

# INVESTMENT IN ROMANIA

2015







Dear Investor,

Dear AmCham Members & Partners,



Welcome to the **AmCham Investment in Romania 2015 guide** which we trust that will offer you a well-researched overview of the Romanian market, investment climate and doing business in Romania!

This e-booklet is part of AmCham's toolkit for promoting Romania's investment opportunities, on top of our constant actions for advocating before the Romanian authorities for measures to increase Romania's economic competitiveness. In AmCham's view this can be reached by ensuring a stable and predictable legislative and fiscal framework, coherent public policies, and transparency in the decision-making process, clear country and sector strategies, among others.

AmCham remains a committed promoter of business opportunities in Romania both for companies which are already established here and also for investors in search of new destinations for their investments, which consider AmCham to be a source of relevant information about the market, government policies, as well as companies' experiences of doing business in Romania.

We are grateful for the support provided by KPMG Romania in structuring and updating this guide so that it offers the latest and most relevant information about doing business in Romania.

Sincerely,

Anca Harasim

Executive Director

American Chamber of Commerce in Romania

## **AMERICAN CHAMBER OF COMMERCE IN ROMANIA – AmCham Romania**

“AmCham is the first choice for advocacy and business growth in Romania!”

The American Chamber of Commerce in Romania (AmCham Romania) is a non-profit and non-political organization established in 1993 by American investors in this country. It is currently one of the 115 international AmChams in 102 countries affiliated to the U.S. Chamber of Commerce, based in Washington D.C., and a member of the AmChams in Europe (ACE).

Currently, AmCham Romania has over 400 members, consisting of major U.S., foreign and local companies doing business in Romania, as well as small and medium-sized firms and business executives in the country. The association is entirely autonomous, with no subsidy from any government body, and relies on income from membership dues and its own activity.

Our purpose is to advance AmCham Romania as the most broad-based, consensus-led professional business association in Romania. We are firmly committed to assisting our members to collectively communicate their important business concerns to the highest levels of the Government of Romania in a manner that facilitates understanding, identification of common interests, and finding practical and transparent solutions, which largely benefit the long-term interests of both the international business community and the Government of Romania. AmCham Romania’s advocacy activity is developed through a structure of committees and task forces that bring together representatives and experts from among member companies in various fields, coordinated by one member of the Board of Directors and one AmCham member with relevant technical expertise.

AmCham Romania also organizes meetings and events with high-government officials to promote the business agenda of its members and recommendations for a better business environment in Romania. AmCham’s recommendations are subject to the overall goal of an increased economic competitiveness of Romania, both at a regional and European level. AmCham’s activities have positioned the organization as a prominent promoter of investment in Romania which has captured the attention of investors prospecting the local market.

AmCham Romania member companies can also access a broad network of business information and contacts, as well as valuable information on U.S. businesses across Europe through AmChams in Europe Network..

For more info about AmCham Romania’s activities and agenda, please visit [www.amcham.ro](http://www.amcham.ro) or contact our office at [amcham@amcham.ro](mailto:amcham@amcham.ro).

**American Chamber of Commerce in Romania** Member of the AmCham Network  
Union International Center , 4th Floor, 11 Ion Campineanu St., Bucharest 1 - Romania  
**T:** + 40 21 315 8694, + 40 21 312 4834, + 40 31 2amcham (262426) **F:** + 40 21 312 4851  
**E:** [amcham@amcham.ro](mailto:amcham@amcham.ro) /[www.amcham.ro](http://www.amcham.ro)

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# CHAPTER 1

## General Information about Romania

Romania is a country of considerable natural beauty, with numerous attractions for the visitor. It has seen significant economic growth in the last two decades, spurred on by EU accession in 2007. Although the economy was affected by the global economic downturn from 2008, it has now returned to growth and is performing better than many other countries in the region. The information contained in this document was last updated on 1 May 2015.



## Passports, Visas and Residence Permits

Romanian visas are not required for nationals of EU/EEA countries or of Canada, Japan and USA. Also, Romanian short-stay entry visas are not required for nationals of Argentina, Australia, 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, Uruguay 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 if they intend to stay in the country for a period exceeding 90 days.

Nationals of countries considered by the Romanian authorities to present a high immigration risk are subject to strict visa requirements and they must follow a special procedure to obtain a visa prior to their arrival. This procedure involves obtaining an *invitation approval* from the Romanian immigration authorities. Visas are obtained based on this invitation approval requested by a Romanian individual or company. Exceptions apply to certain categories provided by law. A bank deposit guarantee is also needed, although there are some exemptions from this requirement.

Non-EU 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 reputable 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.



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 local hires. Proofs of high-skills / qualifications are mandatory. This type of residence document grants the right to reside and be employed in Romania in a highly-skilled position and is generally issued for up to two years validity (depending on the validity of the employment contract) and is renewable upon request. After an 18-month legal stay, the EU Blue Card holder may move to another EU Members State to occupy a highly-skilled position.

For EU 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 Wi-Fi, e mail, fax, telex and international telephone services. A passport or residence permit is required to register at any hotel.

Credit and debit cards are widely accepted in hotels in Bucharest and major cities, but might be more difficult to use in remote areas. Payment for accommodation in city hotels can usually be made in

foreign currency as well as lei, Euros, U.S. dollars and other major currencies are easily exchanged and are widely accepted. It is advisable to reserve hotel accommodation before arriving in Romania, especially during peak periods.

## **Air Transportation**

The Romanian airline carrier, TAROM, serves major points in Romania, Europe, Asia and North America. International full service carriers currently serving Romania include Air France, Austrian Airlines, British Airways, Delta, El Al, Lufthansa, KLM, Olympic, Turkish Airlines, Aeroflot (Russia), Balkanair (Bulgaria), CSA (Czech Republic and Slovak Republic), and LOT (Poland). Romania is also well connected to Europe through low cost carriers, such as Wizzair and Blueair.

