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Preface

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

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

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

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CHAPTER 1
General Information about Romania

Romania is a country of considerable natural beauty, with numerous attractions for the visitor. It has seen significant economic growth in the last two decades, spurred on by EU accession in 2007. Although the economy was affected by the global economic downturn from 2008, it has seen steady growth in recent years and is now performing better than many other countries in the region. The information contained in this document was last updated on 15 April 2017.

Passports, Visas and Residence Permits

For the latest information on entry and immigration requirements see KPMG in Romania’s RoVisa Express iOS app, available in the AppStore. http://bit.ly/12usWxH. This app guides you through the Romanian immigration process in 5 easy steps. With easy-to-access information, RoVisa helps you find out rules about immigration and visa requirements for all categories of stay from countries throughout the world. Scan the following code with a QR reader to install the app.

Also, see KPMG in Romania’s Immigration Pocket Guide 2017

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

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

Nationals of countries considered by the Romanian authorities to present a high immigration risk are subject to strict visa requirements and they must follow a special procedure to obtain a visa prior to their arrival. This
A 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 or evidence of means of support, as well as proof of social health insurance (a European health card is acceptable in most cases).

**Hotel and Long Term Accommodation**

Romania offers a wide range of hotel accommodation. Major hotels offer all normal facilities business travellers expect (Wi-Fi etc.). A passport or residence permit is required to register at any hotel.
Because of the relatively high cost of hotel accommodation in Romania, many longer term or frequent visitors find it more convenient and cost effective to rent accommodation in an apartment. Short term rentals on a daily basis are widely available.

Credit and debit cards are widely accepted in hotels 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, EasyJet and Ryanair.

In Bucharest, all flights now use Henri Coanda (formerly Otopeni), which is Romania’s main international airport. (The smaller Bucharest Baneasa airport, which used to be served by low cost carriers, was converted into an airport 100% dedicated to business air traffic in March 2012). 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. Recently, low cost carriers have entered the domestic market too, alongside the national carrier TAROM, leading to a significant increase in the availability of internal flights and a reduction in costs.

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

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

Sea Ports

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

Geography and Population

Geographical Location

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

Neighbours

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

Population

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

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

Official Language

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

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

Standard Time

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

Area

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

National Day

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

Legal Holidays

1 and 2 January; 24 January; Easter Monday (Orthodox); 1 May; the Monday after Pentecost (normally 7 weeks after Orthodox Easter); 1 June; 15 August; 30 November; 1 December; 25 and 26 December.
Religion

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

National Currency

The national currency is the Leu (pl. Lei) with the subdivision Ban (pl. Bani). In economic and business circles the currency is generally referred to as the RON (New Leu). Approximate official rates in April 2017:

1 EURO = 4.55 Lei
1 USD = 4.07 Lei

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

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

Limited liability company; **societate cu răspundere limitată** (S.R.L.) 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), they may become liable without limitation (“piercing the corporate veil”).

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

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

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

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

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

According to the Company Law, as republished and subsequently amended, the notarization 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 authorized 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, as well as sanitary and sanitary-veterinary 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 organized 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 companies must file their financial statements, on paper and in electronic format, or only in electronic format, with the local offices of the Ministry of Public Finance within a maximum of 150 days of the end of the financial year. Companies with an annual turnover exceeding RON 10,000,000, representing the equivalent of approximately EUR 2,197,802 at an exchange rate of EUR 1 = RON 4.55, 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.

The share capital of an LLC may not be less than RON 200, representing the equivalent of approximately EUR 44 at an exchange rate of EUR 1 = RON
4.55 and is divided into shares ("parti sociale") with a registered value of at least RON 10 each. Shares are not marketable titles but they can be transferred among shareholders and to third parties.

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 shareholders register, 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 ("actiuni"), each with a value of at least RON 0.1. The initial capital paid by each shareholder may not be lower than 30% of the subscribed capital. The remaining 70% of the subscribed share capital must be paid over a period which must not exceed 12 months from the incorporation date, where the shares have been issued in exchange for contributions in cash and 2 years where the shares have been issued in exchange for contributions in kind.

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

The General Meeting of Shareholders may be ordinary or extraordinary. 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 ¼ 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 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 Companies 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 non-executive members, i.e. those who have not been appointed as managers, as well as executive members, who thus combine two offices; that of a director with that of a manager of a company.

B) The two-tier management system

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

Where a director has been designated to hold such a position from among the company’s employees, the employment contract will be suspended during the director’s term of office.

The directors and the members of the Management Board or of the Supervisory Board must conclude professional liability insurance agreements.

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

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

The delegation of a company’s management is 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 accounting-financial experience.

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

The financial statements of companies subject to a financial audit must be verified and certified by financial auditors registered with the Romanian Chamber of Financial Auditors, and in this case the provisions on censors’ activity will no longer be applicable.

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

A self-employed individual is merely an individual doing business independently. 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 offense and is penalized according to the law.
Representative Offices

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

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

Authorizations issued by the Ministry of the Economy limit the activities of Representative Offices to the promotion and technical support of the parent company’s business activities, without their having the right to carry out these activities.

Thus, in practice, a Representative Office 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.

In addition, a tax of EUR 4,000 must be paid annually, in RON, according to the exchange rate of the National Bank of Romania. If the license is issued during the year, the tax must be paid as a proportion of the period remaining until the year end.

Branches and Subsidiaries of Foreign Companies

A foreign company may do business in Romania through either a subsidiary or a branch. While a subsidiary has a legal status and is considered 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 authorized.

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

In practice, subsidiaries must fulfill the same registration formalities as companies, i.e. registration of the 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 în participatie”) is defined as an agreement under which an individual or legal entity grants to one or several other individuals or legal entities a participation share in the profit and losses generated from one or more operations that he/she/it is carrying out. In accordance with the law, a joint venture cannot have legal status and, before third parties, it may not be deemed as an entity distinct from its partners. Partners (even when acting on behalf of the joint venture) fulfill 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
penalization 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 notarized 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 authorizations of an EIG are issued by the Trade Registry’s special office in compliance with Law 359/2004, as amended. An EIG’s headquarters registered in Romania can be relocated abroad, by unanimous decision of its members.

The operation of an EIG is very flexible, with its structure and operation being set out under the 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 organized 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 organization and operation of an EEIG is similar to that of an EIG.
• An EEIG registered in Romania cannot have more than 20 members.
• An EEIG registered in Romania cannot issue shares, bonds or other similar securities.
• An EEIG’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 authorization requirements provided by Decree-Law 122/1990 on the authorization and operation in Romania of representative offices of companies and foreign economic organizations, as amended.
CHAPTER 3
Taxation in Romania

Summary of main taxes

Standard Corporate Tax: fixed rate of 16%

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

Alternative tax on turnover, for micro-enterprises (turnover < EUR 500,000):
- 1% for companies that have at least 1 employee.
- 3% for companies with no employees.

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

Standard Individual Tax: flat rate of 16%.

Social Security Contributions:

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

Standard Withholding Tax: 16%.
Withholding tax on payments to Romanian residents:
- Dividends to Romanian resident companies: 5%
- Dividends to Romanian resident individuals: 5%
- Interest to Romanian resident companies: 0%
- Royalties to Romanian resident companies: 0%

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

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

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

Standard VAT rate: 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).

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

2 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 non-interrupted period of at least 2 years).

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

Rulings:

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

Statute of limitations

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

Interest and late-payment penalties

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

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%.

Corporate taxpayers

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

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

**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: 0.5% of net turnover or 20% of the corporate income tax due. When sponsorship expenses exceed these limits, the unused tax credit can be carried forward over the next 7 consecutive years and recovered under the same conditions.
Provisions and reserves

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

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

Provisions for doubtful customers are deductible under certain conditions.

