 2137/85 of 25 July 1985 on European Economic Interest Groupings (Regulation 2137/1985).

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

- ✓ Companies as defined under Art. 58 para. 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 required 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.

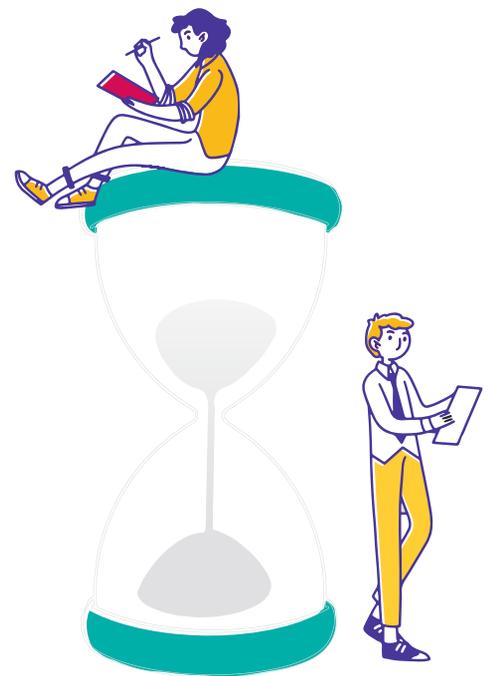
Moreover, an EEIG must include at least:

- ✓ 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 organisation 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's 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 authorisation requirements provided by Decree-Law 122/1990 on the authorisation and operation in Romania of representative offices of companies and foreign economic organisations, as amended.



Social Security Contributions:

Contribution Type	Employee	Employer
Social security (CAS)	25% (applied to gross salary)	-
Social health insurance (CASS)	10%	-
Insurance contribution for work		2.25% (applied to gross salary).

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 1,000,000 by 31 December of the previous year):

- **1%** for companies that have at least 1 employee.
- **3%** for companies with no employees.

The alternative tax on turnover is compulsory, but companies may opt for corporate income tax if their subscribed capital is greater than RON 45,000 and they have at least two employees.

Tax for representative offices: annual **flat tax** of 18.000 RON (about EUR 3,700).

Standard Individual Tax: flat rate of **10%**.

Standard Withholding Tax: **16%**.

CHAPTER 3

Taxation in Romania

Withholding tax on payments to Romanian residents:

Dividends to Romanian resident companies¹
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 companies²
5%

Dividends to non-resident individuals
5%

Interest to non-resident companies³
16%

Royalties to non-resident companies³
16%

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

Tax on capital gains from transfers of securities⁴
16%

Standard VAT rate
19%

Reduced VAT rates
9% and 5%

VAT exempt with credit operations (e.g. intra-Community supplies of goods, export of goods).

VAT exempt without credit operations (e.g. financial services).

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.

Since 1 January 2016, undeclared tax liabilities identified during a tax audit have been 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%**.



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 Under 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 noninterrupted period of at least 2 years).

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



Corporate taxpayers

The following entities are subject to corporate tax in Romania:

- ✓ Romanian legal entities, except for taxpayers subject to the microenterprises tax or specific tax, tax-transparent entities and certain institutions specifically defined in the Fiscal Code (Law no. 227/2015 as further amended).
- ✓ Non-Romanian legal entities that carry out activities through one or more permanent establishments in Romania.
- ✓ Non-Romanian legal entities according to their place of effective management.
- ✓ Non-Romanian legal entities which obtain income from the transfer of ownership or any other rights related to immovable property located in Romania.
- ✓ Legal entities established according to European legislation that have their registered office in Romania.
- ✓ Non-Romanian legal entities operating in Romania through one or more elements treated as permanent establishments, with respect to situations involving the existence of non-uniform treatment of hybrid elements or non-uniform treatment of tax residence.
- ✓ Fiscally transparent entities, in situations that involve the existence of non-uniform treatments of the inverted hybrid elements.

The special tax for taxpayers subject to corporate income tax (i.e. if a taxpayer would qualify for micro-enterprises tax on turnover this special tax cannot be applied) carrying out activities related to hotels, restaurants, catering and bars, is calculated based on the surface area multiplied by a specific fixed tax base (however further adjusted based on certain criteria, such as the city where this area is located, and seasonality).



Tax year and accounting period

- ✓ The accounting and the fiscal year generally follow the calendar year. Taxpayers which have opted for a financial year that is different from the calendar year, according to accounting legislation, may also choose to have a tax year which corresponds to their 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 the current year's results.

For banks, the advance payment system is compulsory. Special rules apply for not-for-profit organisations that record taxable income and for taxpayers that obtain the majority of their income from growing cereals, technical plants and potatoes, orchards and viticulture (the annual tax return must be filed by 25 February of the following year or 25th of the second month after the end of the tax year, if different from the calendar year).



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 and software property or license rights produced/acquired and commissioned during the relevant tax period.
- ✓ Taxpayers carrying out exclusively innovation, research and development activities (as defined by Government Ordinance 57/2002 on scientific research and technological development, as further amended) and closely related activities are exempt from corporate income tax for the first 10 years of operation (in force from January 2017).

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.

As from 2018, a new anti-abuse rule became applicable. This can be applied to any arrangement or series of arrangements which, with regard to all relevant facts and circumstances, are not genuine, and which have been undertaken for the main purpose of, or having as one of the main purposes, obtaining a tax advantage that defeats the object or purpose of the applicable tax law. Such arrangements are to be ignored when calculating the tax liabilities attributed to a taxpayer.

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).

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: 0.75% 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.
- ✓ Net losses arising from assignment of receivables, calculated as the difference between the assignment price and value of the assigned receivables, are deductible up to 30%.

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.

Limitation of deductibility of excess borrowing costs

Excess borrowing costs (calculated as the difference between any debt-related costs, including foreign exchange expenses and capitalised interest, and income from interest and other economically equivalent income) incurred in a fiscal period which exceed the deductible threshold of EUR 1,000,000 will be deductible for corporate income tax

purposes up to the limit of 30% of the calculation base. Nondeductible excess borrowing costs can be carried forward indefinitely. The limitation also applies to any debt-related costs in connection with loans granted by financial institutions.

The calculation base is determined as the gross profit plus corporate income tax payable, plus excess debt related costs and tax depreciation, minus non-taxable income.

If the calculation base is zero or negative, the excess borrowing costs are treated as non-deductible for corporate income tax purposes during the current tax period, but can be carried forward indefinitely.

Excess debt related costs are exempted from applying these limits if they arise from loans used to finance a long-term public infrastructure project for the purpose of providing, improving, operating and / or maintaining a large asset, considered to be of general public interest, and if the project operators are registered in the European Union.

Exit taxation

The taxpayer owes corporate income tax for a transfer of business carried out by a permanent establishment, transfer of assets or transfer of residence. The taxable base should be calculated as the difference between the market value of the assets and their fiscal value.

Controlled foreign company rules

As from 2018, new rules have been introduced on the taxation of controlled foreign companies. A company is considered a controlled foreign company if the following conditions are cumulatively met:

- ✓ The taxpayer by itself, or together with its associated enterprises, holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly more than 50% of the capital or

is entitled to receive more than 50% of the profits of that company; and

- ✓ The actual corporate income tax paid on its profits by the company or permanent establishment is lower than the difference between the corporate income tax that would have been charged for the company or permanent establishment under the applicable Romanian corporate income tax provisions and the actual corporate income tax paid on its profits by the company or permanent establishment.

Under these new rules, a taxpayer should include in its taxable base, in proportion to its holding in the controlled foreign company, the latter's non-distributed income derived from interest or any other income generated by financial assets, royalties or any other income generated from intellectual property rights, dividends and income from the transfer of units, income from financial leasing, income from insurance, banking and other financial activities, income from invoicing companies that earn sales and services, as well as income from goods and services purchased from and sold to associated enterprises, and which add no or little economic value.

Transfer Pricing

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

Since January 2016, large taxpayers which carry out transactions with related parties over certain significance thresholds have been 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 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.

Romanian legislation provides specific requirements on the submission of the Country by Country report and notification obligations relating to the identity and fiscal residence of the reporting entity, for companies that are part of a multinational group which has a total consolidated group revenue of at least EUR 750 million.

These obligations result from the transposition of EU Directive 881/2016 on the mandatory automatic exchange of information on taxation, which follows the recommendations of BEPS Action 13 issued by the OECD. When the headquarters of this type of group is resident in a country outside of the European Union, a secondary filing of the report in Romania may be needed. The fines for late or incomplete submission of the report are significant.

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 EUR 1,000,000 or below.

However, micro-enterprises with a share capital of RON 45,000 or more may opt to pay corporate income tax if they have at least two employees.

Depending on the number of employees, tax rates are:

- ✓ 1% for companies that have at least 1 employee.

- ✓ 3% for companies with no employees.

Micro-enterprises which are involved in sponsorship activities to support non-profit entities and religious organizations, which at the date of conclusion of the contract are signed up in the Register of entities / religious organizations for which tax deductions are granted, as well as micro-enterprises that grant scholarships to students enrolled in dual (practical and theoretical) vocational education, will be able to deduct the corresponding amounts from the income tax of micro-enterprises to the value of 20% of the micro-enterprise income tax due for the quarter when those expenses were incurred.

Personal income taxation

Standard rate: **10%**

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 10% tax rate applies to the following types of income:

- ✓ Income from independent activities
- ✓ Income from intellectual property rights
- ✓ Income from dependent activities
- ✓ Rental income
- ✓ Investment income (except for dividends – 5%)
- ✓ Pension 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

Income from independent activities is taxed at the 10% flat rate.

Since 2018, **income from intellectual property rights** has been regulated under a separate tax regime than that applicable to income from independent activities. The payer of the income (legal entity or other entity required to keep accounting records) must calculate, declare, withhold and pay the following: an income tax of 10% on a calculation base determined by deducting a flat rate of 40% from the gross monthly salary, as well as pension contributions and health contributions (unless the taxpayer is exempted, as is the case for retired people) if the estimated level of income is at least equal to 12 national minimum gross monthly salaries. The filing and payment deadline for income tax and social contributions is the twenty-fifth of the month following that to which the income relates.

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 taxable regardless of where they are paid or received.

Monthly income from a salary is subject to a 10% 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 and medical subscriptions (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 and research and development is tax exempt, subject to certain conditions stipulated by Government Order.

Rental income

Rental income is subject to the 10% flat tax rate. However, a 40% notional deduction is available.

Income from prizes and gambling

Income from prizes is taxed at the 10% flat rate, and is withheld at source by the income payer.

Income from gambling is taxed as follows:

Income	Income tax
Up to 66,750 RON	1%
66,750 RON – 445,000 RON	667.5 RON + 16% for the amount exceeding 66,750 RON
Over 445,000 RON	61,187.5 RON + 25% for the amount exceeding 445,000 RON

Investment income

Capital gains from the transfer of securities (including shares in limited liability companies) are taxed at 10%. 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 10%. 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 10%, 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%, applied to the value which exceeds RON 450,000. If the sale proceeds are less than RON 450,000, no income tax is due.



Mandatory social contributions

Individuals earning income from independent activities are required to pay the social insurance contribution of 25% applicable on a chosen income, which cannot be lower than the national minimum gross annual salary (RON 26.760 for 2020).

A health insurance contribution (10%) is also payable, in certain conditions, by individuals earning income from independent activities, income generated by association with a legal entity, rental income, investment income, income from agricultural, forestry and fishery activities or income from other sources.

The monthly calculation base of the contribution is the national minimum gross monthly salary in force for the month for which the contribution is due. The exemption from payment of the health insurance contribution due on investment income or on income from other sources valid until 2017 no longer applies as from 2018 to individuals who obtain other income such as salaries or pensions.

The payment deadline for income tax, pension contributions and health insurance contributions due on income earned starting from 2020 is 25 May of the year following that in which the income was earned.

The Single Statement

As from 2018, a new form has been introduced, the Single Statement, for the tax income and social insurance contributions due by individuals. The Single Statement replaces seven existing forms and should be filed by individuals earning the following types of income:

- *Income from independent activities.*
- *Income from intellectual property rights.*
- *Income from partnership with a legal entity.*
- *Income from agricultural activities, forestry and fishery activities.*
- *Income from investments.*
- *Income from other sources.*

The filing deadline for the Single Statement is:

- ✓ *30 days as from the start of the activity / obtaining of income during the fiscal year.*
- ✓ *30 days as from the date of the temporary suspension / end of activity or as from the date of qualifying to be included in the category of individuals exempted from paying pension contributions.*
- ✓ *25 May of the year the income is earned, in order to establish the estimated annual income and the pension contribution.*
- ✓ *25 May of the year following that in which the income was earned, in order to finalise the annual income tax and health insurance contribution for the previous year.*
- ✓ *25 May of the year following that in which the income was earned in the case of activity starting during December of the previous year.*

For income earned during 2020 and for finalising 2019, the filing deadline for the Single Statement is 25 May 2021.

By 25 May of the year following that in which income was earned, taxpayers can contribute 3.5% of the income tax due on their taxable annual net income to non-profit

organisations, established according to the law, religious organisations and for private scholarships. The obligation to calculate and pay this amount lies with the relevant tax authority.

By exception, taxpayers who earn income from salary and income treated as such or

income from intellectual property rights may opt for the above amounts to be calculated, withheld and transferred when the income is paid. To exercise this option, the taxpayer should notify the income payer in writing. Once exercised, this option remains valid for a maximum of two consecutive fiscal years.

Employment income

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. The duration of the assignment can be up to 3 years, for foreigners who occupy a management or specialist position, and up to 1 year for foreigners who come as trainee workers and who are transferred within the same company (i.e. so-called "ICT workers").

Certain conditions must be met by this category of assignee, such as that a foreigner who occupies a management or specialist position must have at least 6 consecutive months' experience in the same company or group of companies, whereas trainees must have at least 3 consecutive months' experience within the same company or group of companies. 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 visa and/ or 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 supplied in Romania, except for international transport and related services.
- ✓ Management or consulting fees (irrespective of where the services are supplied).
- ✓ 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 (10%) by the 25th of each month for the previous month.