In Bucharest, all flights now use Henri Coanda (formerly Otopeni), which is Romania's main international airport. (The smaller Bucharest Baneasa airport, which used to be served by low cost carriers, was converted into an airport 100% dedicated to business air traffic in March 2012). There are 14 other airports in Romania; Timisoara, Arad, Oradea, Cluj, Targu Mures, Sibiu, Satu Mare, Baia Mare, Iasi, Suceava, Craiova, Bacau, Tulcea and Constanta. Some are served by international flights and all are connected to Bucharest by TAROM's domestic services.

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

## **Ground transportation**

The Romanian road system is somewhat undeveloped, with a very limited highway network, but new highways are currently under construction and existing national roads are being upgraded. Rail travel is fairly reliable and cheap, although quite 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, being 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, according to the 2011 census, 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.

## 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 and Austria etc.

### **Area**

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

### **National Day**

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

### **Legal Holidays**

1 and 2 January - New Year; Easter Monday (Orthodox); 1 May - Labour Day; the Monday after Pentecost (normally 7 weeks after Orthodox Easter); 15 August (Assumption of the Virgin Mary); 30



November – St. Andrew’s Day ; 1 December - National Day of Romania; 25 and 26 December - Christmas.

### **Religion**

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

### **National Currency**

The national currency is the Leu (pl. Lei) with the subdivision Ban (pl. Bani). In economic and business circles the currency is generally referred to as the RON (New Leu) to distinguish from the ROL (Old Leu) which functioned until July 2005 (when four zeroes were eliminated from the old currency). Approximate official rates in March 2015:

**1 EURO = 4.41 Lei**

**1 USD = 4.06 Lei**

Sources:

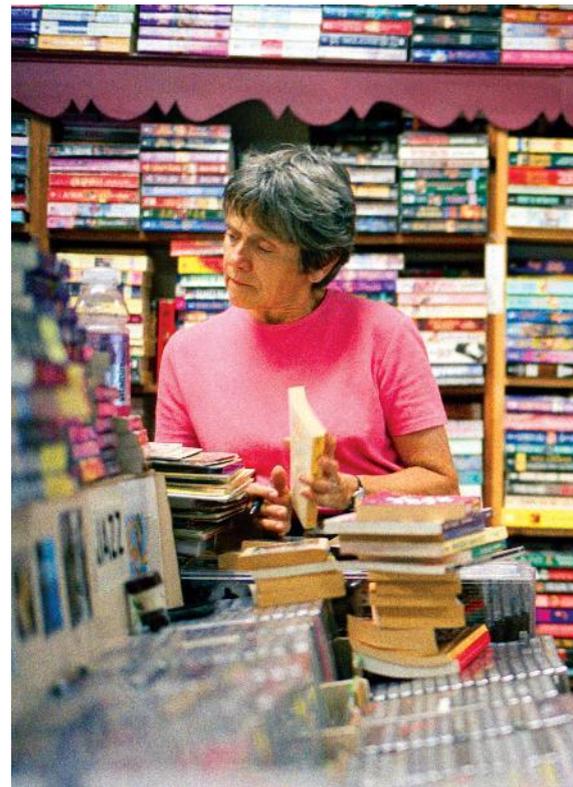
- The Romanian Statistical Yearbook
- The official Web site of the National Bank of Romania
- The official Web site of the Ministry of Transport

# CHAPTER 2

## Forms of Business Organization

- Individuals and legal entities may freely enter into partnerships and set up companies to develop business activities. According to the Company Law (Law 31/1990, as republished and subsequently amended) there are five types of companies:
- Limited liability company, "societate cu raspundere limitata" (S.R.L.) whose obligations are secured by the company's assets. Shareholders are liable only for the payment of their contributions to the share capital.
- Joint stock company, "societate pe actiuni" (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 comandita simpla" (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 comandita pe actiuni" (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.

All companies must be registered with the Romanian Trade Registry Office and they acquire a legal status as from their registration date. Limited liability companies and joint stock companies are the most common types of companies and therefore we will present the characteristics of these two.



### **Limited Liability Companies**

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

The share capital of an S.R.L. may not be less than RON 200, representing the equivalent of approximately EUR 45 at an exchange rate of EUR 1 = RON 4.41 and it is divided into shares ("*parti sociale*") with a registered value of at least RON 10 each. Shares are not marketable titles but they can be traded among shareholders and transferred to third parties as well.

### **Joint Stock Companies**

A joint stock company (S.A.) can be set up by at least two shareholders. The share capital of an S.A. may not be less than RON 90,000. Every 2 years, the Government can change the minimum value of the share capital by reference to the exchange rate, so as 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 contribution in cash and 2 years where the shares have been issued in exchange for contribution in kind.

### **Representative Offices**

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

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

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

In order to obtain an operating license, a Representative Office must pay a yearly tax of USD 1,200. In addition, they must pay an annual tax of EUR 4000. If the license is issued during the year, the tax to be paid is proportional to the period remaining until the year end.

### **Branches and Subsidiaries of Foreign Companies**

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

The new Romanian Civil Code approved under Law no. 71/2011, in line with generally accepted international practice, states that a corporation is governed by its incorporation law.

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

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



In practice, subsidiaries must fulfill the same registration formalities as companies, i.e. registration of the Acts of Incorporation with the appropriate office within the Romanian Trade Registry. A subsidiary must comply with the minimum capital requirements imposed under the Romanian Company Law.