Depreciation

The following depreciation methods are available for tax purposes:

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

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

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

The following rules apply to the deductibility of interest expenses:

1. Interest expenses and foreign exchange losses recorded in relation to loans obtained from a financial institution (e.g. bank loans) are fully deductible.
2. Deductibility of interest expenses recorded in relation to loans obtained from non-financial institutions (e.g. shareholder loans) is subject to the following limits:
   - Interest rate limitation: deductibility of interest expenses may be claimed only up to a 4% interest rate for loans denominated in foreign currencies and up to the reference interest rate published by the National Bank of Romania for loans denominated in RON. Any interest in excess of the relevant threshold is permanently non-deductible for corporate tax purposes.
   - Debt-to-equity limitation: if the company’s debt-to-equity ratio (calculated as the ratio between borrowings maturing after more than 1 year and the company’s equity) exceeds 3:1 or if the company’s equity is negative, interest expenses and foreign exchange losses recorded in relation to loans obtained from non-financial institutions should be treated as non-deductible for corporate tax purposes.

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

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

Transfer Pricing

Transactions between related parties must respect the arm’s length principle. The 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.

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

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

**Withholding tax on dividends to Romanian shareholders**

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

- 0% for dividends paid to corporate shareholders, provided that the dividend recipient has held at least 10% of the shares of the dividend paying entity for an uninterrupted period of at least 1 year.
- 5% for dividends paid to individuals or to corporate shareholders which do not fulfil the conditions mentioned above.
Dividends may be paid only out of profits reflected in annual financial statements, which must be approved by shareholders (no interim dividends may be paid by Romanian companies).

**Special regime for micro-enterprises**

Turnover tax is compulsory, instead of corporate income tax, for Romanian legal entities with a turnover of maximum EUR 500,000 and income from consultancy and management of maximum 20% of turnover. Taxpayers carrying out oil & gas, banking, insurance and reassurance, capital markets or gambling activities do not apply the tax on micro-enterprises, and must pay normal corporate income tax in all cases.

Micro-enterprises with a share capital of RON 45,000 or more may opt to pay corporate income tax.

Depending on the number of employees, tax rates are:
- 1% for companies that have at least 1 employee.
- 3% for companies with no employees.

For newly established micro-enterprises with at least one employee, the tax rate applicable in the first 24 months may be 1%, subject to certain conditions.

**Personal income taxation**

Standard rate: **16%**

**Taxpayers**

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

**Tax residence**

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

- The individual has his/her domicile in Romania (as proved by a valid ID card).
- The individual has his/her center of vital interests in Romania.
- The individual is present in Romania for a period (periods) exceeding 183 days during any 12-month period, ending in the fiscal year concerned.
Romania has concluded Double Taxation Treaties with almost 90 countries around the world (see Taxation of non-residents below). Most of these treaties are based upon the OECD Model Tax Convention on Income and Capital. If an individual qualifies as a resident of one of the two states, the relevant treaty can be applied.

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

- Income from independent activities
- Income from dependent activities
- Rental income
- Investment income (except for dividends – 5%)
- Pension income
- Farming income
- Prizes
- Income from transfer of immovable property
- Other income

For investment income and income from transfer of ownership of immovable goods, see below for applicable tax rates.

Income from independent activities is defined as:

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

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

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

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

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

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

Individuals earning only salary income under a local Romanian contract do not have to file a tax return. The employer withholds and pays all salary taxes and social contributions to the state budget.

Salary income earned by employees whose activity consists of computer software development and research and development is tax exempt, subject to certain conditions stipulated by Government Order.

Rental income

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

Income from prizes and gambling

Income from gambling is taxed as follows:

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

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

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

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

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

**Income from transfer of immovable property**

Gross proceeds earned from sale of real estate are subject to a tax of 3%, applied to the value which exceeds RON 450,000. If the sale proceeds are less than RON 450,000, no income tax is due.

**Immigration rules for expatriates working in Romania**

For information on entry and immigration requirements see KPMG in Romania’s RoVisa Express iPad app, available in the Appstore. [http://bit.ly/12usWxH](http://bit.ly/12usWxH). This app guides you through the Romanian immigration process in 5 easy steps. With easy-to-access information, RoVisa helps you find out rules about immigration and visa requirements for all categories of stay from countries throughout the world. Scan the following code with a QR reader in order to install the app.

Also, see KPMG in Romania’s [Immigration Pocket Guide 2017](#).

**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 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 (16%) 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.
• **1%** for income from gambling activities, with certain exceptions (e.g. online gambling or slot-machines), for which tax is declared and paid by the individual.
• **50%** for interest, royalties, commissions, income from rendering services in or outside Romania as well as income from carrying out a liberal profession, if this income is paid to a non-resident from a state with which Romania has not concluded a treaty for the exchange of
information and if the income is paid in relation to “artificial transactions” as defined under the Fiscal Code.

The tax rates mentioned above may be reduced (or eliminated) by virtue of a treaty for the avoidance of double taxation concluded between Romania and the residence country of the income recipient. For the purposes of applying the more beneficial tax treatment provided by tax treaties, a tax residency certificate should be obtained by the non-Romanian revenue recipient, issued by the tax authorities in 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.
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<tr>
<th>Country</th>
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<td>Albania</td>
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**Representative Offices**

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

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

Romanian VAT legislation is generally in line with the principles of 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 certain goods and services, i.e. accommodation, foodstuffs, restaurant and catering services, prostheses and the related accessories (except for dental prostheses), orthopaedic products, medicine suitable for human and animal use, water (for human consumption and for irrigation in agriculture), supply of fertilizers and pesticides used in agriculture, seeds and other agricultural products intended for sowing or planting, and also for supplies of services specific to agriculture.
- Reduced VAT rate: **5%** for books, magazines, newspapers (with the exception of those destined exclusively or mainly for commercial purposes), admission to castles, museums, monuments, theatres, fairs, zoos, cinemas, exhibitions, cultural events, sporting events, as well as sale of real estate as part of social policy, under certain conditions.

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

The VAT registration process has become more complicated for taxpayers established in Romania in recent years. Taxpayers are required to submit extensive information and documents to the relevant tax office (fiscal records of the directors and associates established in Romania, affidavits with respect to the fiscal record of foreign administrators / associations, statements detailing the activities carried out at the headquarters, and outside it, as appropriate, and any other documents that the tax authorities consider necessary to assess the taxpayer’s intention and ability to carry out economic activities).
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 65,000 threshold are required to register and account for Romanian VAT.

If the annual turnover is below EUR 65,000, the entity is not required to register for VAT purposes. However, the taxable person may opt for the application of the general VAT regime.

If a Romanian entity carries out exclusively operations which are VAT exempt without credit, it is not allowed/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 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 calendar year / last 12 months carried out imports of goods (except for excisable goods) with a value exceeding RON 100,000,000 (i.e. about EUR 23,000,000), or that hold an AEO (“Authorised Economic Operator”) certificate or a customs authorization to apply the on-site simplified customs clearance procedure.

*Services*

The general rule is that the place of supply of services is the place where the beneficiary has established its business. However, there are some exceptions to this rule (e.g. services connected with immovable property, restaurants and catering, as well as passenger transport).

Moreover, 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 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. For 2017, 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.

VAT cash accounting system

Romanian businesses that obtained a turnover lower than RON 2,250,000, 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.
• 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.

Temporary simplification measures (until 31 December 2018) apply to supplies of:
• 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, subject to a flat rate of 1% in 2017, 4% in 2018 and 8% in 2019, 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 2017, the total excise duty for cigarettes has been RON 435.58/1,000 cigarettes.