In terms of social security 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.
- ✓ 10% for the income obtained by individuals resident in an EU Member State or in a state with which Romania has concluded a double taxation treaty.
- ✓ 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 his/her 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 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 through 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.

Albania	Indonezia	Portugal	France	Namibia	UAE
Algeria	Iran	Qatar	Georgia	Netherlands	USA
Armenia	Ireland	Russian Federation	Germany	Nigeria	Uruguay
Australia	Israel	F. R. Yugoslavia	Greece	North Korea	Uzbekistan
Austria	Italy	San Marino	Great Britain	Norway	Vietnam
Azerbaijan	Japan	Saudi Arabia	Holland	Norway	Zambia
Bangladesh	Jordan	Singapore	Hong-Kong	Philippines	
Bosnia-Herzegovina*	Kazakhstan	Slovakia	Hungary	Poland	
Bulgaria	Kuwait	Slovenia	Iceland		
Canada	Latvia	South Africa	India		
China	Lebanon	South Korea			
Croatia	Lithuania	Spain			
Cyprus	Luxembourg	Sri Lanka			
Czech Republic	Macedonia	Sudan			
Denmark	Malaysia	Sweden			
Ecuador	Malta	Switzerland			
Egypt	Mexico	Syria			
Estonia	Moldova	Tajikistan			
Ethiopia	Montenegro**	Thailand			
Finland	Morocco	Tunisia			
		Turkey			
		Turkmenistan			
		Ukraine			

* 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.

On 7 June 2017, Romania joined the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting. The country has included all its double tax treaties which are in force in the list of double tax treaties covered by this convention.

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 18,000 RON. The annual return 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 the EC VAT Directive 2006/112 (the recast of the Sixth VAT Directive).

Romanian VAT legislation uses three different VAT rates:

- ✓ Standard VAT rate: **19%**.
- ✓ Reduced VAT rate: **9%** for food, medicines for human and veterinary use, orthopaedic products, water for irrigation in agriculture, water supply and sewerage, fertilizers and pesticides supply used in agriculture, seeds and other agricultural products for sowing or planting, as well as specific categories of services in connection with agriculture.
- ✓ Reduced VAT rate: **5%** for accommodation, restaurant and catering services, the right to use sport facilities, various types of transport for touristic and leisure purposes, supplies of school books, magazines, newspapers, admission to castles, museums, zoos and botanical gardens, theatres, fairs, exhibitions and cultural events, high-quality (bio) food, as well as supplies of real estate as part of social policy.

Operations subject to VAT

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

VAT registration requirements

Romanian entities

Before October 2017, a requirement to prove willingness and capacity to conduct economic activities, for the purposes of VAT registration of companies, was applicable. Since October 2017, this requirement has been removed and replaced with VAT risk analysis criteria. Taxable persons with a high fiscal risk profile will be denied registration for VAT purposes.

The assessment criteria are subject to a scoring system: the applicant is classified as having a high tax risk profile if its score is below 51 points. The fiscal risk assessment criteria comprise various issues related to the headquarters, insolvency / bankruptcy, fiscal inactivity, temporary inactivity with the Trade Registry, rejection / cancellation of VAT registration, outstanding tax liabilities, minor offences, crimes, income, bank accounts, business activity, third parties, accounting services and employees.

The risk analysis is also carried out by the tax authorities on taxable persons already registered for VAT purposes, based on criteria for assessing the fiscal risk, potentially leading to a default cancellation of the registration for VAT purposes of taxpayers with a high fiscal risk profile. Based on this analysis, re-registration for VAT purposes is possible for taxpayers that no longer have a high fiscal risk profile. The criteria cover various conditions with respect to headquarters, employees, accounting services, reporting discrepancies and tax residence. Romanian entities carrying out economic activities including taxable operations, VAT exempt operations with credit, VAT exempt operations without credit or operations for which the place of supply is outside Romania in excess of the EUR 88,500 threshold are required to register and account for Romanian VAT.

If the annual turnover is below EUR 88,500, 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/not required to register for VAT purposes.

Non-Romanian entities

A taxable person which is not established in Romania, nor registered for VAT purposes in Romania, is required to register for VAT purposes in Romania prior to carrying out operations giving rise to a VAT deduction right, except for operations for which the customer is liable to account for VAT.

Non-resident taxable persons are entitled to opt for VAT registration if they carry out one of the following operations in Romania:

- ✓ Imports 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 these transactions are taxable in accordance with the law or 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, providing that the customer makes available its VAT registration number to the supplier, then the supply should be VAT exempt with credit in Romania.

The acquisition of goods, dispatched to Romania from another EU Member State qualifies as an intra-Community acquisition of goods in Romania, 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 both as input and as output VAT (cash flow neutral).

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.

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 (dispatched from outside the EU), payment of import VAT is actually made to the customs authorities, except for those taxpayers which have applied for and obtained an import VAT deferment payment certificate.

This import VAT deferment payment certificate can be obtained by companies that are VAT registered in Romania and that in the previous 6 months carried out imports of goods (except for excisable goods) with a value exceeding RON 50,000,000 (i.e. about EUR 10,000,000).

Companies that are AEO ("Authorized Economic Operator") certified or hold the Entry Into the Declarant Records customs authorisation are also entitled to apply the import VAT deferment.

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, generally, the place of supply of services to a non-taxable person is where the supplier has established its business, although there are several exceptions.

Generally, if a taxable person purchases certain services from outside Romania and

the services are deemed to be supplied in Romania according to the general rule, the taxpayer 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 a 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 the 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 (as per the fiscal period), by 30th of the month / quarter following the period to which they refer and should include extensive information about all transactions carried out on Romanian territory.

The statement must be submitted, even if the amount is nil.

Intrastat returns

Intrastat returns must be filed on a monthly basis, no later than the 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/to Romania.

Currently, the threshold is RON 900,000 for both intra-Community arrivals of goods and intra-Community dispatches of goods.



VAT deduction

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").

The taxpayer must provide the following documentation in order to deduct the input VAT:

- ✓ An invoice drawn up in accordance with art. 319 par. (20) of the Fiscal Code or
- ✓ An import customs declaration (for imports).

Nevertheless, the taxpayer should be able to demonstrate with appropriate justifying documents the substance of the transactions carried out.

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

The tax authorities may deny the VAT deduction right to taxpayers only if, after checking all available evidence under the law, they can prove beyond any doubt that the taxable person knew or should have known that a transaction involved VAT fraud which occurred upstream or downstream in the supply chain.

VAT cash accounting system

Romanian businesses that obtained a turnover lower than RON 4,500,000, during the previous calendar year, 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

From 1 January 2013, the provisions of Council Directive 2010/45/EC on invoicing rules were transposed into Romanian VAT law, according to which any documents or messages on paper or in electronic format, if in compliance with Art. 319 of the Fiscal Code, are to be considered invoices.

VAT simplification measures

Simplification measures (the reverse charge mechanism) apply to local supplies of the following types of goods/services, if both the Seller and the Buyer are taxable persons, registered for VAT purposes in Romania:

- Ferrous and non-ferrous waste.
- Raw wood.

Temporary simplification measures (until 30 June 2022) apply to supplies of:

- ✓ Cereals and technical plants.

- ✓ Transfers of certificates for emissions of greenhouse gases.
- ✓ Supplies of energy made to taxable persons (electricity traders).
- ✓ Transfers of green certificates.
- ✓ Investment gold, if taxable by option.
- ✓ Buildings, parts thereof and any type of land, if taxable, either by law or by option.
- ✓ Mobile phones.
- ✓ Integrated circuit devices.
- ✓ Games consoles, PC tablets and laptops.

The special scheme for farmers

On 1 January 2017, an optional special scheme for farmers, individuals, sole proprietorships or family enterprises which carry out agricultural activities / services, was introduced. Farmers who opt into the scheme now no longer deduct input VAT, nor do they collect output VAT, regardless of turnover.

Instead, they receive a payment, which was subject to a flat rate of 1% in 2017, 4% in 2018 and 8% from 2019 onwards, so that no VAT should be borne on the purchases of agricultural products / services. Farmers may continue to apply the general VAT regime if they prefer.

Transfer of business as a going concern

A transfer made by a company of all or part of its assets, or liabilities, as a result of a sale, of a contribution in kind to the share capital of a company or of other operations such as mergers and spin-offs, is **not considered a supply of goods from a VAT point of view** (and would represent a transaction outside the scope of VAT), if **the beneficiary is a taxable person established in Romania and certain conditions are met**.

VAT Groups

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 grouping system rules do not exclude from the scope of VAT (or exempt) the transactions carried out between the members of the group.

Instead, the system simply allows the consolidation of the VAT returns of all members, which may bring benefits for the companies' cash flows (as it may possibly lead to a reduction of the payable VAT by offsetting the payable VAT position of one company with the recoverable VAT position of another company from the group).

VAT warehouses

The supply of certain goods which are placed under a VAT warehouse regime is VAT exempt with credit. A VAT warehouse is a location situated in Romania which complies with certain conditions as defined by law.

Furthermore, 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 for being 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.

Since 1 January 2020, the total excise duty for cigarettes has been RON 503,97/1,000 cigarettes. The level of excise duties applicable to the main energy products as is as follows: RON 1,773.46 /1,000 liters for unleaded gasoline, RON 2,085.97/1,000 liters for leaded gasoline, RON 1,625.37/1,000 liters for diesel and

RON 2,262.10 /1,000 liters for kerosene used as motor fuel.

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

Non-harmonised excise duties apply to:

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

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 payable by authorized warehouse keepers, registered consignees or any other legal entity or individual releasing excisable goods from an 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 which will be payable on 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% rate to the value of the excise duties related to the excisable output amounts from the previous year, but this 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 for the guarantee to be provided by traders, depending on the nature of the excisable products. The Commission for the authorization of traders in harmonized excisable goods may approve a request for a reduction in 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.
- ✓ By 100%, if the trader has been operating as an end-user of energy products for the last 4 consecutive years, without breaches of excise duty legislation.

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 time 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 for 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) as well as sales from duty-free shops.

Customs Duties

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

The customs regimes are 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).

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. If the goods are placed under temporary admission with partial relief, 3% of the customs duties become due for each month the goods remain under the arrangement, and should be paid upon discharge of the arrangement.

Under special customs regimes 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 special 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 import VAT in customs if the goods are released for free circulation.

Nevertheless 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 imported goods with a value of at least RON 100,000,000 (around EUR 21,505,376) and

obtained an import VAT deferment payment certificate.

Moreover, traders which are registered for VAT purposes in Romania, and which are either certified as Authorized Economic Operators (AEOs) or authorized for the use of Entry in the Declarant's Records (EIDR) 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 carry out imports of goods followed by intra-Community supplies of the imported goods are also no longer required to guarantee the import VAT.

At present, the applicable legislation on customs duties is the Union Customs Code (Regulation (EU) 952/2013 of the European Parliament and of the Council), which entered into force from 1 May 2016, as well as the Delegated Act (Regulation (EU) 2016/2446), the Implementing Act (Regulation (EU) 2015/2447) and the Delegated Act establishing the transitional rules for operators and customs authorities pending the upgrading or the development of the relevant IT systems to create a fully electronic customs environment (Regulation (EU) 2016/341).

In addition to the Union regulations mentioned above, national legislation is still applicable, i.e. Law 86/2006 on the Romanian Customs Code, G.D. 707/2006 approving the regulation implementing the Romanian Customs Code, as well as the Orders issued by the President of the National Agency for Fiscal Administration.

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

based only on whether the building was owned by an individual or a legal entity).

The following standard tax rates have been applicable since 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. For buildings used in agriculture, the tax rate is 0.4% of the taxable value.

The 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 nonresidential 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.

From 1 January 2021, the tax on buildings/land owned by individuals and legal entities that are used for providing tourist services was reduced by 50%, for a maximum period of 180 consecutive or cumulated days, during a calendar year, in the year following the fulfilment of certain conditions.

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

Other local taxes

1. 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.
2. 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.

Other taxes

Environmental taxes

The most common environmental contributions due in Romania relate to:

- ✓ Packaging related to packed goods and tires placed on the Romanian market (i.e. produced, acquired from another EU Member State or imported), for the difference between the annual recycling/recovery targets set by law and the quantities of packaging waste entrusted for recycling recovery.
- ✓ Hazardous substances placed on the Romanian market (2% of the value of the hazardous substances).
- ✓ Semi-synthetic and synthetic mineral-based oils introduced on to the Romanian market (0.3 RON per kg).
- ✓ Emissions of pollutants from fixed sources (e.g. factories, energy plants), which depend on the type of pollutant.
- ✓ Transport bags, except those made of materials that meet the requirements of SR EN 13432: 2002 (renewable materials) - 0.15 RON per bag. Since the start of 2019, the commercialization of thin and very thin plastic shopping bags made from non-renewable materials has been prohibited.
- ✓ The sale of all types of waste (2% of the income obtained from sales).
- ✓ Contribution to the circular economy payable by owners or, as appropriate, administrators of municipal waste storage facilities, and facilities for construction waste and dismantling, which are destined for disposal by storage (80 RON/ton starting from 2020).
- ✓ Electrical and electronic equipment ("WEEE") and for batteries and portable accumulators ("WB&A") placed on the national market (4 RON/kg and 20 RON/kg for certain categories of WEEE) for the difference between the quantities corresponding to the minimum WEEE/WB&A collection legal targets and the quantities actually collected.

Special taxes are payable by companies in certain lines of business:

1. Insurance and reinsurance.
2. Energy (Electricity, Oil & Gas).
3. Natural Resources.
4. Pharmaceuticals.
5. Media & Telecommunications.
6. Gambling.



Investment incentives

A private investor in Romania may benefit from business aid from both national and EU sources, within the limits allowed by State Aid regulations.