### **Joint Ventures**

Under the Romanian Civil Code approved by Law no. 71/2011, a joint venture (in Romanian *Asocierea în participație*) is defined as an agreement under which an individual or legal entity grants to one or several other individuals or legal entities a participation share in the profit and losses generated from one or more operations that he/she/it is carrying out. In accordance with the law, a joint venture cannot have legal status and, before third parties, it may not be deemed as an entity distinct from its partners. Partners (even when acting on behalf of the joint venture) execute contracts and undertake obligations on their own behalf before third parties. The term "joint venture" is a common term used to describe any forms of economic activity involving foreign investment, including:

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

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

Law no. 161/2003 on measures to ensure transparency of public office, public positions and of the business environment and the prevention and penalization of corruption, introduced two new forms of association for economic purposes, i.e., Economic Interest Groups and European Economic Interest Groups.

## **Economic Interest Group (EIG.)**

An E.I.G. represents an association between two or more individuals or companies, set up for a fixed period of time for the purpose of facilitating or developing the economic activity of its members, and improving the results thereof.

The main characteristics of this form of association, as provided by Law no. 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, particularly in the human resources, finance or investments field; (ii) Holding shares, directly or indirectly, in any of the member business companies, with certain exceptions; (iii) Employing more than 500 staff, etc.

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

## **European Economic Interest Group (EEIG.)**

An EEIG is an association between two or more individuals or companies, set up for a fixed period or indefinitely, for the purpose of facilitating or developing the economic activity of its members, and improving the results of such activity. Duly established EEIGs are legally recognized and can operate in Romania

Members of an EEIG can only be the following:

- Companies as defined under art. 58 par. 2 of the consolidated version of the Treaty establishing the European Community.
- Public or private legal entities set up in accordance with the legislation of one of the EU member states whose headquarters and main office for the management and administration of the statutory activity is located in an EU member state.
- Companies or other legal entities which, according to the legislation of a member state, are not obliged to have a registered office and which, for the purpose of managing their statutory activity, can locate their main office in an EU member state.
- Individuals carrying out industrial, commercial, handicraft or agricultural activities or rendering professional or other services in an EU member state.



# CHAPTER 3

## Taxation

### Summary of main taxes

Standard Corporate Tax: fixed rate of **16%**

Tax for nightclubs and gambling operations: **5%** of total revenue, or **16%** of profit, whichever is higher

Tax on micro-enterprises (turnover < EUR 65,000, income from consultancy and management < 20%): **3%** of the turnover

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

Standard Individual Tax: flat rate of **16%**

### Social Security Contributions:

Contribution Type	Employee	Employer
Social security (CAS)	10.5%*	15.8% **
Social health insurance (CASS)	5.5%	5.2%
Unemployment fund	0.5%	0.5%
Holiday and social health insurance indemnity	-	0.85% (applied to the salary fund) – capped at 12 times the minimum wage (currently RON 850)
Accidents insurance fund contribution	-	0.15% - 0.85% depending on Romanian CAEN of the company
Salary guarantee fund	-	0.25%

\* capped at 5 times the average wage (currently RON 2,415)

\*\* capped at 5 times the average wage (currently RON 2,415)

## Standard Withholding Tax: 16%

### *Withholding tax on payments to Romanian residents:*

Dividends to Romanian resident companies <sup>1</sup>	<b>16%</b>
Dividends to Romanian resident individuals	<b>16%</b>
Interest to Romanian resident companies	<b>0%</b>
Royalties to Romanian resident companies	<b>0%</b>

### *Withholding tax on payments to non-residents:*

Dividends to <i>non-resident</i> companies <sup>2</sup>	<b>16%</b>
Dividends to <i>non-resident</i> individuals	<b>16%</b>
Interest to <i>non-resident</i> companies <sup>3</sup>	<b>16%</b>
Royalties to <i>non-resident</i> companies <sup>3</sup>	<b>16%</b>

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

Tax on capital gains from transfers of securities: **16%**<sup>4</sup>

Standard VAT rate: **24%**

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

Operations exempt with credit

Operations exempt without credit

Local taxes as per the Fiscal Code; Tax on constructions (1%)

<sup>1</sup> 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 starting 1 January 2014 (previously 2 years).

<sup>2</sup> By virtue of the EU Parent/Subsidiary Directive, as from 1 January 2009, profit distributions made by a subsidiary in Romania to its parent company (i.e. which has a holding of at least 10% for an uninterrupted period of at least 1 year starting 1 January 2014 -previously 2 years) located in an EU/EFTA Member State, have been exempt from withholding tax.

<sup>3</sup> As from 1 January 2011, interest and royalty payments made to an associated company (one of the companies has a direct minimum holding of 25% in the other, or both are held under more than 25% common ownership for a non-interrupted period of at least 2 years) from an EU/EFTA Member State have been exempt from withholding tax.

<sup>4</sup> As of 1 January 2014, income derived by a non-resident from the sale of shares held in Romanian companies is non-taxable provided that the non-resident has a minimum participation of 10% for 1 year, when the sale takes place. Similar fiscal treatment also applies for income from liquidation, starting 1 January 2014.

## Taxation of Expatriates

### Immigration requirements

Generally, non-EU/EEA individuals who work in Romania either as assignees of a non-EU/EEA employer or as local employees of a Romanian employer must obtain work permits. The work permit for non-EU/EEA 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.

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

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 a personal tax number of the individual.

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

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



## **Taxation of non-residents**

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

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

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

## **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 towards non-Romanian entities in respect of dividends, interest, royalties, service fees (irrespective of the place of effective supply), liquidation proceeds, commission fees, capital gains etc.
- 1% for income from gambling activities.

- 50% for dividends, 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 a treaty for the avoidance of double taxation concluded between Romania and the residence country of the income recipient. For the purposes of applying the more beneficial tax treatment provided by tax treaties, a tax residency certificate should be obtained by the non-Romanian revenue recipient, issued by the tax authorities in its home country (and made available to the Romanian paying entity).