The level of excise duties applicable to the main energy products is as follows: RON 1,656.36/1,000 liters for unleaded gasoline, RON 1,948.23/1,000 liters for leaded gasoline, RON 1,518.04/1,000 liters for diesel and RON 2,112.73/1,000 liters for kerosene used as motor fuel.

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

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

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.
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.

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

The customs regimes 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 23,000,000) 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) No. 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) No. 2016/2446), the Implementing Act (Regulation (EU) No. 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) No. 2016/341).

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

— Some customs regimes are no longer available, such as the inward processing–drawback system and processing under customs control.
— By 1 January 2021 it is envisaged that communication between traders and the customs authorities, including the submission of documents and declarations, will be made exclusively by electronic means.
— The Union Customs Code provides some situations in which the fulfilment of the criteria/conditions for obtaining AEO authorization, or even holding AEO certification, is required - for instance to obtain authorization to apply simplified customs clearance procedures.
— New criteria and requirements have been introduced for obtaining AEO authorization, i.e. criteria on practical standards of competence and professional qualifications.

In addition to the Union regulations mentioned above, national legislation is still applicable, i.e. Law No. 86/2006 on the Romanian Customs Code, G.D. No. 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.

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 non-residential buildings, the taxable value may be either determined based on a valuation report or, in the absence of a valuation report, the taxable value is the notional value determined as in the case of residential buildings, but in this case the applicable tax rate is 2%.
**Tax on land** is calculated per sqm and varies according to the location of the land and its use.

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

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

**Other local taxes** include:

- Tax on shows: organizers of artistic events, sports competitions and entertainment activities must pay a tax on shows, determined using a rate of up to 5% applied to the income from tickets/subscriptions.

- Advertising tax:
  - For advertising services: between 1% and 3% of the value of the services provided.
  - For displaying advertising signs: up to RON 23 or RON 32 (if the sign is displayed at the location where the activity is carried out) multiplied by the number of square meters of the sign.

**Other taxes**

**Environmental taxes**

The most common environmental contributions due in Romania relate to:

- Packaging materials and tyres placed on the Romanian market, for the difference between the quantities collected/recycled and the collection/recycling targets set by law (2 RON/Kg).

- Oils introduced on to the Romanian market (0.3 RON/Kg).

- Emissions of pollutants from fixed sources (e.g. factories, energy plants), which depend on the type of pollutant.

- Bags and shopping bags, with integrated or applied hand-holds, made of non-renewable materials - 0.1 RON per bag.

- Hazardous substances placed on the Romanian market (2% of the value of the hazardous substances).
• The sale of scrap metal (3% of the income obtained from sales).

• Contribution for final disposal of inert and non-hazardous waste by depositing it (RON 80/ton in 2017, RON 120/ton starting with 2018).

• For 2017, a contribution is due for the difference between the amounts of electrical and electronic equipment (EEE) and portable batteries and accumulators (B&A) reported as placed on the market by retailers and the amounts identified by the Environmental Fund Administration as having been introduced on to the national market (RON/4Kg for most EEE and B&A).

• Companies placing EEE and B&A on the Romanian market are required to finance the collection and recovery of the related waste. From 1 January 2018, a contribution (RON 4/Kg for most EEE and B&A waste) will be due for failure to comply with this legal obligation, calculated based on the difference between the minimum collection rates set by law, and the quantities actually collected.

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

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

Investment incentives

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

Local incentives (i.e. exemption from the local tax on buildings and from the local tax on land) may be granted by local authorities, provided that the local
authority 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:

- 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).
- 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.
- 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).
- Exemption from personal income tax for employees carrying out R&D activities, subject to the fulfilment of certain conditions set out by law.
- Exemption from personal income tax for software development employees. The incentive is granted subject to the fulfilment of certain conditions set out by law.
- 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.
- Incentives for supporting vocational and technical 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.
CHAPTER 4
Banking and Finance

Romanian Banking System

The banking system has seen healthy growth in recent years and the difficulties of non-performing loans which emerged as a result of the 2008-9 recession have largely been resolved.

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

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

National Bank of Romania

The National Bank of Romania (“NBR”)’s activity is governed by Law 312/2004 on the Statute of the National Bank of Romania. As an independent public institution, the NBR is run by a Board of Directors consisting of nine members appointed by Parliament. Its primary objective is to ensure and maintain price stability.

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

Regulations on Credit Institutions

Romanian law applies the main provisions of European Directives on credit institutions, as well as the Capital Requirements Directive (CRD) IV package.

The NBR issued regulations transposing the provisions of Directive no. 2013/36/EU at the end of 2013 and the beginning of 2014. The national legal framework has now transposed the capital and corporate governance requirements provided under this Directive as well as under Regulation 575/2013, (i.e. CRD IV legislative package).
Credit institutions that are Romanian legal entities may be set up and operate as: (i) banks, (ii) credit co-operatives, (iii) housing savings banks, (iv) mortgage loan banks and (v) electronic money institutions.

**Domestic Credit Institutions**

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

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

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

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

Romanian banks are mainly involved in the following activities: (i) Acceptance of deposits and other repayable funds, (ii) Lending, including, inter alia: consumer credits, mortgage credits, factoring with or without recourse, financing of commercial transactions, including forfeiting, (iii) Financial leasing, (iv) Payment services, (v) Issue and administration of payment means such as cheques, bills and promissory notes and other similar means of payment (v) Issue of guarantees and undertaking of commitments, (vi) Trading of financial instruments on their own behalf and on behalf of clients, (vii) Keeping in custody and managing financial instruments, (viii) issuing electronic money etc.

Romanian banks are expressly prohibited from carrying out activities, such as: (i) Pledging the bank’s own shares to secure its liabilities, (ii) Granting loans secured with the bank’s own shares, etc., (iii) Acceptance of deposits and other repayable funds when the bank is insolvent.

Supervision of the liquidity risk is ensured both by banks and the NBR. As such, all banks must submit financial statements to the NBR and other requested data under the terms and in the form established under current legal provisions.
In order to limit the liquidity risk, for each financial year banks must establish: (i) A strategy for liquidity management, which must be reconsidered whenever the business environment makes it necessary and (ii) A strategy for liquidity risk in the event of a potential crisis, and appropriate solutions for resolving the crisis. In order to meet these objectives, banks must have procedures in place for monitoring and limitation of liquidity risk.

Foreign Credit Institutions

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

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

Licensing

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

- Maintenance of a minimum share capital (endowment capital for branches).
- Reputation and financial reliability of significant shareholders.
- Evidence of a strong and professional management team.
- Presentation of a comprehensive three-year business plan.

Generally, the NBR authorization process includes 3 stages:

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

Individuals or legal entities or a group of individuals and/or legal entities which intend to become significant shareholders of an already existing credit institution, e.g., have a contribution to the share capital or voting rights in the bank equal to or more than 10%, must obtain NBR approval.
To ensure the stability of the banking system, the NBR has introduced certain requirements to be met by the shareholders of a bank (individuals or legal entities), as follows: (i) Sound reputation, analyzed in terms of integrity and professional competency, including experience as a controlling shareholder or a director/manager of a financial institution (ii) Stable financial situation (the NBR has the authority to analyze the source of the funds used by individuals or legal entities to gain the position of a significant shareholder), (iii) Supply of the necessary information related to the group they belong to; (iv) Adequate supervision ensured by the relevant authorities in the country of origin of the individual or the legal entity.