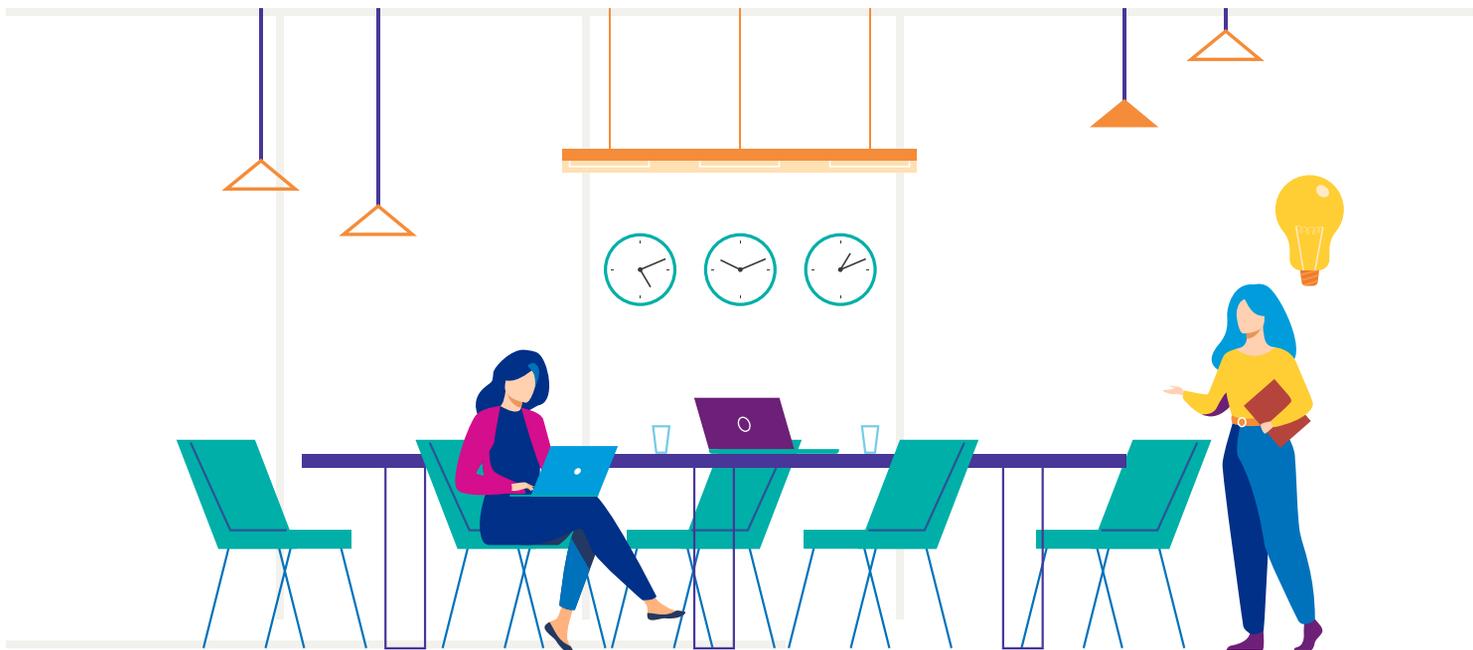
The aid may be obtained for activities including, but not limited to, the following: employment and training, investment in processing activities, services in high technology related fields, R&D, energy, health and agriculture.

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 sets up 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.

In addition, several general tax incentives are available in relation to investment in Romania:

- 1.** Corporate tax relief on reinvested profit: corporate tax relief is available for profit reinvested in technical equipment and software property or license rights produced/acquired and commissioned during the relevant tax period (subject to certain conditions).
- 2.** Super-deduction for R&D expenditure: 50% additional CIT deduction for all eligible R&D costs. The deduction is available even if a fiscal loss is recorded.
- 3.** Corporate tax exemption for innovation, research and development activities: taxpayers carrying out exclusively innovation, research and development activities and closely related activities are exempt from corporate income tax for the first 10 years of operation (in force from January 2017).
- 4.** Exemption from personal income tax for employees carrying out R&D activities, subject to the fulfilment of certain conditions set out by law.
- 5.** Exemption from personal income tax for software development employees. The incentive is granted subject to the fulfilment of certain conditions set out by law.
- 6.** Unemployment contribution incentives for hiring unemployed people; specific incentives for hiring unemployed people from certain social categories (e.g. recent graduates, single parents, older people, disabled people and students hired during summer vacations). The incentives are granted subject to the fulfilment of certain conditions set out by law.
- 7.** Incentives for supporting vocational and technical education and dual (practical and academic) pre-university and university education: expenses incurred in relation to theoretical and/or practical training of students in vocational and technical education, including depreciation of fixed assets or investments used for this purpose, are specifically defined as being tax-deductible. The profit invested in supporting dual (practical and theoretical) vocational education by ensuring the practical training and quality training of students is exempt from profit tax.





Romanian Banking System

The banking system is supervised by the central bank, the National Bank of Romania ("NBR"). A consolidation of the banking sector has been observed in recent years. As at the date of this report 33 banks were registered in Romania, down from 43 in 2009.

National Bank of Romania

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 specialised consultants from the World Bank, as well as with other organisations, 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).

CHAPTER 4

Banking and Finance

New regulatory requirements for Romanian banks

In recent years, Romanian banks have faced increased compliance costs as a result of the implementation of complex, new and far-reaching standards, including MiFID II, PSD 2, AML 2 and the GDPR.

Limited deductibility of expenses incurred in disposing of receivables

According to the provisions of Law 72/2018 approving Ordinance 25/2017 amending the Fiscal Code (Law 227/2015), up to 30% of the difference between the consideration received and the nominal value of the receivable is deductible for corporate income tax purposes.

For banks, if the disposed receivables are covered by depreciation adjustments or if they are booked off-balance sheet, 70% of the difference between the value of the disposed receivables and the consideration received represents elements similar to revenues (taxable for corporate income tax purposes).

Regulations on Credit Institutions

Romania has transposed the provisions of European Directives on credit institutions. The NBR issued regulations transposing the provisions of Directive 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 set out in the Directive and in 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 authorisation of and under the supervision of the NBR.

To be authorised, 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 authorisation, 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, as 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

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 authorisation 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 authorisation process includes 3 stages:

- NBR approval for the setting up of the bank
- Incorporation of the bank (registration with the Trade Registry) and,
- NBR authorisation 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, analysed 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 analyse 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

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

Privatisation of State-Owned Banks

Most banks have now been privatised, 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 privatisation of CEC, this has been postponed indefinitely. The state also owns EXIMBANK, which supports Romania's foreign trade through specialised 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 93/2009. To qualify as a non-banking financial institution and to be authorised to conduct credit operations, a company is required to include in its main objects of activity only the activities permitted under Law 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 they grant 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 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, annual percentage rate, 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 113/2009 on payment services and NBR Regulation 21/2009 on payment institutions, which were promulgated to implement the provisions of Directive 2007/64/EC on payment services within the internal market ("PSD 1"). Regulation 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.

On 12 January 2018, PSD 1 was repealed by the new EU Directive 2015/2366 on payment services (Revised Directive on Payment Services ("PSD 2")), effective 13 January 2018. A major feature of PSD 2 is the introduction of two new categories of Payment Service Providers ("PSPs", collectively known as "Third Party Providers"):

- **Payment Initiation Service Providers ("PISP"); and**
- **Account Information Service Providers ("AISP").**

PSD 2 requires Romania to impose authorisation conditions on undertakings which intend to operate as payment institutions providing payment services. Because PISPs and AISPs do not hold client funds when providing these services, there are no "own funds" requirements. Nonetheless, PSD 2 sets out disclosure requirements that a prospective payment institution must comply with in order to be authorised to provide payment services.

Consequently, PSD 2 brings new changes to the payments industry that affect financial services, together with the other players on the market. Among these changes, the following need to be considered:

- ✓ *Creation of a legal basis for payments via the internet or mobile phones: Regulation of existing payment services by taking third party payment service providers into account, for example payment initiation services (direct payment release via third parties) or account information services (providing users' account information).*
- ✓ *Provision of EU-wide access to the payments market for third-party payment service providers: banks will have to grant direct access to their customers' account information to third-party payment service providers (if authorised by their clients).*
- ✓ *Increased customer protection and authentication: PSD 2 introduces more stringent security requirements for the initiation and processing of electronic payments, as well as for the protection of customers' financial data, for example through enhanced customer*

✓ *authentication. At the same time, consumer rights have been strengthened, e.g. by reducing liability for unauthorised transactions and by introducing an unconditional refund privilege for direct debits.*

✓ *Exemptions apply only for a limited number of payment services: Many providers with innovative business models have to obtain authorisation for their services under PSD 2.*

PSD 2 was implemented in Romania under Law 209/2019.

Foreign Currency Regime

The main provisions currently regulating foreign currency operations are incorporated in NBR Regulation 4/2005, on the foreign currency regime and as supplemented by Regulation 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, 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 carried out 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 harbours, airports, customs or on external routes of international trains, ships or airplanes.*
- ✓ *Any individual or legal entity, for operations related to the organisation or supply of cross-border services.*
- ✓ *Individuals, for incidental operations.*
- ✓ *Any individual or legal entity, for operations carried out 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

(iii) 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 authorisation. Moreover, 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, as well as 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 authorisation.



Consumer Credit Protection

Government Emergency Ordinance 50/2010 on credit agreements for consumers transposed and implemented Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers into Romanian legislation. This ordinance is the main regulation on consumer credit protection and implemented EU requirements on the obligations of creditors.

The Ordinance sets out consumers' rights to transfer credits from one creditor to another under more advantageous contractual conditions as well as to repay in advance the amounts

contracted without paying excessive penalties. The Ordinance also sets out the framework for the operation of credit under conditions of transparent and free competition, thus establishing mechanisms that maintain a sufficient degree of solvency for both debtors and creditors.

Giving in Payment Law

The Giving in Payment Law (in Romanian *Legea Dării în Plată*) regulates the debtor's right to extinguish a full claim, and any related charges/penalties, arising from a credit agreement by transferring real estate ownership which has been mortgaged to the lender.

The Constitutional Court has issued a decision clarifying and limiting the cases when this law can be applied.

Romanian Mortgage Credit Law

This 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 specialise in debt recovery, as well as aspects of the provision of accessory services.

Recovery and resolution of credit institutions and of investment firms

Law 312/2015 on the recovery and resolution of credit institutions and of investment firms, which amends and supplements certain normative acts within the financial sector, is in line with the rules under Directive 2014/59/EU. The Law provides for the setting up of a banking resolution fund similar to that existing under the current national legislative framework, established by Government Ordinance 39/1996 on the setting up and operation of the Deposit Guarantee Fund within the banking system, as

republished. In order to ensure the necessary funds to finance the resolution measures, and to avoid the use of public funds for these purposes, the law provides for the establishment of a resolution fund by correlated contributions from the financial sector, in principle prior to and independently from any resolution operations (ex-ante financing, with a minimum mandatory level at least until a critical ceiling of available resources is reached) and, if such financing proves 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 may issue covered bonds under new rules. In order to issue 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 protection of 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 Uniqa and Vienna Insurance Group.

The market is regulated by the Financial Supervisory Authority ("FSA"). The FSA 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 FSA.

Insurance activities may be carried out only by insurance companies set up and operating according to the general provisions of the Company Law (Law 31/1990), and Law 32/2000 on insurance undertakings and insurance supervision, which was amended by Law 237/2015 on the authorisation 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 organised as joint stock companies registered with the appropriate Trade Registry Office, whose shareholders can be resident or nonresident individuals or legal entities.
- ✓ Currently, the minimum share capital is set according to the category of insurance provided (e.g. EUR 2,000,000 for general insurance activities, and EUR 2,960,000 for life insurance activities).
- ✓ Insurance companies established in an EU or an EEA member state may operate in Romania under a licence 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 carry out insurance activities in Romania by setting-up branches, subject to authorisation by the FSA 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 authorisation by the FSA. Once registered with the Trade Registry Office, insurance companies must obtain their operating license from the FSA. 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 authorising 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 carried out 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 carrying out general insurance activities
- ✓ Portfolio transfer

Law 246/2015 on the recovery and resolution of insurers sets out recovery and resolution planning measures, and states 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 this type of plan, setting out measures to be taken to restore their financial situation in the event that the insurer's financial indicators undergo a significant deterioration.

(b) The resolution plan for an insurer should be prepared by the FSA and should 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 503/2004 on the recovery and bankruptcy procedure of insurance companies.



IDD

Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution ("IDD") repealed and reformed Directive 2002/92/EC of the European Parliament and of the European Council of 9 December 2002 on insurance intermediation. IDD completes the provisions on the sale of investment products in line with the provisions of Directive 2014/65 on Markets in

Financial Instruments (MiFID II) and provisions on key information documents for structured and insurance based individualised investment products under Regulation (EU) 2014/1286 of the European Parliament and of the European Council (PRIIPs). The legal framework of the IDD is aimed at strengthening consumer protection and harmonising the rules on the distribution of insurance products.

The IDD will have an impact in the following ways: it creates a level playing field for all insurance distributors, it facilitates the application of MIFID II in harmony with other regulations, and it generates greater product oversight and governance, as well as regulating customer information requirements, inducements, cross-selling, etc.

The IDD was implemented into Romanian legislation under Law 236/2018.

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 centralised by the National Pensions Authority which collects and directs the contributions towards the pension funds. Since 2008, part of the social security contribution payable by individuals has been redirected from the state budget to the chosen private fund. The redirected contribution was 2% in 2008 and the initial aim was that it should gradually

increase as a proportion of the total payment until it reached 6% in 2016. However, in practice, the increases have been repeatedly delayed. The private pension contribution reached 5.1% in 2017, but was reduced and is currently only 3.75%.

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 unitised 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 licences from the FSA.

Currently, there are only 7 mandatory pension funds (following several mergers in the last few years) and 10 voluntary pension funds.

Capital Markets

The development of Romanian capital markets is closely linked to privatisation. The Bucharest Stock Exchange ("BSE"), initially established in 1864, was re-established in 1995.