Also, 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 starting 1 January 2014 (previously 2 years). 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; but once the 1-year period elapses, the dividend recipient is entitled to claim a reimbursement from the Romanian tax authorities in respect of the withholding tax incurred in Romania;
- Interest and royalties paid to an EU/EFTA company, under the condition of direct minimum shareholding of 25% for at least 2 years.

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

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

## Double taxation relief

The method provided under domestic tax legislation for double taxation avoidance is the tax credit.

Relief from double-taxation for resident taxpayers may be provided by way of a tax treaty. Romania has concluded Double Taxation Avoidance Treaties with more than 80 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.

Albania	India	Poland
Algeria	Indonesia	Portugal
Armenia	Iran	Qatar
Australia	Ireland	Russian Federation
Austria	Israel	San Marino
Azerbaijan	Italy	Saudi Arabia
Bangladesh	Japan	Serbia**
Belarus	Jordan	Singapore
Belgium	Kazakhstan	Slovakia
Bosnia-Herzegovina*	North Korea	Slovenia
Bulgaria	South Korea	South Africa
Canada	Kuwait	Spain
China	Latvia	Sri Lanka
Croatia	Lebanon	Sudan
Cyprus	Lithuania	Sweden
Czech Republic	Luxembourg	Switzerland
Denmark	Macedonia	Syria

Ecuador	Malaysia	Tajikistan
Egypt	Malta	Thailand
Estonia	Mexico	Tunisia
Ethiopia	Moldova	Turkey
Finland	Montenegro**	Turkmenistan
France	Morocco	Ukraine
Georgia	Namibia	United Arab Emirates
Germany	Netherlands	United Kingdom
Greece	Nigeria	United States
Hungary	Norway	Uzbekistan
Iceland	Pakistan	Vietnam
	Philippines	Zambia

\* Treaty concluded with F.S.R. Yugoslavia, in force since 1989, applies to Bosnia-Herzegovina

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

### **Representative Offices**

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

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

## Other taxes

### Environmental taxes

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

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

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

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

- |                                   |                 |
|-----------------------------------|-----------------|
| • Insurance and reinsurance       | Pharmaceuticals |
| • Energy (Electricity, Oil & Gas) | Media & Telco   |
| • Natural Resources               | Gambling        |

# CHAPTER 4

## Banking and Finance

### Romanian Banking System

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

The capital adequacy ratio for the entire banking system was over 14% at the end of 2009, well above the 8 percent EU minimum requirement. Romania's still high reserve requirements (15 percent on lei deposits and 25 percent on foreign currency deposits) also provided a substantial liquidity buffer. This buffer was partially released in 2009 by the National Bank of Romania (from 40% to 25% for foreign currency deposits and from 18% to 15% for local currency). These available funds were used to cover liquidity shortages in the banking system but also to finance bonds issued by the Romanian state.

System profitability came significantly under pressure in 2009 as loan defaults rose sharply and credit growth slowed considerably as a result of a significant contraction in economic activity and increased aversion to risk by banks, following several years of rapid growth of loans in both local and foreign currency.

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

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



## **National Bank of Romania**

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

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

## **Regulations on Credit Institutions**

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

In 2013 and at the beginning of 2014, the NBR adopted local regulations transposing Directive no. 2013/36/EU (Capital Requirements Directive) into Romanian legislation. In this respect, the legal framework governing Romanian banking is currently in line with the capital and corporate governance conditions provided in Directive 2013/36/CE and Regulation 575/2013 (CRD IV 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 8.25 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 5.6 million whereas electronic money institutions must have a minimum initial capital of RON 12 million, i.e. approximately EUR 2.7 million.

## **Foreign Credit Institutions**

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

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

## **Non-Banking Financial Institutions**

Non-banking financial institutions are regulated by Law 93/2009. To qualify as a non-banking financial institution and to be authorized to conduct credit operations, a company is required to include in its main objects of activity only the activities permitted under Law 93/2009, e.g. granting of credits, financial leasing or pawn broking activities.

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

Law 93/2009 states that non-banking financial institutions must be registered with the NBR and included in a General Registry as well as, if applicable, in a Special Registry (depending on certain criteria relating to turnover, credit volume, debt-to-equity ratio, 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 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.

### **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 Axa and Austria's Uniq and Vienna Insurance Group.

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



Supervision Commission. Currently, the former Insurance Supervision Commission is a branch of the ASF.

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

- Insurance companies set up as Romanian legal entities must be organized as joint stock companies registered with the appropriate Trade Registry Office, whose shareholders can be resident or non-resident individuals or legal entities
- Currently, the minimum share capital must be RON 8 million (approximately EUR 1.8 million) for general insurance activities except for compulsory insurance activities and RON 12 million (approximately EUR 3 million) for general insurance activities including compulsory insurance activities and for life insurance activities. These limits may be modified by the Insurance Supervisory Commission.
- As a consequence of Romania's EU accession, insurance companies established in an EU or an EEA member state may operate in Romania under a license issued by the supervisory authorities in their home-countries, by setting-up a branch or by providing services directly, in accordance with the right of establishment and freedom to provide services.
- Non-EU insurance companies may perform insurance activities in Romania by setting-up branches, subject to authorization by the ASF and subject to supplementary requirements.

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



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

### **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 (currently 10.5%) has been redirected from the state budget to the chosen private fund. The redirected contribution was 2% in 2008 and it will gradually increase to 6% by 2015, while the social security contribution to the state system will diminish accordingly. In 2014, the contribution redirected to the chosen private pension fund amounts to 4.5%.