**Accounting Regulations**

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

**Privatization of State-Owned Banks**

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

**Non-Banking Financial Institutions**

Non-banking financial institutions are regulated by Law no. 93/2009. To qualify as a non-banking financial institution and to be authorized to conduct credit operations, a company is required to include in its main objects of activity only the activities permitted under Law no. 93/2009, e.g. granting of credits, financial leasing or pawnbroking activities. Non-banking financial institutions must have a minimum share capital in RON equivalent of EUR 200,000, or EUR 3,000,000 if 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 no. 93/2009 states that non-banking financial institutions must be registered with the NBR and included in a General Registry as well as, if applicable, in a Special Registry (depending on certain criteria relating to turnover, credit volume, debt-to-equity ratio, total assets and own capital - as established under NBR regulations). As a general rule, non-banking financial institutions are allowed to carry out the activities included in their object of activity only after they have been recorded in the General Registry maintained by the NBR.

**Payment Institutions**

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

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

**Foreign Currency Regime**

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

**Currency Convertibility**

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

**Inter-bank Foreign Exchange Market**

The leu’s exchange rate is determined on the inter-bank foreign exchange market, 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 currency.

As a general rule, payments made between residents, related to the trade of goods and services must be carried out in RON. In certain situations, such as those presented below, payments can also be made in foreign currency by the following categories of residents:

- Legal entities, for payments and cash receipts from cross-border trade of goods and services.
- Any individual or legal entity, for trading operations inside harbors, airports, customs or on external routes of international trains, ships or airplanes.
- Any individual or legal entity, for operations related to the organization or supply of cross-border services.
- Individuals, for incidental operations.
- Any individual or legal entity, for operations 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 (ii) primary trading with financial instruments with the initial reimbursement
period longer than 1 year (bonds or other financial instruments) issued by residents on a foreign capital market.

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

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

**Consumer Credit Protection**

Government Emergency Ordinance no. 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**

The Law on giving in payment no. 77/2016 (in Romanian “legea dării în plată”) sets out a debtor’s right to extinguish a full credit agreement and any related obligations by transferring real estate ownership which has been mortgaged to the lender. The law has come under intensive public debate and recently the Constitutional Court issued a decision clarifying that the law can only be applied in cases of hardship.
Romanian Mortgage Credit Law


GEO 52/2016 applies to all credit agreements for consumers on the sale and acquisition of immovable assets, credit agreements backed up by immovable mortgages, as well as credit agreements which involve a right related to an immovable asset.

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

Consumer protection against insolvency of credit institutions and of investment firms

Law no. 312/2015 updated previous regulations on the guaranteeing of certain deposits within the banking system, bringing Romania’s legislation into line with EU law. The Law sets out the framework for the Deposit Guarantee Fund, to which financial institutions are required to contribute, and states that the resources of this fund 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 the 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 a number of conditions are met, including: (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 must be likely to ensure the premises of protecting the interests of its investors and other creditors; (ii) the issuance of covered bonds should 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 Unika and Vienna Insurance Group.

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

Insurance activities may be carried out only by insurance companies set up and operating according to the general provisions of the Company Law (Law 31/1990), OG 54/2016 on insurance and reinsurance and Law 32/2000 on insurance undertakings and insurance supervision which was amended by Law 237/2015 on the authorization and supervision of insurance and reinsurance activities. As such, the setting up of an insurance company is subject to the following main rules:

- Insurance companies set up as Romanian legal entities must be organized as joint stock companies registered with the appropriate Trade Registry Office, whose shareholders can be resident or non-resident individuals or legal entities.
- Currently, the minimum share capital, depending on the insurance type offered, starts from a minimum of EUR 2,000,000 for insurers and EUR 960,000 for reinsurers. Insurance companies based in an EU or an EEA member state may operate in Romania under a license issued by the supervisory authorities in their home-countries, by setting-up a branch or by providing services directly, in accordance with the right of establishment and freedom to provide services.
- Non-EU insurance companies may carry out insurance activities in Romania by setting-up branches, subject to authorization by the ASF and subject to supplementary requirements.

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

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

The authority supervising the insurance market has issued regulations on matters such as:

- Internal control and risk management of insurance companies.
- Fees for insurance companies and insurance brokers.
- Evaluation criteria for approval of significant shareholders and for authorizing the setting up of insurance companies. Insurance companies must have adequate financial resources and insurance must be their sole object of activity. They must have a corporate name which is not misleading to customers, as well as meeting minimal conditions related to share capital and reserves. They must present comprehensive reinsurance and feasibility programs, while foreign insurance companies must present evidence of similar activities 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 no. 246/2015 on the recovery and resolution of insurers sets out recovery and resolution planning measures, requiring insurers which play a significant role in the national insurance system to develop their own recovery plans.

(a) In terms of recovery plans, the insurers mentioned above must develop and maintain a plan, setting out measures to be taken to restore their financial situation if the insurer’s financial indicators undergo a significant deterioration.

(b) The resolution plan for an insurer should be prepared by the ASF and provide the resolution measures that can be undertaken by the ASF if the insurer meets the conditions required for the initiation of a resolution procedure.

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

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

Participation in a mandatory pension fund is only open to employees paying social security contributions (CAS). Contribution collection is centralized by the National Pensions Authority which collects and directs the contributions towards the pension funds. Since 2008, part of the social security contribution due by individuals has been redirected from the state budget to the chosen private fund. The redirected contribution was set at 2% in 2008 with the aim of a gradual increase to 6%, with a corresponding decrease in the contribution to the state system. It is currently 5.1%.

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

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

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

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

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

Regulatory mechanisms and bodies

The Financial Supervision Authority ("ASF") is the regulatory and supervisory body of the capital market. The ASF was established in 2013 and took over the prerogatives of the former National Securities Commission ("NSC"), the Insurance Supervision Commission and the Private Pensions Supervision Commission. Currently, the former NSC is a branch of the ASF called the Financial Instruments and Investment Sector. The ASF has certain extended prerogatives to the effect that it authorizes investment firms, management companies and undertakings for collective investments in transferable securities and also provides the general listing requirements for issuers and regulates the securities exchange, including trading and settlement mechanisms.

In 2004, as a result of the Government’s efforts to harmonize Romanian capital market legislation with EU directives, the legal framework governing capital markets was significantly amended by the enactment of Law no. 297/2004 on capital markets ("Law 297/2004").

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

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

On February 2017, the draft law on financial instruments issuers and market operations was adopted by the Chamber of Deputies. In order to become a law, the draft will have to follow the full legislative procedure, and then be signed by the President of Romania and published in the Official Journal of Romania. The law maintains a number of provisions contained in the Capital Market Law (297/2004) and transposes a number of European directives. It repeals Title V – Market operations, Title VI – Issuers, and Title VII – Market abuse from Law 297/2004.

The main purpose of the draft law is to create the prerequisites necessary to ensure the development of the capital market in order for Romania to be reclassified as an emerging market. Consequently, the draft sets out the following development goals: (a) Improvements to the implementing framework applicable to corporate governance principles for issuers with favourable implications for transparency and relevant information reporting; (b) Optimisation of the framework for public tenders and securities listing; (c) Strengthening of the legal framework to ensure investors’ rights, for example the right to vote in the general meeting of shareholders, the right to dividends etc.

The draft law sets out the applicable legal framework for market operations which have as their subject matter financial instruments admitted to trading or which will be admitted to trading on a regulated market or traded on a multilateral trading system or on a trading system supervised by the Financial Supervisory Authority as well as for issuers of financial instruments, and public offers of securities.

Distinctions are made between entities listed on a regulated market and those listed under an alternative trading system.

The draft law excludes from its application monetary and currency instruments which are regulated and supervised by the National Bank of Romania.

The draft 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.
Intermediaries

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

Investment Firms (Societăți de Servicii de Investiții Financiare) are set up in Romania as joint stock companies whose object of activity is to carry out investment services. In 2015, the ASF issued a regulation allowing investment firms to carry out other activities such as insurance intermediation or credit intermediation.

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

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

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

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

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

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

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

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

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

Regulated markets

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

Bucharest Stock Exchange

The Bucharest Stock Exchange (BSE) was established as a legal body in April 1995. Law 297/2004 on capital markets transformed it into a joint stock company.