Law 24/2017

Law 24/2017 on financial instruments issuers and market operations created the prerequisites necessary to ensure the development of the capital market in order for the national market to be reclassified as an emerging market. It consequently sets out the following development goals:

- (a) to enhance the implementing framework applicable to corporate governance principles for issuers, with favourable implications for transparency and relevant information reporting,
- (b) to optimise the public bidding framework and the listing of securities,
- (c) to strengthen the legal framework to ensure investors' rights, for example the right to vote in the general meeting of shareholders, the right to dividends etc.

Law 24/2017 also makes distinctions between entities listed on a regulated market and those listed under an alternative trading system. It excludes from its application monetary and currency instruments which are regulated and supervised by the NBR, as well as derivative instruments which have such instruments as active support, currency and interest rates.

Law 24/2017 redefines the notions of shareholder, formal agreement, regulated information, trading place, regulated market, algorithmic trading, high frequency trading etc (updating previous legislation).

Law 24/2017 also sets out norms on abusive use of inside information, unauthorised disclosure of inside information and market abuse, as well as measures for preventing market abuse.

In contrast to previous legislation, the provisions on market abuse are also applicable to multilateral trading facilities, organised trading facilities and auction platforms authorised as regulated markets for emission certificates. Law 24/2017 also extends the concept of "person holding inside information" for example, to persons that have access to such information as a consequence of the nature of their working position, profession or professional duties.

In addition, Law 24/2017 defines the notion of information of a precise nature, abusive use of inside information, as well as illegal disclosure of inside information.

Regulatory mechanisms and bodies

The Financial Supervision Authority ("FSA") is the regulatory and supervisory body of the .capital market. The FSA 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 FSA called the Financial Instruments and Investment Sector. The FSA has certain extended prerogatives; it authorises 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.

The legal framework governing capital markets is set out in Law 297/2004.

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

1. *Intermediaries*
2. *Collective investment undertakings*
3. *Management companies*
4. *Regulated markets*
5. *Clearing, settlement, deposit and registry systems for financial instruments.*

Intermediaries

Generally, securities transactions may be carried out only through intermediaries, i.e.

- (i) Investment firms authorised by the FSA,
- (ii) Credit institutions authorised by the NBR and
- (iii) Similar institutions authorised in an EU/EEA Member State to provide investment services.

Investment Firms

(in Romanian, "Societati de Servicii de Investitii Financiare") are set up in Romania as joint stock companies whose object of activity is to provide investment services. In 2015, the FSA issued a regulation allowing investment firms to carry out other activities such as insurance intermediation or credit intermediation.

Investment firms which are authorised and supervised in an EU Member State may provide in Romania the investment services they have been authorised for by the appropriate body in their country of origin, either directly or through branches set up for this purpose, without the FSA's authorisation.

Non-EU investment firms may set up branches in Romania subject to the FSA's authorisation.

The minimum initial capital of an investment firm is set at three levels, depending on the type of investment services it carries out, i.e. the RON equivalent of

(i) EUR 50,000,

(ii) EUR 125,000 and

(iii) EUR 730,000. Additionally, Regulation 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 FSA, certified by financial auditors.

Additionally, Regulation 3/2014 issued by the FSA implements measures for the application of the CRD IV legislative package in the specific case of investment firms.

MIFID II

MiFID II was implemented into Romanian legislation in 2018.

The core themes and key issues of MiFID II/MiFIR are the following:

Investor protection; Transaction reporting; Commodity derivatives; Microstructural Issues; Market Infrastructure, Trading and Clearing; Governance; Transparency; Regulatory.

The key impact and business challenges are the following: Advice – independence & inducements (suitability and advice statement; accountability to board), Product Governance – target markets, investor needs (focus on structured products and structured deposits - similar to TCF – Treating Customers Fairly - TCF) ; Appropriateness – type & complexity (If executing only, appropriateness check not required; client to be informed in writing.); Best Execution – additional monitoring, fewer incentives (Order handling policy to be reviewed. Best execution applies to all MiFID products. Publish top 5 venues); Strategy and composition – customer focus and diversity (No. of directorships to be limited. Technical standards will specify role, responsibilities and time commitment.); Authorization – Systematic Internalisers (SI) may be categorised as MTFs, requiring authorisation.



Credit institutions

authorised 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 carried out only by authorised investment advisors (individuals or legal entities).

Issuers

Under Law 24/2017, 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 24/2017 (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 FSA. All actions undertaken in this respect are made via intermediaries.

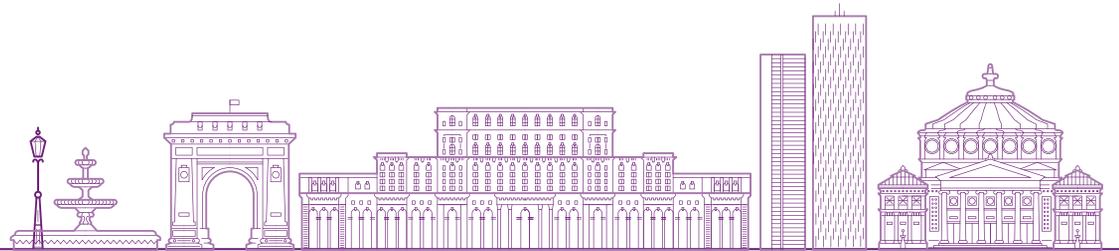
Law 297/2004, Law 24/2017 and other regulations also set out provisions with regard to protection of investors, information requirements, procedures to be followed where public offers for sale or purchase of shares are made, etc.

Regulated markets

Law 297/2004 sets out 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 rights. Both the market operators and the regulated market must be authorized by the FSA.

Bucharest Stock Exchange



The Bucharest Stock Exchange was established as a legal body in 1995. 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.

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. Equity sector

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.

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

B. Debt sector

The debt sector is divided into:

- (i) Corporate bonds,
- (ii) Municipal Bonds,
- (iii) Treasury Bonds,
- (iv) International Bonds,
- (v) Other debt.

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 materialised or dematerialised form.

Dematerialised 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 FSA have issued Regulations governing the performance of these transactions.

Alternative Trading System (ATS) - AeRO

In 2015, a new improved alternative trading system called AeRO was launched. According to the BSE's presentation of this market, the alternative trading system is not a regulated market in the sense of the European Directives or European and Romanian capital market legislation, 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:

1. Having a foreseeable capitalisation of at least the RON equivalent of EUR 250,000;
2. Having a free-float of at least 10% of the issued shares or at least 30 shareholders.

The procedure for admission to trading on AeRO requires the company to contract an Authorised Adviser which carries out the specific services for the company in order to be admitted to trading.

The Authorised Adviser continues to provide the specific transaction services after the company is admitted.

The BSE has published a lists of Authorised Advisers which may be either BSE participants or other entities authorised by the BSE.

Collective Investment Undertakings

Law 297/2004 classifies collective investment undertakings in two main categories:

- (i) Undertakings for collective investments in transferable securities ("UCITS") and
- (ii) Other types of collective investment undertakings.

UCITSs (Open-end Investment Funds and Investment Companies)

Open-end investment funds are non-incorporated collective schemes authorised by the FSA 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 UCITSs and/or, subject to FSA 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 FSA, 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 (AIFMs)

Law 74/2015 on Alternative Investment Fund Managers transposed the Directive on Alternative Investment Fund Managers (AIFMD) into Romanian law.

The Directive aims to achieve a harmonised legal framework at EU level, for the authorisation and supervision of alternative investment fund managers. Its transposition into Romanian legislation aims to regulate the activity of all alternative investment fund managers (AIFMs), other than undertakings for collective investment in transferable securities (UCITS) and which especially distribute titles to professional investors.

In this respect, authorisation/registration conditions, capital requirements, operational requirements relating to 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 authorisation, 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 10/2015 on alternative investment funds management. The regulation's provisions include rules on:

1. *Authorisation, registration and operation of alternative investment fund managers.*
2. *Appointment and duties of a depository for alternative investment funds.*
3. *Necessary conditions for a registered AIFM to manage an 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 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 FSA and must entrust their assets to a depository. Closed-end investment funds registered with the FSA must be managed by an authorised 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.

Depositories

The assets of UCITSs must be entrusted to a depository. According to current legislation, only Romanian credit

institutions or branches of credit institutions registered in an EU Member State may provide depository services. To carry out these activities, an operating permit from the FSA is required.

The competences and obligations of depositories are set out under Government Emergency Ordinance 32/2012 and Regulation 15/2004 issued by the former NSC.



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/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 (in 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. However, based on the amendments brought by GEO 52/2016, the loans governed by its provisions lose their attribute as writs of foreclosure after assignment to debt recovery agencies.

CHAPTER 5

General commercial rules

Finance and Bankruptcy

Law 85/2014 on Insolvency Procedures (referred to as the "Insolvency Law") applies 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 exist related to their insolvency. Thus, the following entities may be deemed as professionals: companies, agricultural companies, economic interest groups, individuals who undertake commercial activities either individually or in family associations, or any private legal entity carrying out economic activities that can no longer meet its commercial debts/obligations and certain others (hereinafter referred to as the "debtor").



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, to enter into 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.

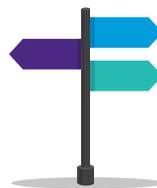
Furthermore, GEO no. 88/2018 approved by Law no. 113/2020 made some changes to the Insolvency Law. For both debtors and creditors that are seeking to open insolvency proceedings, the new provisions extended the minimum amount of RON 40 000 to RON 50 000 for these cases. Another measure issued which benefits debtors is that debtors are permitted to file for insolvency even if their debts to the state are higher than 50% of the entire amount of their debts. Furthermore,

debts acquired during the insolvency procedure that are more 60 days old cannot be enforced. This legislation has also modified certain procedures. The new provisions state that if debtors comply with their reorganisation plan, the state may convert 50% of the receivables into shares under certain conditions.

In the context of the state of alert related to the Covid-19 pandemic, Law no. 55/2020 was issued, introducing certain measures relating to insolvency applicable during the state of alert. The above mentioned debtors' obligation to file for insolvency became an option for those debtors that are in a state of insolvency or reach a state of insolvency during the state of alert.

They are required to file for insolvency proceedings within 30 days of the end of the state of alert. The threshold of RON 50 000 is also applicable in the case of debtors that have interrupted their activities totally or partially as a result of the measures adopted during the state of alert (or the state of emergency in 2020).

Moreover, during the state of alert, creditors are able to file for insolvency proceedings against their debtors only after the creditors show that they have made a reasonable attempt to conclude a payment agreement with those debtors.



Furthermore, the legal provisions state that the "observation period" of debtors will be extended by three months, as well as the period for proposing a reorganisation plan, even if the period during which the plan should be submitted has already started.

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 will recover the corresponding amounts 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.

Law no. 209/2019 on payment services and for the amendment of certain legislative acts transposes into Romanian law Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market,

amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) no. 1093/2010, and repealing Directive 2007/64/EC (“PSD 2”). Law 209/2019 came into force on 13 December 2019.

The main purpose of the law is to improve the standards of the payment services provided by banks, payment institutions, electronic money issuers and, also, by the new players on the payment services market known as “third-party services providers” (i.e. payment initiation service providers and account information service providers).

Furthermore, the law brought clarifications related to the services excluded from the application of the legal requirements on payment services.



GEO no. 111/2020 to amend Law no. 129/2019 on the prevention and combatting of money laundering and terrorist financing entered into force on 15 July 2020.

It requires the National Agency for Fiscal Administration (ANAF) to organise and operationalise the electronic register for payment accounts and bank accounts identified by IBAN to allow timely identification of all individuals or legal entities that hold or control payment accounts and bank accounts identified by IBAN or securities held at a credit institution in Romania.

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 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 against 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.

A mediation agreement should be verified and attested by the parties’ lawyers, by the notary public or by a lawyer or notary public chosen by the mediator (with the prior agreement of the parties) in order to represent enforceable title.

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 provide 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.

This has the advantage of being less time consuming than normal judicial proceedings and being subject to a small value, fixed stamp duty. Thus creditors may choose between the special procedure of payment ordinance (in Romanian, "ordonanta de plata") 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 interrupt the statute of limitations.

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:

1. Be certain (their existence should be legally unquestionable), liquid (their value should be determined/determinable) and payable (payment should have become due).
2. Represent an obligation to pay an amount of money.
3. 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.

Personal insolvency law

On 1 January 2018, Law 151/2015 concerning the insolvency of individuals (herein after called the "Personal Insolvency Law") and Government Decision 419/2017 for the approval of the implementing rules of Law 151/2015 concerning the insolvency of individuals entered into force. The purpose of these regulations is to create a collective procedure which aims to achieve the following:

1. The financial recovery of individuals acting in good-faith;
2. The satisfaction of their outstanding debts;
3. Their release from debt, under certain conditions.

A state of insolvency occurs when an individual is unable to pay his/her outstanding debts, as they fall due, with his/her available funds.

The Personal Insolvency Law assumes (this assumption may be rebutted) that an individual is in a state of insolvency when he/she has not paid his/her debts to one or several creditors within 90 days of the date of maturity.

There are three types of insolvency procedures, as regulated by the Personal Insolvency Law:

1. Insolvency procedure based on a debt recovery plan.
2. Insolvency procedure based on liquidation of assets.
3. Simplified insolvency procedure.

Only those individuals who meet certain conditions may benefit from the provisions of the Personal Insolvency Law. The official bodies which implement the personal insolvency procedure are local insolvency commissions and the administrators of the procedures, courts of law and liquidators.

GDPR

The General Data Protection Regulation (GDPR) has been applicable within EU Member States as from 25 May 2018. GDPR is a strong piece of legislation and represents a clear shift from the previous Privacy regulatory environment in the EU.

GDPR applies to every company located in Romania which processes personal data. As an EU regulation, it has direct application in Romania (no transposition formalities required).

The administrative fines set out in the GDPR are huge:

(i) 2% of global turnover or €10m (whichever is higher) or

(ii) 4% of global turnover or €20m (whichever is higher). Consequently, companies need to strictly comply with the GDPR's provisions.