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

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

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

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

Currently, there are only 8 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, but transactions started only in November 1995. Trading volumes were not significant until 2003-2004. In addition, RASDAQ became operational in October 1996.

## **Regulatory mechanisms and bodies**

The Financial Supervision Authority 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 Financial Instruments and Investment Sector. The ASF has certain extended prerogatives to the effect that it authorizes investment firms, management companies, and undertakings for collective investments in transferable securities and also provides the general

listing requirements for issuers and regulates the securities exchange, including trading and settlement mechanisms.

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

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

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

### Intermediaries

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

**Investment Firms** (*Societăți de Servicii de Investiții Financiare*) are set up in Romania as joint stock companies whose exclusive object of activity is to perform investment services.

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

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



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

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

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

## Issuers

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

An eligibility condition is that shares must be fully paid and freely negotiable. Additionally, a sufficient number, as defined by Law 297/2004 (25% of the share capital or less) of shares must be distributed to the public, unless the distribution is made through transactions on the regulated market.

Admission to a regulated market requires that an application should be addressed to the market operator after the publication of an

information sheet approved by the ASF. All actions undertaken in this respect are made via intermediaries.

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

### **Regulated markets**

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

### **Bucharest Stock Exchange**

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

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

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

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

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

A. The equity sector is divided into: (i) Tier 1 shares, (ii) Tier 1 rights, (iii) Tier 2 shares, (iv) Tier 2 rights, (v) Tier 3 shares, (vi) Tier 3 rights, (vii) International shares and (viii) International rights.

Tier 1 shares include the best performing companies. For example, in order to be admitted to the Tier 1 shares category, an issuer must have a shareholders' equity of minimum EUR 40 million corresponding to its last financial year.

In order to be listed in the Tier 2 shares category, a company must have a shareholders' equity of minimum EUR 1 million corresponding to its last financial year.

Tier 3 shares generally include shares in dynamic, innovative commercial companies with large economic growth potential, as well as shares in companies mainly focusing on technological development in fields such as medicine, biotechnology, agro technology, telecommunications, etc. which have a shareholders' equity of minimum EUR 1 million corresponding to their financial year.

B. The debt sector is divided into: (i) Tier 1 corporate bonds, (ii) Tier 2 corporate bonds, (iii) Tier 3 corporate bonds, (iv) Municipal Bonds, (v) Treasury Bonds, (vi) International Bonds, (vii) Other debt.

C. The Collective Investment Undertakings sector is divided into: (i) Shares, (ii) Mutual Funds Shares, (iii) International Collective Investment Undertakings, (iv) Local Collective Investment Undertakings.

D. The Structured Products sector is divided into: (i) Certificates, (ii) Warrants, (iii) Other types of Structured Product.

E. The Other International Financial Sector is divided into: (i) Category A – financial instruments associated with equity, (ii) Category B – financial instruments associated with debt.

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

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

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

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

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

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

## **RASDAQ**

The RASDAQ (Romanian Association of Securities Dealers Automated Quotation) market was created in October 1995 under the "Romanian Capital Markets" program, financed by the United States Agency for International Development and it officially opened in October 1996, to ensure an institutional and technical framework for the trading of shares distributed through the Mass Privatization Program.

According to regulations issued by the NSC at the end of 1996, all companies privatized through the mass privatization program are listed on the RASDAQ regardless of whether the companies' management has expressly requested this.

The RASDAQ market has three listing categories (first, second and base category) based on certain criteria expressly provided by law.

According to regulations issued by the NSC, security issuers have reporting obligations to the RASDAQ market (including reporting about major events such as calling of general meetings of shareholders, resolutions adopted, etc.).

RASDAQ will be dismantled in October 2015, following Law 151/2014 clarifying the legal status of this market. The companies listed on RASDAQ must make preparations to be transferred to a regulated market, an alternative trading system or become closed companies.

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

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

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

### **Bonds and other debt securities**

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

Additionally, the Ministry of Public Finance is empowered to issue treasury bills in national or foreign currency, for short, medium or

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

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

### **Alternative Trading System (ATS)**

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.

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

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

# Chapter 5

## General commercial rules

### Domestic Commercial Transactions

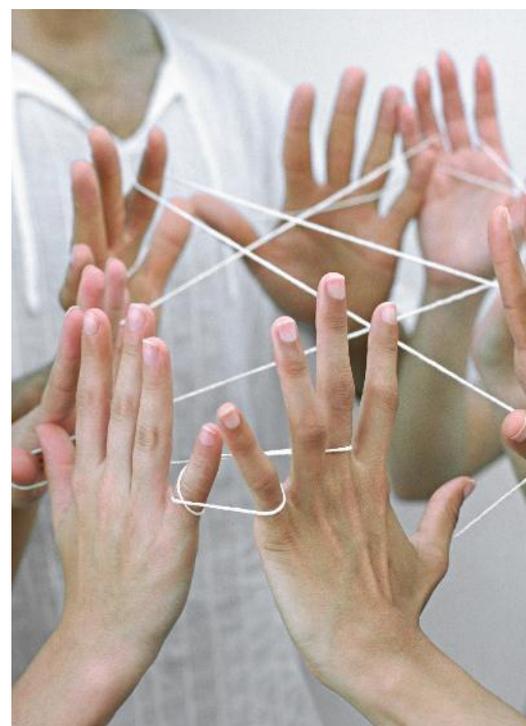
#### Commercial Law

The contractual and commercial (“professional”) rules are mainly set out under the Romanian Civil Code (which entered into force on 1 October 2011).