The regulated spot market operated by the BSE is structured as follows:
A. Equity sector
B. Debt sector
C. Collective Investment Undertakings Sector
D. Structured Products Sector
E. Other International Financial Instruments Sector.
A. The equity sector is divided into: (i) Premium Tier shares, (ii) Standard Tier shares, (iii) International Tier shares.

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

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


Bonds and other debt securities

The bonds market is currently developing, in terms of both corporate and municipal bonds. In this respect, regulations have been adopted governing the securitization of receivables and mortgage-backed securities.

Additionally, the Ministry of Public Finance is empowered to issue treasury bills in national or foreign currency, for short, medium or long term periods. These treasury bills can be issued in materialized or dematerialized form. Dematerialized treasury bills with a maturity in excess of 12 months can be traded on the regulated market and can be bought by individuals and companies. The Ministry of Public Finance, together with the NBR and the former NSC have issued Regulations governing the performance of these transactions.

Alternative Trading System (ATS) - AeRO

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

On 25 February 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 European Directives or European and Romanian capital market law, but is regulated by the BSE’s rules and obligations. The alternative system was established by the BSE in order to provide a market with less reporting obligations from issuers, but at the same time with sufficient transparency for investors to encourage them to trade.

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

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

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

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

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

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

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

**Collective Investment Undertakings**


**UCITSS (Open-end Investment Funds and Investment Companies)**

Open-end investment funds are non-incorporated collective schemes authorized by the ASF and managed by a management company that has the exclusive prerogative to set up an open-end investment fund. The funds issue fund units but are not allowed to issue other financial instruments.
A management company can be set up as a joint stock company, with an initial capital of at least the RON equivalent of EUR 125,000.

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

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

Investment companies are (i) Joint stock companies issuing nominative shares, fully paid upon subscription and (ii) 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 UCITs is that their units (fund units or shares, as appropriate), may be repurchased from their owners, upon request.

**Alternative investment funds managers (AIFM)**

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

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

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

To this extent, the transposition aims to regulate the activity of all alternative investment funds managers (AIFMs), other than undertakings for collective investment in transferable securities (UCITs) and which especially distribute titles to professional investors.
In this respect, authorization/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 authorization, if the AIFM manages assets below a certain level. In this case, these entities only come under the registration requirement.

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

- Authorization, registration and operation of alternative investment fund managers.
- Appointment and duties of a depositary for alternative investment funds.
- Necessary conditions for a registered AIF to manage 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 the public (individuals and/or companies) and which are set up as (i) Closed-end investment funds or (ii) Closed-end investment companies. These entities must register with the ASF and must entrust their assets to a depositary. Closed-end investment funds registered with the ASF must be managed by an authorized management company.

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

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

Domestic Commercial Transactions

Commercial Law

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

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

To guarantee their contractual obligations, debtors and creditors may enter into suretyship contracts, issue letters of guarantee and comfort letters as well as set mortgages on immovable/movable assets and pledges. Additionally, creditors may introduce prior claims with regard to contract related receivables.

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

Finance and Bankruptcy

Law no. 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 meets
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.

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.

**Disputes between professionals**

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

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

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

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

Written evidence

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

Formal procedure for receivables collection

According to the Civil Procedure Code, the formal procedure for receivables collection is an alternative solution to the general applicable rules for asserting a financial claim, having the advantage of being less time consuming than normal judicial proceedings and subject to a small-value, fixed stamp duty. Thus creditors may choose between the special procedure of payment ordinance (in Romanian “ordonanță de plată”) and filing an action in court. Nevertheless, creditors who are unsuccessful in this formal procedure for the collection of receivables will be given the opportunity to continue to pursue their case in accordance with the general applicable rules.
The procedure for receivables collection begins with a mandatory notice of delay (sent through the enforcement officer or by registered letter) whereby the debtor is advised to pay the amount owed in a 15 day period as of its receipt. Moreover, under the Civil Procedure Code, this notice of delay will 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:

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

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

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

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

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

Transfer of real estate

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

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

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

However, under Law 71/2011 on the implementation of the New Civil Code, these provisions on ownership registration in the Land Book become applicable only after completion of cadastral measurements in each 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 notarized documents and further to their registration in
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 no. 312/2005, which stated that this right would apply seven years after Romania’s EU accession).

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

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

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

**Land registration**

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

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

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

**Fiduciary agreements**

Fiduciary Agreements have been possible in Romania since 2011. These allow any person 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 notarized 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 legislative framework for land restitution saw significant amendments during 2013 through the entry into force of Law 165/2013 on the measures for the finalization of the restitution process, in kind or in equivalent, of immovable property abusively taken over during the communist regime in Romania, as subsequently amended. (The last amendment was on 31 December 2016). As a general rule, former owners benefit from restitution in kind of their former properties. However, if restitution claims may no longer be solved by restitution in kind, the following compensatory measures apply: compensation through points (one point is valued at 1 RON) or compensation with assets of equivalent value. The Ordinance also states that all restitution claims must be solved by 1 January 2018, (as amended on 21 December 2016), and that possession of the land must be granted and ownership titles issued by that date.

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

Another solution adopted by the Romanian Government for property restitution was the establishment, under Title VII of Law No. 247/2005 and Government Decision no.1481/2005, of Fondul Proprietatea SA., 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 no. 54/2006, 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. A concession agreement may be extended for a maximum period equal to half of the initial concession term.

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

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

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

Thus, mortgage loans are granted by institutions authorized in accordance with the provisions of Law 190/1999.

Loans must be secured by a mortgage set on the building which is being financed or on equivalent properties. Moreover, a mortgage may also be set over future real estate. This mortgage may be registered in the Land Book provided that the building permit have previously been registered in the Land Book.
The law also sets out specific protection rules for borrowers, such as the possibility of an advance repayment or negotiation of the interest rate.

**Developing Real Estate**

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

Once the 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 authorizations may be required (for utilities etc).

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

According to Law 372/2005 on energy performance of buildings, which took effect on 1 January 2011, a sale/acquisition/lease of buildings can be made only provided that an energy performance certificate is obtained. Absence of such a certificate may invalidate the sale agreement. In general, the certificate is valid 10 years as of its issuance date. Insurance of buildings against earthquakes, landslides and floods has been mandatory since 2011. 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.
CHAPTER 7
EU Funding

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

By the end of February 2017, Romania had achieved an effective absorption rate of 2007-2013 Structural and Cohesion Funds (“SCF”) of 79.23%, with interim reimbursements from the European Commission (without advance payments) of EUR 14.88 billion. In a country-by-country comparison, Romania ranked last but one among EU Member States in terms of EU funds absorption. The SCF absorption rate by operational programs (“OPs”) as at 31 October 2016 is outlined below:

<table>
<thead>
<tr>
<th>Operational Program</th>
<th>Effective absorption rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase of Economic Competitiveness SOP</td>
<td>85.94%</td>
</tr>
<tr>
<td>Human Resources Development SOP</td>
<td>73.37%</td>
</tr>
<tr>
<td>Regional OP</td>
<td>85.04%</td>
</tr>
<tr>
<td>Environment SOP</td>
<td>78.48%</td>
</tr>
<tr>
<td>Administrative Capacity Development OP</td>
<td>82.00%</td>
</tr>
<tr>
<td>Technical Assistance OP</td>
<td>86.00%</td>
</tr>
<tr>
<td>Transport SOP</td>
<td>74.63%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>79.23%</strong></td>
</tr>
</tbody>
</table>

Source: Ministry of Regional Development, Public Administration and European Funds

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.