While fines under GDPR can be up to 20 million euros, or up to 4% of the total global turnover of the preceding fiscal year, whichever is higher, as mentioned above, the fines imposed by the Romanian Authority for the Processing of Personal Data to date have ranged between EUR 500 and EUR 150,000.

The core elements of GDPR are the following:

(i) Strict conditions to obtain valid consent as a legitimate basis for data protection, as well as new rights for data subjects;

(ii) The requirement for organisations with more than 250 employees to prepare and maintain a personal data inventory;

(iii) The requirement to appoint a data protection officer, under certain conditions;

(iv) The requirement to adapt the company's systems and IT

applications which process personal data to the principles provided by GDPR (“privacy by design” and “privacy by default”);

(v) The requirement to report data protection breaches to the data protection regulator (ANSPDCP) within 72 hours and, potentially, to the individual whose personal data were lost or accessed without authorisation;

(vi) A specific contractual framework based on the relationship between the company and its outsourced service providers etc.

Companies are likely to have to do the following as a result of GDPR:

- data mapping to cover all processing activities;
- a gap analysis to evaluate where the company stands in terms of compliance with GDPR;
- possible further implementation of GDPR requirements, including evaluation of the need to appoint a data protection officer and make other appointments as appropriate;
- a review of the company’s data protection policies and procedures (or the drafting of new policies and procedures);
- a review of processing agreements, including contracts concluded with outsourced service suppliers;
- review and adaptation of the company’s systems and IT application to comply with GDPR requirements etc.

The GDPR was followed by rules aimed at implementing so-called “open clauses” in Romania via Law 190/2018 on implementing measures in relation to GDPR and various decisions adopted by the Romanian Authority for the Processing of Personal Data, such as the decision on its investigative activity and the list of activities for which a data protection impact assessment is needed.





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 213/1998, as amended, and Government Emergency Ordinance 57/2019 on the Administrative Code.

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 carried out.

CHAPTER 6

Real Estate in Romania



Transfer of real estate

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

Under the Civil Code introduced in 2011, the right to 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) Notarised written agreements attesting transfer of ownership, (ii) Irrevocable court rulings, (iii) An inheritance certificate or (iv) Other documents issued by the administrative authorities.

These provisions on ownership registration in the Land Book become applicable only after completion of cadastral measurements in each local 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 notarised 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 positive 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 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 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 17/2014).

The law stipulates that individuals and legal entities from EU/EEA member states and Switzerland may acquire agricultural land in Romania.

The law also sets out the specific procedures that should be followed for the sale of such lands as regards the observance of the pre-emption right of co-owners, lessees, neighbours, and the state under equal price and in equal conditions.

Law 17/2014 was recently amended through Law 175/2020 and new categories of pre-emptors were introduced. Thus, the following categories of pre-emptors were set:

- 1st category pre-emptors: co-owners and certain relatives.
- 2nd category pre-emptors: owners of agricultural investments for the cultivation of trees, vines, hops, exclusively private irrigation and / or agricultural lessees.
- 3rd category pre-emptors: the owners and / or agricultural lessees of agricultural land adjacent to the land subject to sale.
- 4th category pre-emptors: young farmers.
- 5th category pre-emptors: the Gheorghe Ionescu-Șișești Academy of Agricultural and Forestry Sciences and agricultural research and development units.
- 6th category pre-emptors: individuals with domicile/ residence in the local administrative units where the land is located or in the neighbouring local administrative units.
- 7th category pre-emptor: the Romanian state, through the State Land and Property Agency.

Although the current form of Law 17/2014 provides for the free sale of agricultural land in the event that no preemptor exercises the right of preemption, the new provisions establish a series of conditions that must be met by individuals/ legal entities which do not fall into the category of preemptors.

These conditions involve (i) Having had domicile / residence / a registered office / secondary office in Romania at least 5 years prior to the registration of the sale offer (in the case of legal entities this condition also applies to individuals who are associates, as well as to the legal entities controlling the company) (ii) Having carried out agricultural activities in Romania for a period of at least 5 years prior to the registration of the offer to sell, (iii) Fiscal registration in Romania for a period of at least 5 years, for individuals/

obtaining a minimum percentage of 75% of the total income of the last 5 fiscal years, from agricultural activities, etc.

Law 17/2014, as subsequently amended, also imposes on legal entities and individuals which want to sell agricultural land earlier than 8 years from its acquisition the obligation to pay a tax of 80% of the amount representing the difference between the sale price and the purchase price, based on the notaries' grid in force for that period. The obligation to pay this tax does not apply in the case of reorganisation or reallocation of assets within the same group of companies.

Failure to comply with the above-mentioned provisions is penalised with the absolute nullity of the transaction. Also, after the acquisition, the agricultural land must be used exclusively for the purpose of carrying out agricultural activities.

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 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 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

Fiduciary Agreements have been possible in Romania since 2011. These allow any individual or legal entity to transfer rights, property rights included, to one or several fiduciaries to exercise these 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 notarised form and must give details about the rights transferred, term of transfer which cannot exceed 33 years from its conclusion, 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 most agricultural land in Romania is privately owned and, according to some sources, the proportion is even higher for land located inside city limits.

The main legal provisions governing land restitution are Law 18/1991, Law 1/2000, Law 10/2001, and Law 247/2005, as subsequently amended.

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 finalisation of the restitution process, in kind or in equivalent, of immovable property abusively taken over during the communist regime in Romania, as subsequently amended. 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 compensatory measures can be used by their beneficiaries within 3 years as of the issuance date of the compensation deed. For deeds issued before 1 January 2017, the 3 year period starts as of this date.

Even if claimants potentially entitled to file restitution claims under specific restitution laws (such as Law 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 247/2005 and Government Decision 481/2005, of Fondul Proprietatea S.A., to ensure the financial resources required for the compensation of individuals whose property was expropriated by the communist regime.

Compensation was in the form of shares issued by Fondul Proprietatea SA, representing the updated value of a property that cannot be returned in kind to the entitled persons who thus become shareholders in Fondul Proprietatea S.A. The market value of these shares was set after Fondul Proprietatea S.A. was listed on the stock exchange in January 2011. Fondul Proprietatea S.A. ceased to award shares from 2013.

Concession of Public Property

According to Government Emergency Ordinance 57/2019 on the Administrative Code, assets representing public property of the state or its administrative units can be subject to concession.

These 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.

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

This law lays down special rules on loans for real estate investments, derogating from the common rules. However, the provisions of the Civil Code and the 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 authorised in accordance with the provisions of Law 190/1999. Loans must be secured by a mortgage set on the building which is being financed.

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 has 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 50/1991 on the authorisation of construction works and its Application Norms) under which certain authorisations 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).

Once the urban planning certificate has been issued, 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 addition, depending on the activity to be carried out in the built area, specific authorisations may be required (for utilities etc).



Other legislation with potential impact on the real estate market

A sale/acquisition/lease of buildings can be made only provided that an energy performance certificate is obtained. Absence of a certificate may invalidate the sale agreement.

In general, the certificate is valid 10 years as of its issuance date. Insurance of buildings against earthquakes, landslides and floods is mandatory.

If a person is also interested in concluding an optional insurance policy, this cannot be concluded if the interested person does not also have a mandatory insurance policy.

Since joining the EU in 2007, Romania has had access to Structural Funds (ERDF – European Regional Development Fund and ESF – European Social Fund), Cohesion Funds and Agricultural and Fisheries Funds.

Through several national and regional programmes, Romania has been allocated around EUR 30.89 billion in total from European Structural and Investment Funds (ESI Funds) over the period 2014-2020 (out of which approximately EUR 11.126 billion came under ERDF, EUR 6.53 billion were assigned through the Cohesion Fund (CF), and EUR 8.295 came under the Agricultural and Fisheries Funds).¹

Romania achieved an absorption rate of ESI Funds of only 29% of the EUR 30.89 billion assigned for the 2014-2020 financial framework. In a country-by-country comparison, Romania ranked second-to-last among EU Member States in terms of EU funds absorption.²

In addition, the Romanian authorities have 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.

For the 2021-2027 period, Romania may benefit from up to EUR 79 billion in funds, distributed between Structural and Cohesion Funds, funds following from the recovery plan for Europe and the Common Agricultural Policy.³

¹ According to the European Commission's data on ESI Funds, available at <https://cohesiondata.ec.europa.eu/countries/RO>.

² According to the Fiscal Council's data, at the February 2020 level, quoted by Ziarul Financiar, available at: https://www.zf.ro/zf-24/romania-din-nou-codasa-penultimul-loc-din-uniunea-europeana-la-19296796?mc_cid=1867cd65c0&mc_eid=3fd045be34.

³ According to the results of the negotiations inside the European Council summit, from July 2020, available at: <https://www.zf.ro/eveniment/romania-va-primi-de-la-ue-79-9-mld-euro-presedintele-iohannis-dupa-19433429> and according to the data available from the Ministry for Investments and European Projects, available at: <http://mfe.gov.ro/minister/periode-de-programare/perioda-2021-2027/>.

CHAPTER 7

EU Funding

New Cohesion Policy – 2021-2027

The European Parliament and the Council agreed on the Commission's proposals for the instruments related to the cohesion policy for 2021-2027, including the Recovery Assistance for Cohesion and the Territories of Europe package (REACT-EU), the European Territorial Cooperation programmes ("Interreg"), the European Regional Development Fund (ERDF) and the Cohesion Fund (CF) and the Just Transition Fund (JTF).

Following the crisis of 2020 and all consequences arising from it, the EU has planned a new framework for Regional Development and Cohesion Policy.

The European Commission set the five objectives which will drive EU Investments in the period 2021-2027. The investments will focus on a Smarter Europe, through economic transformation and innovation, a Greener, carbon free Europe, a more Connected Europe, through strategic transport and digital networks and a more Social Europe, closer to its citizens. ERDF and CF will make available close to EUR 234 billion across the European Union.

The Just Transition Fund represents a new instrument with an overall budget of EUR 17.5 billion. The JTF is a crucial element for implementing the European Green Deal and it seeks to alleviate the economic and social costs arising from the transition towards a climate-neutral economy.



These instruments complement each other, supporting investments in innovation and entrepreneurship, a digital and green transition and the development of transport networks.

Allocation of funds, Partnership Agreements and OPs

During the programming period 2021-2027, which has been agreed upon and pending the final approval, Romania will receive an indicative total allocation of approximately EUR 31.96 billion from Structural and Cohesion Funds.

Out of this, EUR 19 billion will be allocated from ERDF and EUR 6.07 billion will come through the European Social Fund, which will support social inclusion, health, education and employment. Furthermore, EUR 4.49 billion will be allocated from the Cohesion Fund, while EUR 1.76 billion will be made available through the Just Transition Fund.

The indicative financial allocation for the 2021-2027 period is outlined below:

Program	Financial allocation for 2021-2027(EUR million)
Intelligent Growth, Digitization and Financial Instruments OP	
Sustainable Development OP	
Transport OP	
Education and Employment OP	
Inclusion and Social Dignity OP	
Health OP	
Regional OP	
Just Transition OP	
Technical Assistance OP	
Aquaculture and Fisheries Program	

Source: Ministry of Investments and European Projects

Several priorities were identified in the proposed Partnership Agreement, in correlation with the conditionalities brought in by the regulations: transport infrastructure, environment infrastructure, business environment, risk management and climate change, education, as well as social inclusion.

The institutional configuration corresponding to the 2021-2027 framework has been compressed:

1. The Ministry of Investments and European Projects is the managing authority for the Intelligent Growth, Digitization and Financial Instruments OP, Education and Employment OP, Sustainable Development OP, Just Transition OP, Health OP, Inclusion and Social Dignity OP and the Technical Assistance OP.
2. The Ministry of Agriculture and Rural Development is the managing authority for the Fisheries OP.
3. The Ministry of Transport and Infrastructure will be the managing authority of the Transport OP, one of the biggest operational programmes with structural and cohesion funds.

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

OP Intelligent Growth, Digitization and Financial Instruments

The Intelligent Growth, Digitization and Financial Instruments Operational Programme (POCIDIF) proposes measures in the fields of research, development and innovation / smart specialization and in the field of digitisation, financed either through grants or through financial instruments in compliance with state aid rules, as appropriate, in order to meet the challenges identified at national level.

One focus of the OP is bridging the gap and managing the disruptions of the market caused by the low level of public R&D investments, which for several years have remained relatively low compared to the EU average.

OP Transport

The general objective of this programme, as well as the biggest challenge, is to help solve the issue of the gap in development of the transport infrastructure of Romania compared to other EU Member States. Moreover, these investments must be made keeping in mind the achievement of European carbon reduction targets and the transfer to sustainable and safe mobility.

OP Sustainable Development

The aim of this programme is to address the needs of several sectors. As such, it will focus on adapting to climate change by increasing energy efficiency and developing smart energy systems, storage solutions and energy adequacy; water and wastewater infrastructure; the circular economy; biodiversity conservation; air quality; decontamination of polluted sites and risk management.



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.