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

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

According to the Romanian Civil Code and Government Emergency Ordinance 99/2006 on credit institutions and capital adequacy (the “**Banking Law**”), mortgage or pledge agreements as well as any other agreements concluded for the purpose of securing credit agreements are deemed as writs of foreclosure (*Romanian: titluri executorii*). As such, in order to enforce a pledge on a movable asset, the Law grants creditors the right to use the procedures governed by the former Civil Procedure Code. The New Civil Procedure Code entered into force on 15 February 2013, thus replacing certain elements in relation to enforcement of pledges.



### **Alternative Dispute Resolution (ADR) procedures**

The New 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, for certain litigation cases the information session on the use and benefits of mediation is a mandatory procedure to be observed by the plaintiff prior to filing a claim with the court.

Law 192/2006 on mediation, as amended in 2012; (the “Mediation Law”) states that any civil, commercial or even criminal minor disputes may be settled amicably by the parties through mediation. Mediation is defined as a private procedure, conducted by a mediator, whose purpose is to facilitate the settlement of a dispute under private and confidential terms, upon the parties’ agreement. The Mediation law also sets out the judges’ obligation to inform the parties, at the beginning of each trial, that they can settle their dispute through mediation. If the parties choose mediation, the court case is suspended and, if the parties reach an agreement, the court will only confirm their agreement under a decision that can be appealed 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 the traditional dispute resolution before public courts, the Romanian business environment is only just starting to use this method.

# CHAPTER 6

## Real Estate in Romania

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

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

### Transfer of real estate

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

On 1 October 2011, Law 287/2009 on the New Civil Code came into force. As of that date, a new rule became applicable 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) Inheritance certificate or (iv) Other documents issued by the administrative authorities.



However, under Law 71/2011 on the implementation of the New Civil Code, these provisions on ownership registration in the Land Book become applicable only after completion of cadastral measurements in each territorial unit and after the creation of land books for the immovable assets in question (which is expected to occur in minimum 2 years).

If real estate rights, other than a property right, are acquired, such as easements, usufruct, right of superficies etc, such rights may also be granted only under notarized documents and further to their registration in the Land Book.

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.

Foreign individuals and legal entities from EU member states have been entitled to acquire and own farming land, forests and forest land in Romania since 1 January 2014 (i.e. 7 years after Romania's EU accession, as set out in Law no. 312/ 2005).

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. There are however pending discussions and inconsistent practice as to whether the foreign entities mentioned above (i.e. non residents at the time of Romania's EU accession) may currently own any land or only land for secondary residences or offices.

A bill aiming to regulate the acquisition of agricultural land by individuals who are citizens of EU member states was adopted by the Parliament in January 2014, with the aim of providing pre-emption rights to Romanian citizens and the Romanian State.

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

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 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.

## Restitution of land

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

The main legal provisions governing land restitution are Law no. 18/1991, Law no. 1/2000, Law no. 10/2001, and Law no. 247/2005, as subsequently amended.

As a general rule, former owners benefit from restitution in kind of their former properties, while restitution in cash equivalent is an exception. However, under the amendments made to Law 10/2001 in 2008, real estate sold under a sale-purchase agreement under Law no. 112/1995 is no longer returned to its former owners, who are entitled to receive only adequate compensation.

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.

One of the solutions adopted by the Romanian Government for property restitution was the establishment, under Title VII of Law No. 247/2005 and Government Ordinance 1481/2005, of Fondul Proprietatea SA., to ensure the financial resources required for the indemnification of individuals whose property was expropriated by the communist regime. Indemnification is 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 SA. The market value of these shares was set after Fondul Proprietatea S.A. was listed on the stock exchange in January 2011.

## **Concession of Public Property**

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

Such concession rights can be acquired under a public tender or by direct negotiation and can be granted for a period of up to 49 years, 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 services companies the right to use public property, free of charge, under certain conditions.

## CHAPTER 7

### EU Funding



Since its EU accession in early 2007, Romania has had access to Structural Instruments and Agriculture Funds. Structural Instruments and Agriculture Funds were allocated by the European Union for two related purposes: support for the poorer regions of Europe and support for integrating European infrastructure, particularly in the transport sector. The current programming period is about to end as a new one is about to begin.

EU funds are a type of public support. As a result, EU funding for business activities is regulated by European Competition policy which sets state aid regulations. The beneficiary has a maximum of 3 years to spend the funds. Failure to do so triggers the automatic decommissioning of the financing. As a rule, the beneficiary must first spend the money, and then claim a reimbursement. Focus is placed on SMEs that are regarded as the most flexible type of company, likely to increase the competitiveness of EU products.

The following activities may benefit from EU funding: acquisition of fixed assets (buildings, equipment); acquisition of intangible assets (patents, trademarks and know-how); research & development; IT development; human resources; participation in fairs and exhibitions; standardisation and certification of companies.

### Structural Instruments

For the next period, 2014-2010, the reformed cohesion policy will make available up to 366.8 billion EUR to invest in Europe's regions, cities and the real economy. In this period, Romania will receive a total allocation of about 28 billion EUR from structural and cohesion funds and from European Agricultural and Regional Development Fund. Out of this amount, 21 billion EUR will be allocated to the operational programs financed from structural funds and 7.5 billion EUR will return to the National Rural Development Programme.

Structural Instruments are absorbed in Romania through 6 Operational Programmes (OPs): Competitiveness; Human Capital; Large Infrastructure, Administrative Capacity; Technical Assistance and Regional Operational Programme.

The key features of operational programmes of interest to businesses 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 by companies, as up to 80% of its budget is intended to foster their activity. OP Competitiveness particularly supports research, technological development, innovation, e-economy and sustainable energy development.

### **OP Human Capital**

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

### **Large Infrastructure**

The Large Infrastructure Operational Programme will bring together environmental projects, transportation, projects on highways and major energy projects. Eligible applicants are public authorities, as a rule.