**European Structural and Investment Funds – 2014-2020**

With a Common Strategic Framework to provide the basis for better coordination between the European Structural and Investment Funds (ERDF, Cohesion Fund and ESF as the three funds under the Cohesion Policy, as well as the Rural Development and Fisheries funds), the EU’s strategy is to achieve better inter-connection with other EU instruments like Horizon 2020, the Connecting Europe Facility, as well as the Programme for Employment and Social Innovation.
The newly reformed Cohesion Policy, which will make available up to EUR 351.8 billion across the EU, targets innovation and research, the digital agenda, support for small and medium-sized businesses (SMEs) and the low-carbon economy (energy efficiency and renewable energy), priority Trans-European transport links and key environmental infrastructure projects, as well as employment (through training and life-long learning, education and social inclusion), etc.

The ex-ante conditions (or, more specifically, the conditions to be met before funds can be channelled) represent a new feature in the EU’s approach to improving efficiency in the use of funds. According to the regulations, for each of the conditionalities, a strategy and related action plans had to be provided no later than 31 December 2016. As from January 2017, there were still 13 ex-ante conditionalities to comply with. Moreover, by the end of 2016, there was only one certified Managing Authority. The certification process is mandatory in order to secure reimbursement from the European Commission and the Government is committed to complete the certification process by July 2017.

Allocation of funds, Partnership Agreements and OPs

During the current programming period (2014-2020), Romania will receive an indicative total allocation of approximately EUR 32.96 billion from Structural and Cohesion Funds, Rural Development and Fisheries funds, Cross-border cooperation programs and the Connecting Europe Facility. Out of this, EUR 22.99 billion will be allocated to the operational programs financed under the Cohesion Policy and EUR 8.13 billion will relate to the National Program for Rural Development.

The indicative financial allocation for the 2014-2020 period is outlined below:

<table>
<thead>
<tr>
<th>Program</th>
<th>Financial allocation for 2014-2020 (EUR million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large Infrastructure OP</td>
<td>9,418.53</td>
</tr>
<tr>
<td>National Programme for Rural Development</td>
<td>8,127.99</td>
</tr>
<tr>
<td>Regional OP</td>
<td>6,700.00</td>
</tr>
<tr>
<td>Human Capital OP</td>
<td>4,326.84</td>
</tr>
<tr>
<td>Competitiveness OP</td>
<td>1,329.78</td>
</tr>
<tr>
<td>Connecting Europe Facility</td>
<td>1,236.00</td>
</tr>
<tr>
<td>Administrative Capacity OP</td>
<td>553.19</td>
</tr>
<tr>
<td>Cross-border Cooperation</td>
<td>452.70</td>
</tr>
<tr>
<td>Helping Disadvantaged Persons OP</td>
<td>440.00</td>
</tr>
<tr>
<td>Technical Assistance OP</td>
<td>212.76</td>
</tr>
<tr>
<td>Fisheries and Maritime Affairs OP</td>
<td>168.42</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>32,966.21</strong></td>
</tr>
</tbody>
</table>

*Source: Ministry of Regional Development, Public Administration and European Funds*
Several priorities were identified in the Partnership Agreement, in correlation with the conditionalities brought in by the regulations: transport infrastructure, environment infrastructure, business environment, risk management and climate change, education, social inclusion as well as land registration.

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

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

At the beginning of 2016, the European Commission had approved all financing programs through which Romania will receive EU Funds corresponding to the 2014-2020 programming period.

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

**OP Competitiveness**

This programme is intended to increase the efficiency of Romanian companies, bringing them closer to the EU average. This is an operational programme which can be accessed mainly by private companies. OP Competitiveness particularly supports research, technological development, innovation, and e-economy. The R&D component of OP Competitiveness triggered the beginning of the call for proposals session for the 2014-2020 programming period, with a first call launched in May 2015. These sessions have been followed by an IT&C dedicated session of the call for proposals. A 2nd round of call proposals dedicated to the R&D sector is expected for the first half of 2017.

**OP Human Capital**

The general objective of this programme is to develop human capital and increase competitiveness on the labor market. Companies and particularly
suppliers of training may be eligible for funds under OP Human Capital. A first session of the call for proposals was launched starting from May 2016.

**OP Large Infrastructure**

The Programme will bring together environmental projects, road and other transport modes and major energy projects. Eligible applicants for the environment and transport sectors are public authorities and state owned companies (for example, for road projects, the beneficiary would be the National Company of Road Infrastructure Management in Romania in its capacity as administrator of the road transport infrastructure, as well as Transgaz and Transelectrica for energy infrastructure). For energy, private companies are also eligible to apply for funding. However, clear eligibility criteria will be provided to potential beneficiaries which seek funding under this OP. Part of the call for proposals was already launched in mid 2016.

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

**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. There are already 2 important call for proposals sessions dedicated to SMEs and micro-enterprises, launched under this OP.

**Agriculture Funds**

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

- The European Agricultural Fund for Rural Development (EAFRD), contributing to structural reform of agriculture and development of rural areas. This Fund acts locally through the National Programme for Rural Development; and
- The Operational Programme for Fisheries and Maritime Affairs (OP FMA), funded by the European Maritime and Fisheries Fund, supporting structural measures in this field and “accompanying measures” of the Common Fisheries Policy (CFP).
The interventions proposed for the agriculture sector will be integrated with the competitiveness strategy 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.

During the first three years of the current programming period, a limited number of calls for proposals were launched in 2015, mainly those dedicated to the R&D and IT&C sectors under the Competitiveness OP, while during 2016 there was a larger number of calls for proposals.

As at the end of 2016, the absorption rate under the National Programme for Rural Development had increased to 10%, with EUR 767 million absorbed and effective reimbursements of about EUR 480 million.
CHAPTER 8
Labor regulations and employment standards

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

Employment documentation

Employment contracts

Generally, work in Romania is 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 guaranteed bonuses or incentives. In addition to these clauses, the parties can negotiate and include other specific clauses in the contract, such as: professional training, mobility, confidentiality and non-competition.

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

Registration formalities

According to Government Decision no. 500/2011, every employer is required to establish and send to the local Labour Inspectorate a General Employees’ Registry and to present it to the labour inspectors, if so required. This Registry is kept in electronic format at the employer’s headquarters.

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

Otherwise, non-fulfilment of this obligation leads to fines for the employer ranging between RON 5,000 and 8,000 (approximately EUR 1,111 - 1,777 at an exchange rate of 1 EUR = RON 4.5).
Employers must also have a personal file for each employee, keep it in good condition at their headquarters and present it to labor inspectors, if required.

For information on entry and immigration requirements see KPMG in Romania’s RoVisa Express iPad app, available in the Appstore. http://bit.ly/12usWxH. This app guides you through the Romanian immigration process in 5 easy steps. With easy-to-access information, RoVisa helps you find out rules about immigration and visa requirements for all categories of stay from countries throughout the world. Scan the following code with a QR reader in order to install the app.

See also KPMG in Romania’s Immigration Pocket Guide 2017.

Work Permits

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

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 validity remaining. Simplified conditions have been introduced for foreigners who change jobs with the same employer or who change employer, 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 statement of criminal record issued by the Romanian authorities. There are different types of work permits issued to non-Romanian nationals, depending on their employment structure while in Romania. Specifically, work permits for permanent employees are issued for indefinite or definite periods of time to non-Romanian nationals who intend to conclude employment contracts with 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 EU/EEA member states or Switzerland wishes to continue to work in Romania after the initial twelve-month period of secondment, then he or she must obtain a work permit for permanent or highly-skilled employees and conclude a local employment contract with a Romanian employer.

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 of 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 worker”). 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.