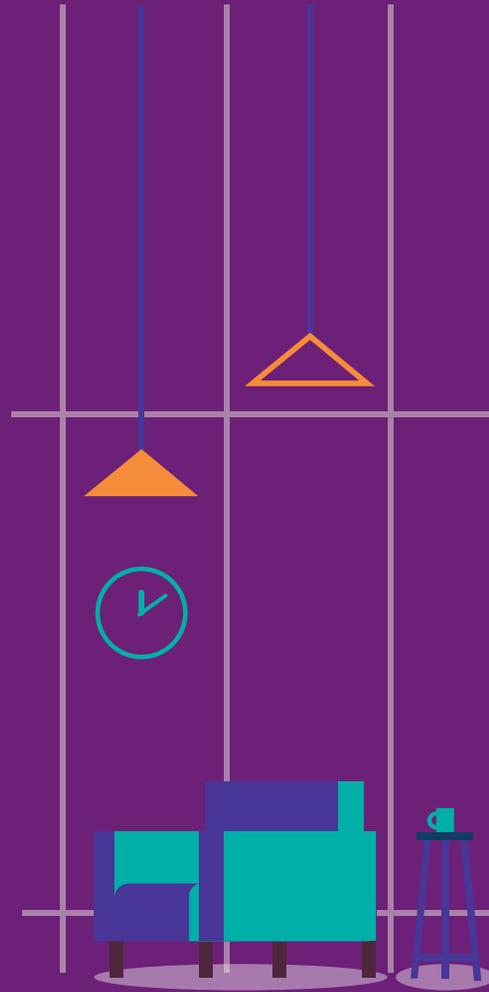
Agriculture Funds

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

1. The European Agricultural Fund for Rural Development (EAFRD), contributing to structural reform of agriculture and development of rural areas.; and
2. The Operational Programme for Fisheries , funded by the European Maritime and Fisheries Fund, supporting structural measures in this field and "accompanying measures" of the Common Fisheries Policy (CFP).

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





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

CHAPTER 8

Labour regulations and employment standards

Employment documentation

Employment contracts

Generally, work in Romania is carried out 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 bonuses, allowances, increments or incentives awarded.

In addition to these clauses, the parties can negotiate and include other specific clauses in the contract, covering issues such as: professional training, mobility, confidentiality and non-competition.

Work can also be carried out under employment contracts concluded for a fixed term, contracts with a temporary job placement agency (staff hiring), part-time employment contracts as well as work-at-home and teleworking contracts.

However, such contracts can be concluded only under certain specific conditions as provided by the Labour Code, republished and further amended.

Registration formalities

According to Labour Code, 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 registered in the General Employees' Electronic Registry and sent to the local labour inspectorates within certain legal deadlines set out in Government Decision no.905/2017.

Failure to fulfil this obligation leads to fines for the employer ranging between RON 5,000 and 8,000 (approximately EUR 1,020 – 1,632).

Employers must also keep in good condition a personal file for each employee, at their headquarters and present it to labour inspectors, if required.



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 25/2014 on the employment and secondment of third-country individuals in Romania, amending and supplementing certain legislative acts concerning the status of foreigners in 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.

Foreigners (i.e. nationals of countries other than EEA countries or Switzerland) are only admitted to carry out work in Romania in limited numbers (quotas). The specific quotas are announced yearly by the Romanian government. The tight quotas in combination with high demand have led to very restrictive admission practices. Consequently, only detailed and properly documented work permit applications based on solid reasoning have a chance of success.

A work permit is a document granting an employer/beneficiary of services the right to employ/receive as an assignee a foreign individual to take up a specific position within the company. Based on a work permit and specific long-term visa for local employment/assignment, 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 a twenty-four-month period, which can generally be renewed.

The validity of the work permit is determined 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 a remaining validity period. Simplified conditions have been introduced for foreigners who change jobs with the same employer or who change employers, provided their single permit or EU Blue card is valid.

Foreigners in these categories are no longer required to provide proof of selection or proof of payment obligations to the state budget provided that they can submit a clean criminal record statement, issued by the Romanian authorities. There are different types of work

permit 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 the 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 not nationals of 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 within a 5 year period based on a secondment decision issued by a foreign employer.



If a non-Romanian individual who is not a national of an EU/EEA member state 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.

Multinational companies may second management staff and specialists who are third-country nationals for a longer period (up to three years), instead of one year under the standard assignment procedure.

Thus, the duration of the assignment can be up to 3 years, for foreigners who occupy a management or specialist position and up to

1 year for foreigners who come as trainee workers and who are transferred within the same company (i.e. the so-called "ICT workers").

Certain conditions must be met by this category of assignees, such as: a foreigner who occupies a management or specialist position must have at least 6 consecutive months' experience with the same company or group of companies.

Foreigners who hold ICT permits issued by other EU states, may carry out activities in Romania as ICT workers from the date when the Romanian company registers the application for the work permit, and do not have to wait until it is issued.

Under current Romanian immigration legislation, individuals who are not nationals of 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 have been issued residence permits in the EU/EEA member state from which they have been assigned to Romania (or in Switzerland).

In support of a work permit application, diplomas, certificates of competencies, as well as scientific titles obtained abroad must be first validated and recognised by the Romanian Ministry of Education, and must have either the Hague Convention Apostille or over-legalisation stamps, as appropriate.

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.

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

New rules for UK citizens have applied, as from 1 January 2021

In the context of the end of the Brexit transition period on 31 December 2020, the end of free movement of people between the EU and the UK has had a significant impact on the mobility of people moving between the two countries, whether for local hires, assignees, remote workers, or business travelers, which business leaders should take into account. New immigration rules will consequently be applicable to UK nationals.

In this context, on 25 November 2020, Emergency Ordinance no. 204, enacting various measures applicable for UK nationals in relation to the Withdrawal Agreement, was published in Monitorul Oficial (the Official Journal of Romania), (no.1132). The newly adopted measures are applicable as from 1 December 2020.

Right to entry into Romania

UK citizens, as beneficiaries of the Withdrawal Agreement, may enter Romania without a visa, only under a valid travel document and a residence permit issued by the General Inspectorate for Immigration.

Until the new residence permits are obtained, UK citizens benefiting from the Withdrawal Agreement can enter Romanian territory, without a visa or other formalities, based on valid documents issued by the General Inspectorate for Immigration, in accordance with EU legislation.

UK citizens who do not enjoy rights under the Withdrawal Agreement can enter and reside in Romania without a visa for a period of 90 days within any 180 days.



Stay in Romania

UK nationals and their family members, already registered and residing in Romania before 31 December 2020 (i.e. holders of registration certificates) and who wish to remain in Romania after 1 January 2021 may apply for an extension of their right of residence in Romania (i.e. a new residence document according to the new status) no later than 31 December 2021, as beneficiaries of the Withdrawal Agreement. The residence document will be valid for up to 5 years.

UK nationals who have obtained a permanent residence right in Romania

before 31 December 2020, have their status valid and recognized if they apply for a permanent residence permit by 31 December 2021. The validity of the permanent residence documents will be for up to 10 years.

Family members accompanying a UK national from 1 January 2021 until 30 September 2021 may apply for a temporary right of stay in Romania until 31 December 2021.

Those entering Romania after 1 October 2021 have to apply for right of residence within 90 days of the entry

date.

UK citizens entering Romania after 1 January 2021 and who are not beneficiaries of the Withdrawal Agreement will be subject to Romanian immigration legislation specific to non-EU nationals (i.e. work permit, residence permit required).

UK nationals residing in Romania must notify the immigration authorities in relation to any change which has occurred in their situation (i.e. change of name/citizenship/residence address/marital status etc.) within 30 days of the change.

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 programme is 8 hours/day and 40 hours/week. There are 15 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 and 2 January, 24 January, Good Friday and Easter Monday (Orthodox), 1 May, the Monday following Pentecost (normally 7 weeks after Orthodox Easter), 1 June, 15 August, 30 November, 1 December, and 25 and 26 December.

At present, the minimum gross base salary is RON 2,300 (approximately EUR 470). This does not include bonuses, increments, incentives or any other allowances. This amount is based on a full time working programme of approximately 169,333 hours per month in 2021, representing RON 13,583/hour.

However, the minimum gross base salary for employees assigned to positions for which higher education is required, and who have at least one year of seniority in higher education, is RON 2,350 (approximately EUR 480), not including bonuses, increments, incentives or any other allowances. Likewise, this amount is based on a full time working programme of approximately 169,333 hours per month, representing 13,878/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 300 and 2,000 (approximately between EUR 61 and EUR 408).



Full-time employees over the age of 18 must be granted a minimum of 20 days paid holiday per year. A higher number of paid holiday days per year may be granted by the employer if provided under individual employment contracts, collective bargaining agreements or internal regulations.



Undeclared work

Under the provisions of the Labour Code, the following are defined as undeclared work:

- (i) Receiving an individual for work in the absence of a written individual employment contract concluded the day before the commencement of the activity, at the latest;
- (ii) Receiving an individual for work without having registered the details of the individual employment contract with the employees' electronic general register the day before the commencement of the activity, at the latest;
- (iii) Receiving an individual for work during the suspension of his/her individual employment contract; and (iv) Receiving an individual for work outside his/her working programme as established within part-time individual employment contracts.

Undeclared work represents an administrative offence, and is penalized by fines of up to RON 200,000 (approximately EUR 40,816).



Occupational health and safety

The regulations on occupational health and safety were issued in 2006 (Law no. 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 Labour Code, an employer is legally required to periodically ensure the training of employees in work protection, health and safety. This training is mandatory under the Labour Code and Law no. 319/2006: for new employees, for employees changing their place of work/function or who are transferred to a new workplace, when new work equipment, technology or work procedures

are introduced, when special work is carried out, or for employees who begin their activity after a work interruption of longer than 6 months or when the applicable legislation in the field of employment is changed.

Under the law, the establishment of an Occupational Health and Safety Committee is mandatory for employers which have at least 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 the employee in charge of work safety 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 Labour Code, employment contracts can be terminated only in cases specifically provided by law.

The provisions of the Labour Code governing employment contracts restrict the contractual freedom of the parties in certain cases, e.g. termination of the agreement by the employer.

If an individual employment contract is terminated by the employer (other than 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.

Further, in accordance with the Labour Code, employees made redundant 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 Labour Code, as well as the applicable collective bargaining agreements (if they exist), and secondary legislation provide some specific measures aimed at protecting employees whose individual employment contracts are terminated due to collective layoffs.

In addition, Law no. 67/2006 ensures protection of employees where the undertaking, or a unit or part of it is transferred to another employer.

According to Law no. 67/2006, a transfer does not represent in itself a valid reason for individual or collective redundancies by either the transferor or the transferee.

The rights and obligations arising from employment contracts or employment relationships existing at the date of transfer are also transferred to the transferee

Collective Bargaining Agreements and Trade Unions

Companies with at least 21 employees must carry out collective negotiations with their employees (represented in the negotiations by either a trade union or elected employees' representatives) on an annual basis but they are not required to actually conclude collective bargaining agreements. The duration of collective negotiations cannot exceed 60 calendar days, unless otherwise mutually agreed by the parties.

Refusal by an employer to initiate negotiation of a collective bargaining agreement may trigger fines ranging between RON 5,000 and RON 10,000 (approximately between EUR 1,020 and EUR 2,040).

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 may also focus on other benefits, such as meal tickets/canteen meals and employees' events.

A collective bargaining agreement is concluded for a fixed period of a minimum of 12 months and cannot exceed 24 months. Upon expiry of the agreement, the parties may decide to extend its term only once, by at most 12 months, or may work out an entirely different arrangement.

Collective agreements and addenda to these contracts should be concluded in written form, should be registered with the local labour authorities, and are applicable as of their registration with the appropriate labour 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 organised by reference to an industry or an employer, based on the labour union concept, or by reference to job classifications, organised as craft unions.

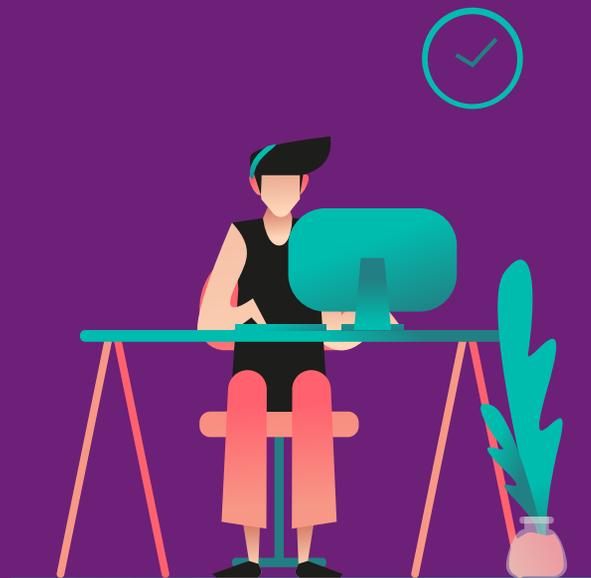
Labour disputes

Law no. 62/2011 on Social Dialogue sets out the procedure to be followed in labour disputes. According to this law, labour disputes are now divided into collective labour conflicts and individual labour conflicts.

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

- ✓ When a conflict concerning the collective economic, professional and social interests of the employees has been openly declared, conciliation procedures are initiated by a representative of the Ministry of Labour and Social Protection 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. Arbitration is decided by the Mediation and Arbitration Office for Collective Labour Conflicts within the Ministry of Labour and Social Protection.



The first step is compulsory, while the other two are left to the parties' choice. Nevertheless, mediation and arbitration of a collective labour conflict are mandatory, if the parties have agreed to them, prior to initiating a strike and during a strike. As long as a collective bargaining agreement is in force, employees cannot initiate collective labour 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 labour 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 labour conflicts are settled by the relevant courts. Employees' demands are assessed under a special emergency procedure (the hearings cannot take place more than 10 days after the emergency procedure is initiated).

Nonetheless, in order to promote the amicable settlement of individual labour disputes, on conclusion of an individual employment contract or during its execution, the parties may include in the contract a clause establishing that any individual labour dispute should be resolved through a conciliation procedure. In this case, the conciliation will take place with the help of an external consultant, specialising in labour law, with respect for neutrality, impartiality, and confidentiality, and based on the free consent of the parties.



Social contributions

Social contributions are payable by employers and employees as set out below:

Pension contribution

- ✓ 25% payable by employees

In addition:

- ✓ 4% payable by employers for special work conditions
- ✓ 8% payable by employers for special and other work conditions

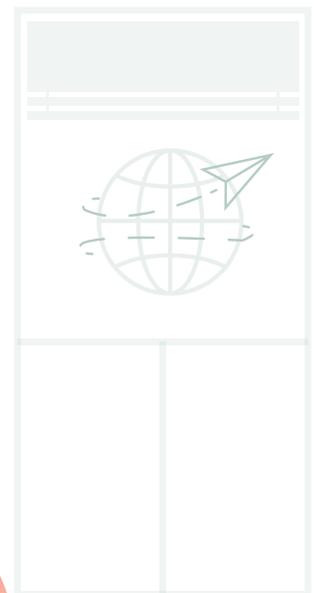
Health insurance contribution

- ✓ 10% payable by employees

Work insurance contribution

- ✓ 2.25% payable by employers

The Fiscal Code provides for certain tax facilities for employees and employers in the construction industry, consisting of exemption from the payment of income tax and health insurance contributions and a reduction in the pension contribution.