### **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.

The structure of fund allocation (from European Structural and Investment Funds) for the period 2014 – 2020 in relation to operational programmes can be summarised as follows:

Program	Financial allocation for 2014-2020 at program level
Large Infrastructure OP	9,42
Human Capital OP	4,22
Regional OP	6,70
Competitiveness OP	1,33
Administrative Capacity OP	0,55
Technical Assistance OP	0,21
National Programme for Rural Development	8,02
OP for Fisheries and Maritime Affairs	0,17
Youth Employment Initiative	0,11
<b>TOTAL</b>	<b>30,73</b>

### Agriculture Funds

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

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

# CHAPTER 8

## **Labour regulations and employment standards**

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

### **Employment documentation**

#### **Employment contracts**

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

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

#### **Registration formalities**

According to Government Ordinance 123/2010, starting from 1 January 2011, individual employment contracts no longer need to be registered with local labour inspectorates. Moreover, under Decision 500/2011, every employer is required to establish and send to the local Labour Inspectorate a General Employees' Registry and to present it to the labour inspectors, if so required. This Registry is kept in electronic format at the employer's headquarters.



Specific employees' data (such as date of employment, position, type of employment contract, etc.) must be entered in the General Employees' electronic Registry and sent to the local labour inspectorates not later than the day preceding the first working day for a new employee. Otherwise, non-fulfilment of this obligation leads to fines for the employer ranging between RON 5,000 and 10,000 (approximately EUR 1,130- 2,270).

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

### **Work Permits**

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

A work permit is a document under which a national of a non-EU/EEA member state is entitled to work in Romania for a specific position, for one employer only, for a twelve-month period and can generally be renewed. Moving from one company to another involves obtaining a new work permit even if the existing one has validity remaining.

Different types of work permits are issued to non-Romanian nationals, depending on their employment structure while in Romania. Specifically, work permits for permanent employees are issued for indefinite or definite periods of time to non-Romanian nationals who intend to conclude employment contracts with only one Romanian employer. Highly-skilled qualified foreign workers will be granted specific work permits for highly-skilled workers. Work permits are also issued for seconded employees who are

non-Romanian nationals and are nationals of non-EU/EEA member states, employed by non-Romanian employers and seconded to work in Romania.

This type of work permit is issued for a maximum of one year at a minimum time interval of 5 years based on the secondment agreement between the foreign and the Romanian employer.

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

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

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

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 as of its registration.

### **Employment Standards**

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

The normal working program is 8 hours/day and 40 hours/week. There are 12 legal holidays; 1, 2 January, 1 May, Easter Monday

(Orthodox), the Monday after Pentecost (normally 7 weeks after Orthodox Easter), 15 August (Assumption Day), 30 November (Saint Andrew), 1 December (National Day), 25 and 26 December (Christmas).

From 1 January 2015, the minimum gross base salary is RON 975 per month (approximately EUR 190). After 1 July 2015, the minimum gross base salary will be RON 1,050 (approximately EUR 200). This amount is consistent with a full time working program of approximately 170 hours per month, representing RON 5.73/hour (approximately RON 6.17/hour after 1 July 2015). The establishment by the employer of a monthly base salary for its employees below the minimum wage can lead to fines of between RON 1,000 and 2,000 (approximately EUR 227-454).

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

### **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:

- 31.3% (20.8% paid by the employer and 10.5% paid by the employee) for normal work conditions.
- 36.3% (25.8% paid by the employer and 10.5% paid by the employee) for difficult work conditions.
- 41.3% (30.8% paid by the employer and 10.5% paid by the employee) for exceptionally difficult work conditions.

Employees under 35 years of age must register with a mandatory private pension fund. In 2014, a 4.5% contribution corresponding to a privately administered pension fund is included in the employees' social security contribution of 10.5%.

## **Social Health Insurance System**

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

## **Unemployment Benefit Insurance**

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

## **Work Accidents and Occupational Diseases Insurance**

Law 346/2002 governs a system aimed at covering the risks of loss/reduction of work capacity or death related to work accidents and occupational diseases.

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

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

## **Medical Leave and Allowance**

The current contribution rate for medical leave and allowances (due by employers) is 0.85% of the salary fund, capped at 12 times the minimum gross salary multiplied by the number of insured employees during the month in question (currently, the minimum gross salary is RON 850).

### **Salary Guarantee Fund**

To ensure employees' protection in the event of an employer's insolvency, Law 200/2006 provides for the creation of a fund to be used to guarantee the payment of salary debts. The contribution rate due by employers is 0.25% of the monthly gross income.

# CHAPTER 9

## The legal system

Broadly, the Romanian legal system stems from the Roman branch of law, but it is also partly influenced by the Anglo-Saxon branch. Romanian legislation has mostly been brought into line with EU law, as part of the EU accession procedure.

### 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 New Civil Code came into force on 1 October 2011, replacing the former code that was adopted in 1864, based on Napoleon's Civil Code of 1804. The current Civil Code is based on multiple sources of inspiration from many systems of law, e.g., civil codes of France, Italy, Quebec, Switzerland. The New Civil Code regulates for the first time certain institutions, such as trusts, parties' permission to set prescription terms for their obligations, etc., and modifies the effects of certain legal actions.

The New Civil Code 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.

Besides the new Civil Code, a new Civil Procedure Code has been adopted, and took effect from 15 February 2013. This new code 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 (iv) Mandatory attendance by the parties to several types of civil litigation cases at a meeting before an authorized mediator, to be informed about the advantages of settling the dispute by resorting to mediation, etc.

A draft bill of an Insolvency Code is currently in the Senate and has also been submitted for public debate, unifying insolvency and pre-insolvency proceedings, in an effort to curb the increasing number of debtor-induced insolvency proceedings and offer more protection to lenders.