**Employment Standards**

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

The normal working program is 8 hours/day and 40 hours/week. There are 14 legal holidays, although additional days off can be legally granted on a yearly basis (e.g. the Monday after Christmas if the statutory holiday falls on a weekend day). The legal holidays are 1, 2 January, 24 January, 1 May, Easter Monday (Orthodox), 1 June, the Monday after Pentecost (normally 7 weeks after Orthodox Easter), 15 August (Assumption Day), 30 November (Saint Andrew), 1 December (National Day), 25 and 26 December (Christmas).

At present, the minimum gross base salary is RON 1,450 (approximately EUR 322 at an exchange rate of 1EUR= RON 4.5). This does not include incentives or any other allowances. This amount is based on a full time
working program of approximately 166 hours per month, representing approximately RON 8,735/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 EUR 67-EUR 444 at an exchange rate of 1EUR = RON 4.5).

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/year may be granted by the employer if provided under individual employment contracts, collective bargaining agreements or internal regulation.

**Occupational health and safety**

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

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

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

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

**Termination of individual employment contracts**

According to the Romanian Labor Code, employment contracts can be terminated only in cases specifically provided by law. The provisions of the Labor Code governing employment contracts restrict the contractual freedom of the parties in certain cases, e.g. termination of agreement by the employer.
If an individual employment contract is terminated by the employer (for reasons not pertaining to the employee and when the employee is deemed physically or mentally unfit or professionally unsuitable), employers are required to give the employee a minimum of 20-working days prior notice. In some circumstances set out under an individual employment contract and/or the applicable collective bargaining agreement, employers may also be required to give the employee additional severance payments. Further, in accordance with the Labor 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 Labor Code as well as the applicable collective bargaining agreements and secondary legislation provide some specific measures aimed at protecting employees whose individual employment contracts are terminated due to collective layoffs.

In addition, Law 67/2006 ensures protection of employees where the undertaking, or a unit or part of it is transferred to another employer.

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

**Collective Bargaining Agreements and Trade Unions**

Companies with more than 21 employees must 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 EUR 1,111-EUR 2,222 at an exchange rate 1 EUR= RON4,5).

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 at least 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 addendums to these contracts should be concluded in written form, should be registered with the local labor authorities and are applicable as of their registration with the appropriate authority or as of a subsequent date as established by the parties.

A collective bargaining agreement cannot be unilaterally terminated.

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

**Labor disputes**

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

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

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

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

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

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

Individual labor conflicts are settled by the relevant courts.

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

**Social contributions**

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

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

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

The rates apply to the salary fund.

Employees under 35 years of age must register with a mandatory private pension fund. In 2017, a 5.1% contribution corresponding to a privately administered pension fund is included in the employees' social security contribution of 10.5%.
Social Health Insurance System

The current contribution to the health insurance fund is due by both employers and employees. The health insurance contribution is currently 5.2% for employers, whereas the employees’ health insurance contribution is 5.5% from the calculation base, as per the provisions of the Fiscal Code.

Unemployment Benefit Insurance

The Romanian government administers a national unemployment insurance system which provides short-term benefits for employees made redundant. Employers contribute 0.5% of the total monthly gross salary fund and employees contribute 0.5% of their monthly gross salary, with certain exceptions, as per the provisions of the Fiscal Code. Employers are required to collect employees’ contributions and remit them to the state fund on behalf of their employees.

Work Accidents and Occupational Diseases Insurance

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

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

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

Medical Leave and Allowance

The current contribution rate for medical leave and allowances (due by employers) is 0.85% of the salary fund, as per the provisions of the Fiscal Code, capped at 12 times the minimum gross salary multiplied by the number of insured employees during the relevant month (the minimum gross salary is of RON 1,450).
Salary Guarantee Fund

To ensure employees’ protection in the event of an employer’s insolvency, Law no. 200/2006 provides for the creation of a fund to be used to guarantee the payment of salary debts. The contribution rate due by employers is 0.25% of the monthly gross income, as per the provisions of the Fiscal Code.
CHAPTER 9
The legal system

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

The Constitution

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

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

Body of Laws

(a) Civil Law

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

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

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

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

(b) Criminal Law

The 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 harmonizing 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 (Romanian: sistemul zilelor amendă), (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. The Criminal Procedure Code includes significant amendments to the procedural practices regulated by the former code, aiming to reduce the length of trials, simplify criminal judicial procedures, and protect fundamental human rights, observing the principles of fair criminal trial in line with international standards and the requirements of European Court of Human Rights case-law.
One significant amendment included in the Criminal Procedure Code involves the separation of judicial functions in a criminal trial, by introducing 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 authorization of foreclosure proceedings by bailiffs.

**Judicial System**

According to the Constitution and the Civil Procedure Code, the Romanian judicial system comprises: local courts (Romanian *judecătorii*), tribunals (Romanian *tribunale*), tribunals of specialized jurisdiction (Romanian *tribunale specializate*), courts of appeal (Romanian *curtii de apel*) and the High Court of Cassation and Justice. As a general rule, local courts and tribunals act in first instances depending on the type and 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 to decisions made by the courts of appeal in first or second instances, as well as having a relevant role in providing a unitary and unifying interpretation of legislation at national level.

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

**Commercial Arbitration**

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

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

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

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

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

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

Copyright

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

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

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

**Patents**

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

Patents have a 20-year validity. Law 255/1998 provides a special legal framework for the protection of plant species, also based on a patent certificate. The provisions of Regulation no. 2100/94/EC on Community plant variety rights are also applicable.

Certain procedural aspects have been amended through the adoption of the New Civil Procedure Code, while the New Criminal Code, in force since 1 February 2014, has amended some issues related to the crimes and offences provided under the law.

**Utility models**

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

The utility model ensures the protection of technical inventions only, and only products benefit from this protection. Consequently, inventions consisting of procedures or methods are not covered. According to Art. 7 of Law no. 350/2007, a utility model can be protected for a maximum of 10 years consisting of a first 6-year term followed by renewal of protection for at most two consecutive 2-year terms.

Several procedural aspects have been amended by the New Civil Procedure Code, while the New Criminal Code amended some aspects related to the crimes and offences set out in the law.
Trademarks

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

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.

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

Drawings and models

The protection of drawings and models in Romania is governed by Law 129/1992, which has undergone significant amendments, especially with respect to certain procedural aspects, (e.g. procedural time limits or examination procedure). This Law transposes the provisions of Directive 98/71/EC on the legal protection of designs. Council Regulation (EC) no. 6/2002 on Community designs is also applicable, ensuring the protection of 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 Harmonization in the Internal Market or via OSIM.

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

On-the-job inventions

In 2014 Law no. 83/2014 concerning on-the-job inventions was adopted (in Romanian, “inventii de serviciu”).
The Law applies to inventions designed by an individual inventor or a group of inventors, provided that the individual inventor or at least one member of the group of inventors is an employee of a private or public legal entity. Furthermore, the Law is applicable where either (a) the technical solution is the result of work 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 will be applicable to technical solutions that can be protected under an invention patent or utility model.

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


CHAPTER 11
Accounting

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

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

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

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

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

- Accounting regulations compliant with IFRS approved by Order of the National Bank of Romania no. 27/2010, applicable to credit institutions.
- Accounting regulations compliant with IFRS approved by Order of the Ministry of Public Finance no. 2844/2016, applicable to entities whose securities have been admitted for trading on a stock exchange.
o Accounting regulations compliant with European Directives approved by Order of the National Bank of Romania no. 6/2015 applicable to non-banking financial institutions, payment institutions, electronic money institutions and to the Guarantee Fund for Bank Deposits.