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 that of the EU, considering the country's accession as a Member State from 1 January 2007.

CHAPTER 9

The legal system

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. the civil codes of France, Italy, Quebec, and Switzerland, and Unidroit Principles.

For the first time in Romania, the 2011 Civil Code regulated certain institutions, such as trusts, parties' permission to set prescription terms for their obligations etc., and modified the effects of certain legal actions.

The 2011 Civil Code also repealed 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.

The Civil Procedure Code took effect on 15 February 2013. This included significant amendments to the procedural practices regulated by the former code, aiming to improve efficiency and the speed of legal proceedings.

(b) Criminal Law



The Criminal Code (Law 286/2009) came into force on 1 February 2014, replacing the former code that was adopted in 1968. The 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 harmonising criminal legislation with the systems existing in other European Union member states.

The main issues which are regulated under the 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 (in Romanian, "sistemul zilelor amenda"), (iii) The introduction of the possibility of plea bargaining for legal entities as well as for individuals etc.

The Criminal Procedure Code (Law 135/2010) came into force on 1 February 2014. This included 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 trials in line with international standards and the requirements of European Court of

Human Rights case-law.

One significant amendment included in the Criminal Procedure Code involved the separation of judicial functions in a criminal trial, by the introduction of the notions of a preliminary chamber judge as well as of a judge of rights and freedoms, mainly with regard to situations when preventive measures need to be taken.

However, since the Criminal Procedure Code entered into force, the Romanian Constitutional Court has issued several decisions stating that several provisions of the Code are unconstitutional, such as authorisation of foreclosure proceedings by bailiffs.

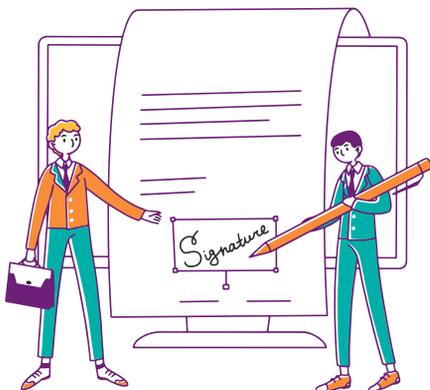
Judicial System

According to the Constitution and the Civil Procedure Code, the Romanian judicial system comprises: local courts (in Romanian, "judecatorii"), district courts (in Romanian, "tribunale"), district courts of specialised jurisdiction (in Romanian, "tribunale specializate"), courts of appeal (in Romanian, "curti de apel") and the High Court of Cassation and Justice.

As a general rule, local courts and district courts act in first instances depending on the type and amount of money involved in 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 against 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.

District courts of specialised jurisdiction are constituted for specific matters by Order of the Ministry of Justice. Upon the legal incorporation of these district courts, 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 Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania functions in Bucharest and applies rules similar to the Rules of Arbitration 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 organisation, as set out in European Union legislation.

Since 1 January 2018, the Court of International Commercial Arbitration has been attached to the Chamber of Commerce and Industry of Romania. In support of the business environment, the Court applies new Rules of Arbitration in order to improve the functioning of commercial arbitration. These Rules of Arbitration are consistent with the best European and international practices in the field.

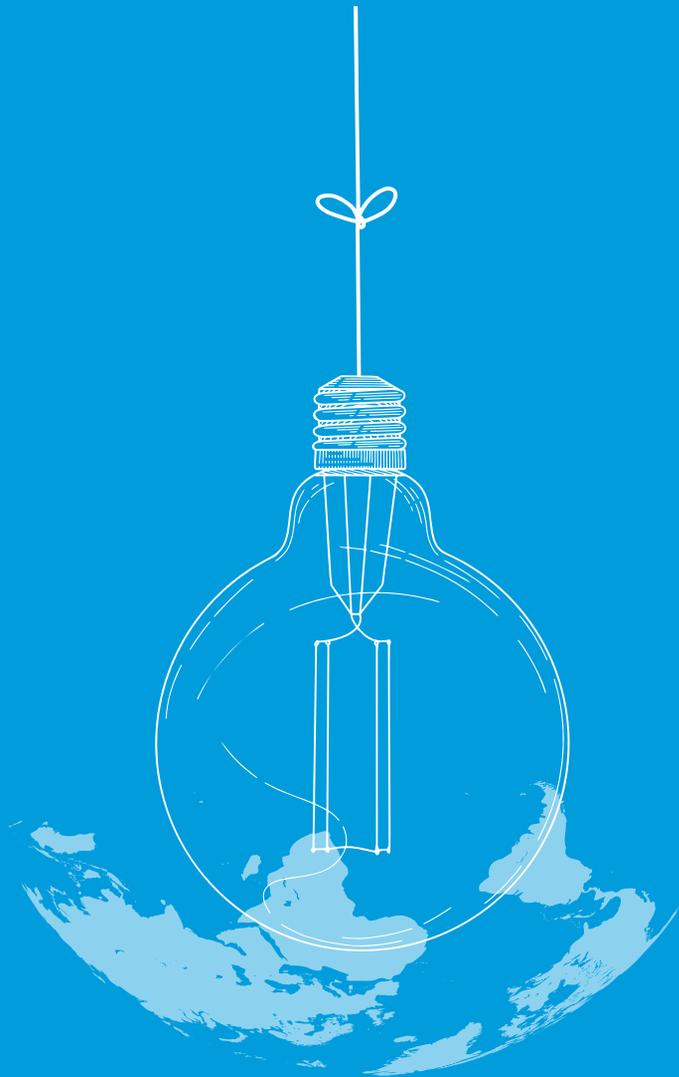
Recognition and enforcement of foreign courts' decisions

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

Judgements given in civil and commercial matters in another EU member state are recognised in Romania in accordance with Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters as well as Council Regulation 805/2004 creating a European enforcement order for uncontested claims. A judgement 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 there is an automatic recognition of the capacity of writ of execution, as per the provisions of Regulation (EU) 1215/2012, 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 judgements 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.



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.

CHAPTER 10

Protection of intellectual and industrial property rights

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 to the EU Trademark System administered by the European Union Intellectual Property Office.

At national level, trademarks are protected under Law 84/1998, which sets out the procedure for registering trademarks with the State Office for Inventions and Trademarks (the Romanian specialised government body with sole authority to ensure the protection of industrial property – OSIM), the priority rights recognised and the rights and obligations deriving from trademark protection.

Trademarks may consist of any sign capable of being represented graphically provided that such signs are capable of distinguishing the goods or services of one enterprise from those of other enterprises and can be represented in the Trademark Register in such a way as to enable the relevant authorities and the public to establish clearly and precisely the object of the protection conferred.

The right to the trademark is acquired and protected by its registration with OSIM and the right belongs to the applicant who first filed the trademark application.

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

On 13 July 2020, Law 112/2020 which amends and supplements Law 84/1998 entered into force and is designed to align the national provisions on trademarks and geographical indications with European legislation, as well as with the jurisprudential tendencies of the Court of

Justice of the European Union. Law 112/2020 introduced shorter deadlines for trademark registrations, examinations, appeals and even priority claiming. At the same time, new deadlines for the opposition procedure were also introduced which are designed to ensure its coherence and speed.



Copyright

Romania is a member of the Bern Convention on Copyrights and a signatory party to the WIPO Copyright Treaty. In Romania copyright is regulated by Law 8/1996, which 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.

The most recent amendments to Law 8/1996 were made by Law 74/2018, Law 203/2018, Law 15/2019 and Law 8/2020.

Copyright is granted to the author of the work, irrespective of any formalities, from the moment the work is created and it meets the criteria for protection, even if the work has not been finished or made public.

In general, for a work to be protected by copyright it must be 'the author's own intellectual creation', which in Romania means that a work needs to be expressed in a concrete form, be original (i.e. it should bear the mark of the author's personality) and be in a form that can be perceived by others.

The Romanian legal framework provides that some works are not protected for copyright, for example, simple facts and data, ideas, theories, concepts, scientific discoveries, etc.

The general rule is that the individual(s) who created the work is/are the author(s) thereof, except in the cases provided by Law 8/1996 in which legal entities and individuals other than the author may benefit from the protection granted to the author (for example, the employer, in cases when the employee creates computer software as part of his/her employment relationship).

The economic rights of copyright protection last for the author's lifetime and after his/her death are transferred by inheritance for 70 years.

Patents

Romania is a party to the 1883 Paris Convention for the Protection of Industrial Property, and has ratified all the amendments, and to the 1973 European Patent Convention.

Currently, in Romania, patents are regulated by Law 64/1991, which governs the procedure for registering patents, as well as the rights and obligations deriving from them.

In order for an invention to benefit from legal protection, the inventor must obtain a patent certificate issued by the OSIM. According to Romanian law, a patent may be granted for any technical invention which has as its object a product or process, provided that it is new, involves an inventive step and is susceptible to industrial application. The right to the patent belongs to the inventor or his/her successors in title.

By way of example, discoveries, scientific theories, aesthetic creations, or computer programs are not considered inventions and do not benefit from the legal protection afforded by patents.

Patents have a 20-year validity, except for those which cover the protection of plant species, also based on a patent certificate, which have a 25 year validity (based on Law 255/1998).

Utility models

The utility model, which forms part of the legal framework governing the protection of industrial property, was introduced into Romanian legislation in 2007 (Law 350/2007).

The utility model ensures the protection of technical inventions only, and only products benefit from this protection. Consequently, inventions consisting of procedures or methods are not covered.

For a utility model certificate to be granted, the technical solution must be new, exceed the level of simple skill and be susceptible to industrial application. According to Romanian law, the right to the utility model belongs to the inventor or his/her successors in title.

In order for a technical solution to benefit from legal protection, the inventor must obtain a utility model certificate issued by the OSIM.

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.



On-the-job inventions

Since 2014 on-the-job inventions (in Romanian, "invenții de serviciu") have been regulated in Romania by Law 83/2014.

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 carried out 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 are applicable to technical solutions that can be protected under an invention patent or utility model.

An employee who creates an invention is required to communicate to the employer the presentation of the invention and the employer can then decide whether or not to classify an invention as an on-the-job invention and may claim the right to it.



As a general rule, the right to on-the-job inventions belongs to the employer. If the employer does not claim the invention, the right to the on-the-job invention can belong to the employee, in the case of inventions developed by using the employer's resources, as a result of the inventor's own professional training and qualification.

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%.

Drawings and models

The protection of drawings and models in Romania is governed by Law 129/1992, which transposes the provisions of Directive 98/71/EC on the legal protection of designs.

Council Regulation (EC) 6/2002 on Community designs is also applicable, ensuring the protection of EU designs and models in Romania. Under the regulations, EU protection of a design / model can be obtained via the filing of an application directly with the Office for Harmonisation in the Internal Market or via OSIM.

Drawings or models represent the external appearance of a product or part thereof, rendered in two or three dimensions, resulting from the combination of the main features, in particular lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation, which are able to be submitted for registration as a model or drawing, and are distinct from all the existing products on the market.

In order for a drawing or model to benefit from legal protection, the drawing or the model should be registered with OSIM. The right to obtain a registration certificate issued by the OSIM belongs to the author of the drawing or model or to his/her successors.



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 for trademarks.

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 82/1991, republished in the Official Journal of Romania 454 of 18 June 2008 (the “Accounting Law”). The provisions of the Accounting Law are applicable to:

- Private companies
- State companies (in Romanian, “regii autonome”), as well as national research and development institutes
- Cooperatives
- Public institutions
- Non-profit organisations
- Other legal entities
- Individuals authorised 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 approved 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.

CHAPTER 11

Accounting

Order 1802 is applicable to all companies, except for entities operating in the financial services sector 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 27/2010 with subsequent amendments, applicable to credit institutions,
- ✓ Accounting regulations compliant with IFRS approved by Order of the Ministry of Public Finance 2844/2016, applicable to entities whose securities have been admitted for trading on a regulated market.
- ✓ Accounting regulations compliant with European Directives approved by Order of the National Bank of Romania 6/2015 with subsequent amendments, 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 Financial Supervisory Authority 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 14/2015 with subsequent amendments, applicable to entities in the private pension system.
- ✓ Accounting regulations compliant with International Financial Reporting Standards approved by Norm 39/2015 with subsequent amendments applicable to entities authorised, 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 individuals authorised to carry out independent activities and associations without legal status. However since 2015, these entities have been able to 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 Authority.

- ✓ 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 reporting 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:

- Class 1 – Equity accounts
- Class 2 – Non-current assets
- Class 3 – Inventories and work in progress
- Class 4 – Third party accounts
- Class 5 – Treasury accounts
- Class 6 – Expense accounts
- Class 7 – Revenue accounts
- Class 8 – Special accounts
- Class 9 – Management accounts



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 indicated in the orders issued 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 condensed financial statements. The entities defined by Order 1802, in terms of size are:

Micro-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 – RON 1,500,000 (equivalent of EUR 338.310 as defined in Order 1802)
- ✓ Net turnover – RON 3,000,000 (equivalent of EUR 676.620 as defined in Order 1802)
- ✓ Average number of employees – 10

These entities are required to submit only condensed 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 – RON 17,500,000 (equivalent of EUR 3.946.953 as defined in Order 1802) - Net turnover – RON 35,000,000 (equivalent of EUR 7.893.906 as defined in Order 1802)
- ✓ Average number of employees – 50

These entities are required to submit a condensed balance sheet, extended income statement and explanatory notes to the financial statements. The presentation of the statement of changes in equity and the statement of cash flows 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 – RON 17,500,000 (equivalent of EUR 3.946.953 as defined in Order 1802)
- ✓ Net turnover – RON 35,000,000 (equivalent of EUR 7.893.906 as defined in Order 1802)
- ✓ Average number of employees – 50

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

For the purpose of Order 1802, public interest entities are national entities/ companies, entities controlled by the state and autonomous administrations (in Romanian, “regii autonome”).