## **(b) Criminal Law**

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

The new Criminal Procedural Code, adopted under Law 135/2010 also came into force on 1 February 2014. Its regulations are intended 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.

## **Judicial System**

According to the Constitution and the Civil Procedure Code, the Romanian judicial system comprises: local courts (*judectorii*), tribunals (*tribunale*), courts of appeal (*curti de apel*) and the High Court of Cassation and Justice. Local courts and tribunals act in first instances depending on the type and value of the dispute, while the courts of appeal judge first or final appeals. The High Court of Cassation and Justice is Romania's supreme court. It deals with second appeals, as well as having a relevant role in interpreting the unitary application of legislation at national level.

The Court of Accounts (*Curtea de Conturi*) is the supreme financial regulatory institution in the field of public finance. It performs its functions independently, under the supervision of the Romanian Parliament. The main duty of the Court of Accounts is to verify the creation, administration and use of the financial resources of the

State and the public sector. Currently, this institution does not have any jurisdictional role.

### **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 new Civil Procedure Code. The new provisions are better 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.

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 new 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

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. 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, 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 under the 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, audiovisual works, architecture, graphic and plastic art works, digital art works, etc.

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.



## **Patents**

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

Patents have a 20-year validity. Law 255/1998 provides a special legal framework for the protection of plant species, also based on a patent certificate. Certain procedural aspects have been amended through the adoption of the New Civil Procedure Code.

## **Utility models**

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

The utility model ensures the protection of technical inventions only, and only products benefit from such protection. Therefore, 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.

## **Trademarks and geographical indications**

Romania is a signatory party to the 1894 Madrid Agreement on International Registration of Trademarks and a party to the Community Trademark System administered by the Office for Harmonization in the Internal Market. Trademarks and their protection are regulated under Law 84/1998, which sets out the procedure for registering trademarks with OSIM, the priority rights

recognized and the rights and obligations deriving from trademark protection.

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

A trademark is protected for an initial 10 year-term and its validity may be subsequently extended for equal periods of time. Some procedural aspects have been amended under the New Civil Procedure Code.

Law 84/1998 also regulates the legal regime of geographical indications, protected for the same initial term as trademarks (10 years, which can be indefinitely extended for equal periods).

### **Industrial designs and models**

Romania is a signatory party to the 1925 Hague Agreement concerning the International Deposit of Industrial Designs.

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

The designs 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 designs and industrial models is similar to the registration procedure provided in respect of trademarks. The New Civil Procedure Code has introduced certain procedural amendments.

## 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 Official Journal of Romania no. 454 of 18 June 2008 (the "Accounting Law").

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.

# CHAPTER 12

## Competition in Romania - Main legal issues

### Relevant legislation

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

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

With the adoption of the Regulation 1/2003, relevant articles from the Treaty for the Functioning of the European Union became directly applicable by the national competition authorities as well as by the national courts.

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

### Competition Authority

The Competition Council is an autonomous administrative authority responsible for secondary legislation on 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 in respect of competition matters are:

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

### **Merger control (control of economic concentrations)**

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

### **State Aid Control**

Following Romania's accession to the European Union, the EU legal framework on state aid has become directly applicable in Romania. Therefore, as a general rule, granting and implementing state aid in Romania is now subject to the European Commission's

prior approval, inasmuch as the state aid falls under the legal notification requirements. The Competition Council plays the role of liaising authority between the European Union and the authorities/beneficiaries of state aid and provides professional assistance in the field of state aid (by drafting documents to ensure that the specific conditions are met, etc.).

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

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

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

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

### **Non-compliance penalties**

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

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 who have a significant role in creating/implementing an anti-competitive agreement, a decision of an association of undertakings or a concerted practice may become subject, under certain conditions, to criminal penalties.

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

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

# CHAPTER 13

## Environmental protection

### General provisions

Environmental legislation was first introduced in 1991. Since then, it has been developed to comply with the standards imposed by the European Union. Some of the Romanian regulations are stricter than the EU rules. 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) and do not apply to companies set up after 1990.



### Environmental legislation

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

According to current legislation, legal entities must obtain an environmental authorization to perform certain activities considered to have an environmental impact, which are established under a Ministerial Order. This authorization sets out companies' obligations to comply with applicable environmental norms. In the event of non-compliance (applicable only in connection with the topics covered by the Directives in respect of which Romania obtained transition periods), an environmental compliance program is agreed with the environmental authorities, including measures to be implemented during a certain timeframe. If the related measures are not implemented within the agreed period, the local

authority sends a notification to the company in question and if the problem is not resolved within maximum 30 days from receipt of the notification, the authority suspends the environmental authorization for a period of up to 6 months. During this period, the company may not carry out its activities and if it still fails to resolve the situation within this time interval, the environmental authority cancels the environmental authorisation.

### **Environmental Authorities**

The environmental authority at central governmental level is the Ministry of Environment and Climate Change (MECC), in charge of national environmental policy and strategy development. The Romanian environmental legal framework is also developed by the MECC. The central implementation authority is the National Environmental Protection Agency (NEPA) which coordinates the local environmental authorities and ensures the necessary training process for all parties involved in environmental matters. The Local Environmental Protection Authorities (42 LEPAs)-are located in each of Romania's 41 counties and in Bucharest. 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, i.e. the Danube Delta Biosphere Reserve Administration.

The National Environmental Guard (NEG) is the national environmental protection enforcement institution, subordinated to the MECC. The NEG is represented by a Local Environmental Guard (LEG) in each county and in Bucharest. The LEGs verify compliance by companies located in the relevant county with environmental regulations and norms. For non-compliance, LEGs may impose penalties, according to the amount of environmental damage or risk caused by the non-compliance.



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The information contained in this document was last updated in May 2015.