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

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

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

Accounting Records

The main accounting principles are as follows:

- Double-entry bookkeeping is generally applicable.
- As an exception, single-entry bookkeeping is maintained by certain categories of entities such as individuals authorized 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 Agency.
- Accounts are maintained in the Romanian language and in RON; foreign currency transactions are accounted for both in RON and in the foreign currency.
- Accounting records are stored for a ten year period, starting from the closing date of the financial period for which the documents were prepared, except for payroll records which are maintained for fifty years.
- Order 1802 details a specified chart of accounts to be used by legal entities and includes directions for the mapping of individual accounts to the balance sheet and income statement templates. The accounts are grouped in the following categories:
o Class 1 – Equity accounts
o Class 2 – Non-current assets
o Class 3 – Inventories and work in progress
o Class 4 – Third party accounts
o Class 5 – Treasury accounts
o Class 6 – Expense accounts
o Class 7 – Revenue accounts
o Class 8 – Special accounts
o 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 prescribed by the Ministry of Public Finance or by the other regulators for the entities under their supervision.

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

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

- Microentities are those that, at the date of the financial statements, do not exceed the limits of at least two out of the following three criteria:
  - Total assets – RON 1,500,000 (equivalent of EUR 338,310)
  - Net turnover – RON 3,000,000 (equivalent of EUR 676,620)
  - Average number of employees – 10

These entities are required to submit only abridged financial statements.

- Small entities are those that, at the date of the financial statements, do not exceed the limits of at least two out of the following three criteria:
  - Total assets – RON 17,500,000 (equivalent of EUR 3,946,953)
  - Net turnover – RON 35,000,000 (equivalent of EUR 7,893,906)
  - Average number of employees – 50

These entities are required to submit an abridged balance sheet, extended income statement and explanatory notes. The presentation of the statement of changes in equity and the statement of cash flows 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 105,000,000 (equivalent of EUR 3,946,953)
  - Net turnover – RON 210,000,000 (equivalent of EUR 7,893,906)
  - 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 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, indicating the reason for departure and its impact on assets, liabilities, financial position and profit or loss for the period.

**Consolidated Financial Statements**

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

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

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

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

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

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

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

- Small and medium-sized groups are groups that include a parent company and its subsidiaries that will be included in the consolidation process and, on a consolidated basis, do not exceed the limit of at least two out of the following three criteria:
  - Total assets – RON 105,000,000 (equivalent of EUR 23,681,717)
  - Net turnover – RON 210,000,000 (equivalent of EUR 47,363,435)
  - Average number of employees – 250

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

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

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

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

Application of IFRS in Romania

Application of IFRS as the basis of accounting and preparation of financial statements compliant with IFRS is compulsory for credit institutions. Entities whose securities have been admitted for trading on a regulated market, except for entities under the supervision of the Romanian Financial Supervision Authority, apply IFRS as approved by Order 2844/2016 as the basis of accounting and in preparation of their individual/separate financial statements.

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

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

The relevant legislation includes:

- Accounting regulations compliant with IFRS approved by Order of the National Bank of Romania no. 27/2010, applicable to credit institutions.
- Accounting regulations compliant with IFRS approved by Order of the Ministry of Public Finance no. 2844/2016, applicable to entities whose securities have been admitted for trading on a stock exchange.
- Order no. 881/2012 issued by the Ministry of Public Finance on application of International Financial Reporting Standards by the
entities whose securities have been admitted for trading on a stock exchange.

- Accounting regulations compliant with IFRS approved by Norm no. 39/2015, applicable to entities authorized, regulated and supervised by the Financial Supervisory Authority.
CHAPTER 12
Competition in Romania - Main legal issues

Relevant legislation

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

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

Main issues

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

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

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

According to the Competition Law, an economic concentration involves a lasting change of control resulting from operations such as the merger of two or more previously independent undertakings or 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, the level of which is periodically subject to amendment by the Competition Council depending on market development, are as follows: (i) a worldwide aggregated turnover of EUR 10,000,000 in RON equivalent generated by the undertakings involved and (ii) a turnover of EUR 4,000,000 in RON equivalent generated in Romania by each of at least two of the undertakings involved in the operation. International transactions that produce effects in Romania must also be notified to the Competition Council if the above criteria on turnover thresholds are met. Turnover is assessed for the year preceding that in which the operation was 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.

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

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

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

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

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

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

**Exemptions**

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

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

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

However, some categories of agreements between undertakings which would qualify for certain exemptions under the Competition Law, are prohibited, regardless of the cumulated market share held by the parties to the agreement in question, if they contain restrictions which, according to the Competition Law, are deemed to be serious (e.g. agreements between competitors to set the selling price of products to third parties; agreements between non-competitors imposing restrictions in terms of territory to be covered or clients to whom the buyer may sell goods or services, 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 no. 77/2014, 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 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 authorization requirements, provided that the conditions set out under the block exemption regulation are met. This regulation creates exemptions for
the following types of state aid: aid for small and medium-sized enterprises, aid to promote employment, aid in the form of risk capital, aid for environmental protection, aid for research, development and innovation, as well as aid for disabled and disadvantaged workers.

Penalties 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 turnover for the year preceding the penalty.

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

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

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

An amendment to Law no. 21/1996 took effect from 1 January 2016, stating that companies may receive less severe penalties if the anticompetitive behavior 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 behavior on the hearing date.
CHAPTER 13
Environmental protection

General provisions

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

Environmental legislation

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

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

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

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

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

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

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

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

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

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

- Emergency Ordinance no. 5/2.04.2015 on electrical and electronic equipment waste (WEEE) transposed into national legislation the requirements of Directive no. 2012/19/EU. EEE producers must organize the separate collection of WEEE from private households to reach an average collection rate at national level of at least 4 kg/inhabitant/year. Since 1 January 2016, the minimum collection rate has been calculated as a percentage ratio 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. Thus, the minimum collection rates are 45% for 2017-2020, and 65% after 2020. The Ordinance also sets out EEE producers’ obligation to meet their recovery and recycling targets. The recovery targets range between 70% and 85% of the average weight of equipment while the recycling targets for WEEE range between 50% and 80% of the average weight of equipment, depending on the EEE categories. Producers must ensure the financing of the collection, treatment, recovery and final disposal of WEEE from private households and other users. A producer can choose to fulfil this obligation either individually or by joining a collective scheme. The former obligation of EEE producers to be registered in the National Register of EEE producers, managed by the National Environmental Protection Agency (NEPA), remains valid and also extends to producers supplying EEE by means of distance communication technologies. A new regulation on environmental taxes and contributions, requires EEE producers (excluding lighting sources producers) to pay a tax of Eur 0.87/Kg for the difference between the collection rate and the WEEE quantity actually collected, starting from 1 January 2018. For producers of lighting sources, the level of the environmental tax will be Euro 4.44/Kg. For 2017, a similar tax will be applied for the difference between the EEE declared as introduced on to the Romanian market by
producers and the amount of EEE ascertained by the inspection authority as being introduced on the market (as appropriate).

- 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 recent legislation, producers of batteries and accumulators are required to pay a tax of Eur 0.87/Kg for the difference between the collection rate and the amount of batteries and accumulators actually collected, starting from 1 January 2018. For 2017, a similar tax will be applied for the difference between the number of batteries and accumulators declared as introduced on the Romanian market by producers and the amount of batteries and accumulators determined by the inspection authority as having been introduced on to the market (as appropriate).

- Waste oil management; a requirement for oil producers/importers to pay an environmental tax of around 0.07 euro/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).

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

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

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

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

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

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

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

**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 LEPA)-are located in each of Romania’s 41 counties and in Bucharest City. Each LEPA is responsible for the environmental regulatory (authorizing) process of companies doing business in that county. A special authority has been established for the Danube Delta area, the Danube Delta Biosphere Reserve Administration.

The National Environmental Guard (NEG) is the national environmental protection enforcement institution, subordinated to the 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 non-compliance, LEGs impose penalties, according to the amount of environmental damage or risk caused by the non-compliance.
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