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 the preparation of statutory financial statements.

Any departure from these principles is seen as being exceptional and requires disclosure in the explanatory notes to the financial statements, 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:

- ✓ It has a majority of the shareholders' or members' voting rights in another entity named as a subsidiary.
- ✓ 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.
- ✓ 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 a provision in its memorandum or articles of association, where the law governing that subsidiary permits its being subject to such contracts or provisions.
- ✓ 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.
- ✓ 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 – RON 105,000,000 (equivalent of EUR 23.681.717 as defined in Order 1802)
- ✓ Net turnover – RON 210,000,000 (equivalent of EUR 47.363.435 as defined in Order 1802)
- ✓ 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:

1. Where the parent company of the exempted entity holds all 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.
2. 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 2844/2016 as the basis of accounting and in the preparation of their individual/ separate financial statements.

Entities in the Financial Investments and Instruments Sector, which are authorised, regulated and under the supervision of the Financial Supervision Authority apply IFRS as the basis of accounting and prepare financial statements in accordance with IFRS and Financial Supervision Authority Norm 39/2015 for the approval of the accounting regulations compliant with IFRS.

Insurance companies have prepared financial statements in accordance with IFRS for information purposes, as per Norm 19/2015 issued by the Financial Supervision Authority. Also, non-banking financial institutions currently prepare financial statements in accordance with IFRS for information purposes, as per Order 8/2019 issued by the National Bank of Romania

Additionally, according to Order 666/2015 issued by the Ministry of Public Finance, as from 1 January 2018 a number of state-owned entities have been required to apply IFRS as their basis of accounting and to prepare their annual financial statements in accordance with IFRS.

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 1802/2014. This is applicable also for those 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 27/2010 with subsequent amendments, applicable to credit institutions.*
- ✓ *Accounting regulations compliant with IFRS approved by Order of the Ministry of Public Finance 2844/2016, applicable to entities whose securities have been admitted for trading on a stock exchange.*
- ✓ *Order 1121/2006 issued by the Ministry of Public Finance on application of International Financial Reporting Standards, as subsequently amended by Order 881/2012 issued by the Ministry of Public Finance on application of International Financial Reporting Standards by entities whose securities*

have been admitted for trading on a stock exchange.

- ✓ *Accounting regulations compliant with IFRS approved by Norm 39/2015 with subsequent amendments, applicable to entities authorised, regulated and supervised by the Financial Supervisory Authority.*
- ✓ *Norm 19/2015 issued by the Financial Supervision Authority on the preparation of annual IFRS financial statements for information purposes by insurance companies.*
- ✓ *Order 8/2019 issued by the National Bank of Romania on the application of International Financial Reporting Standards by non-banking financial institutions.*
- ✓ *Order 666/2015 issued by the Ministry of Public Finance on application of Accounting regulations conforming with International Financial Reporting Standards by certain state-owned entities.*



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 (Law 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 77/2014, as further amended.

The Competition Law applies, subject to certain conditions, to all companies (regardless of their nationality) in connection with activities carried out 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 relation to competition, 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.

CHAPTER 12

Competition in Romania

Main issues

The main issues to be considered with respect to competition 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 parts 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).

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, regulated under Order 431/2017, 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 carried out 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. The levels of the thresholds are periodically subject to amendment by the Competition Council depending on market development. 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 authorised 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:

1. 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.
2. 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, conditioning contractual performance to the approval of supplementary performances 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

The EU legal framework on state aid is directly applicable in Romania. Consequently, 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 relation to 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.

According to Government Emergency Ordinance 77/2014 (amended by Government Emergency Ordinance 6/2020), state aid is defined as any economic incentive granted by the state by using state resources or resources managed by the state, in any form, which distorts or threatens to distort competition by favouring certain enterprises or production sectors, in a manner affecting the commercial exchanges between 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 (cash grant equivalent) 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 ceiling applies to the total of all public assistance to any single recipient undertaking, which is considered to be de minimis aid.

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 authorisation 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 are 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 worldwide 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 worldwide 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 a dominant position may trigger fines of up to 10% of the total annual worldwide turnover of the year preceding the penalty.

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

An amendment to Law 21/1996 took effect from 1 January 2016, stating that companies may receive less severe penalties if the anticompetitive behaviour is made public to the Competition Council before any hearing. The previous legislation also allowed for less severe penalties for undertakings which disclosed the anticompetitive behaviour on the hearing date.

Directive 2014/104/EU on actions for damages in the case of infringements of competition law was transposed into national legislation under Government Emergency Ordinance 39/2017 (GEO 39/2017) that amends Law 21/1996.

Even though GEO 39/2017 was repealed by Decision no. 239/2020 made by the High Court of Justice and Cassation, which ruled that GEO 39/2017 was unconstitutional, the legal provisions of Directive 2014/104/EU were introduced in a similar manner by Government Emergency Ordinance 170/2020 (GEO 170/2020).

GEO 170/2020 regulates expressly the right of any entity or individual who has suffered harm, due to infringement of competition rules by an undertaking or an association of undertakings, to lodge claims with the appropriate courts of jurisdiction (i.e. the Bucharest Tribunal)

for full compensation for the harm suffered.

The legislation refers expressly to infringements of the provisions of Article 101 or 102 of the Treaty on the Functioning of the European Union, as well as of Article 5 and 6 of Law 21/1996. The legislation also gives additional definitions of concepts such as “action for damages”, “direct purchaser”, “leniency statement”, “injured party” etc.

Under GEO 170/2020, any entity or individual which has suffered harm caused by an anti-competitive practice prohibited under the provisions of Law 21/1996 may claim and obtain reparation in full for the harm done. As such, it is stipulated that full compensation has to be paid to parties who have suffered harm to the status in which they would have been had the competition rules not been infringed.

Moreover, full compensation includes both the actual harm suffered and the profit of which the injured party is deprived, as well as the payment of related interest.

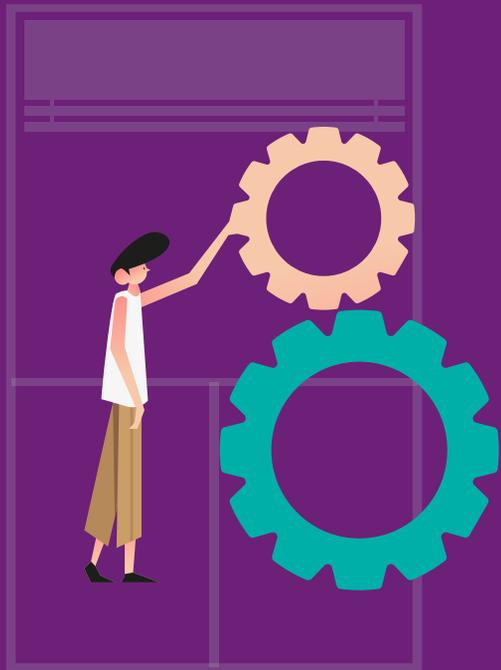
According to GEO 170/2020 all claims for damages, irrespective of value, should be lodged with the Bucharest Tribunal. Damages claims for competition law infringements will only become time barred after five years (as opposed to three years for regular claims for damages).

The new limitation period will only begin when the claimant knows, or could be expected to know, the identity of the party responsible for the infringement, the relevant conduct, the harm being caused by that conduct and the fact that the conduct constitutes an infringement of competition law.

The limitation periods are suspended when a competition authority is investigating an alleged infringement.

The suspension ends one year after the investigation or valid decision by the authorities.





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. EU environmental regulations have been transposed into Romanian legislation and any new EU norm is automatically applicable in Romania, as an EU Member State.

CHAPTER 13

Environmental protection



Environmental legislation

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

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

According to current legislation, legal entities must obtain an environmental authorisation to carry out certain activities considered to have an environmental impact, which are established under a Ministerial Order. This authorisation sets out companies' obligations to comply with applicable environmental norms.

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

However, this period can be more than 180 days if the activity is subject to the Industrial Emissions Directive (transposed into Romanian legislation by Law 278/2013) and needs an "integrated environmental authorisation". In order to maintain the validity of the environmental authorisation, the holder of the activity should apply for the annual visa not later

than 90 days and not earlier than 60 days before the day and month corresponding to the day and month in which the authorisation the entity holds was issued.

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 permit for

1. Environmental permit – a regulatory paper for a proposed project (including an area development plan and programme) 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) 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.

2. The Environmental Authorisation 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 and obligations related to environmental protection. For the activities subject to the IED, an Integrated Environmental Authorisation (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 (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/authorisation (Water Management Authorisation) issued by the Romanian Water Authority.

The Water Management Authorisation 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 procedures for the issuance of environmental authorisations/** integrated environmental authorisations and environmental permits/ integrated environmental permits: Environmental Permits are issued for projects as well as for significant changes made to activities in progress whereas Environmental Authorisations 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 on this issue. Producers and importers of packaged goods and disposable packaging have annual recovery and recycling targets (annual percentage of packaging placed on the Romanian market) that can be met either by companies setting their own collection system, only by managing their own packaging placed on the national market or by transferring these obligations to special certified collection organisations. If the targets are not

reached, companies are required to pay an environmental tax of about 0.40 EUR/kg for packaging waste not recovered/recycled.

- **Materials containing Polychlorinated Biphenyls (PCBs)** as well as materials containing asbestos that are considered hazardous in terms of human health and the environment and which 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 EU's REACH Regulation (on Registration, Evaluation and Authorisation of Chemicals) is also applicable in Romania. Registration with the European Chemicals Agency is compulsory. 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.
- **Electrical and electronic equipment waste (WEEE)**. Emergency Ordinance 5/2 April 2015 transposed into national legislation the requirements of Directive 2012/19/EU. EEE producers must organise the separate collection of WEEE from private households to reach an average collection rate at national level of at least 4 kg /inhabitant/ year. The minimum collection rate is calculated as

a percentage ratio (currently 65%) between the total amount of WEEE collected in the relevant year and the average amount of EEE placed on the market over the three previous years.

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 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.

A regulation on environmental taxes and contributions requires EEE producers (excluding lighting sources producers) to pay a tax of EUR 0.82/Kg for the difference between the collection rate and the WEEE quantity actually collected. For producers of lighting sources, the level of the environmental tax is EUR 4.08/Kg.



Batteries and accumulators management; the separate collection target (45%) for batteries and accumulators placed on the Romanian market by producers is set as a requirement 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. Under applicable legislation on the Environmental Fund, producers of batteries and accumulators are required to pay a tax of EUR 0.82/Kg for the difference between the collection rate and the amount of batteries and accumulators actually collected.

- **Waste oil management;** a requirement for oil producers/importers to pay an environmental tax of around 0.06 EUR/litre to the Environmental Fund Administration (EFA) for the amount of oil placed on the Romanian market is regulated by Emergency Ordinance (EO) 196/2005, on the Environmental Fund (with subsequent modifications).
- **Recycling of used tyres.** GD 170/2004 on waste tyres management requires tyre producers/importers to recover and recycle 80% of used tyres (expressed as a proportion of their weight). If this target is not met, an environmental tax of about 0.40 EUR/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 (less sensitive 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.

- **The “polluter pays” principle**, as set out in 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 19/2008, which sets out the application of Law 74/2019 aims to protect human health and the environment from the effects of soil contamination by regulating measures to improve the quality of environmental factors affected by the confirmed presence of pollutants at levels posing a significant risk to human health and the environment, taking into account present and future land use.

Emissions Trading. The revised Emission Trading Scheme (ETS) Directive 2003/87/CE establishes a scheme for greenhouse gas emission allowance trading within the EU (amending Council Directive 96/61/EC), and introduces fully harmonised and EU-wide rules for emission allowances distribution.

The EU ETS legislative framework for its next trading period (phase 4: 2021-2030) was revised in early 2018 to enable it to meet the EU's 2030 emission reduction targets and as part of the EU's contribution to the Paris Agreement.

The review focuses on:

1. Strengthening the EU ETS as an investment engine by increasing the rate of annual reductions in the volume of certificates issued to 2.2% from 2021 and strengthening the market stability reserve (the mechanism established by the EU in 2015 to reduce surplus emissions and to improve the resilience of the EU ETS to future shocks).
2. Continuing the free allocation of allowances as a guarantee for the international competitiveness of industrial sectors at risk of carbon leakage, while ensuring that the rules for determining the free allocation are focused and reflect technological progress.
3. Helping industry and the energy sector meet the innovation and investment challenges of the low-carbon transition through several low-carbon financing mechanisms.

Bidding is the most transparent method of allocating allowances and implements the principle that the polluter should pay. Undertakings covered by the EU Emissions Trading Scheme (EU ETS) need to buy an increasing proportion of allowances through auctions.

Starting with phase 3 of the EU ETS (2013-2020), bidding is the default method of allocating allowances. Certificates may also be allocated free of charge or placed in the Market Stability Reserve (MSR).

In the context of the 2030 climate and energy framework, EU leaders have decided that the transitional free allocation should be available for some Member States during phase 4 (2021-2030). They also stressed the need to improve transparency so that free allocation can be used to support real investment.

The revised EU ETS thus extends the availability of the free optional transitional allocation under Article 10c to the same lower-income Member States in phase 4. Of the 10 eligible Member States, only Bulgaria, Hungary and Romania have decided to use the free transitional allocation under Article 10c in step 4.

 **Environmental Authorities**

The environmental authority at central governmental level is the Ministry of Environment (MOE), in charge of national environmental policy and strategy development.

The Romanian environmental legal framework is also developed by the MOE. 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 (authorising) 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 MOE. 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 noncompliance, LEGs impose penalties, according to the amount of environmental damage or risk caused by the non-compliance.

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