TUCA ZBARCEA
ASOCIATII

Better Business

IN ROMANIA

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Contents

Introduction

In previous editions of this booklet, we were welcoming you with enthusiastic presentations of the transformations Romania's economy went through after the fall of Communism, with legitimate hopes flowing from Romania's access onto the EU, with the optimism of the figures measuring foreign investments on the local market and, generally, with the trust that the entire business environment in Romania has all chances of becoming better: as any other emerging market, ours cannot (could not) other than grow...

We all know that today's premises are not the same or, if not yet completely different, are undergoing inevitable changes. Romania's economy remains emergent, but the crisis which affected the world today forced a different perspective upon us.

After the unprecedented warming of the global economy, we suddenly found ourselves faced with an icy cold wind, causing contraction. Global-this contraction, too, and expressing itself by a natural tendency of repositioning, reorganisation, exorcism.

The chaos on the financial markets, the fall of the speculations on the stock exchange and on the real estate market, the chain of bankruptcies, the infections spreading from toxic banking assets, the growing unemployment, the dramatic reduction of trade were only a few of the symptoms the virus which attacked the world economy. Symptoms that inevitably hit our economy too, caused trouble in what we saw as the El Dorado of foreign investment.

This dramatic change of perspective forces us to introspection, before anything else, to an effort of realistic repositioning. To adapting to new realities as we go. To redefining better business. It seems like only yesterday that, on the background of the economy growing en fanfare, "better" meant "more" (and more and more), but now, "better" means "more efficient" and "more effective".

This booklet is offered as a support for you and your company's investments in an economy which looks forward trustfully to investments in infrastructure, environment protection, health, natural resources and so on.

This booklet is made to offer you support in managing the inevitable complications created in the aftermath of the economic crisis but to also give you solid arguments for a better business development in Romania.

The sun may shine in wintertime, too. We would be happy if this booklet would help you find and enjoy its warmth.

Florentin Țuca, Managing Partner, Țuca Zbârcea & Asociații

Corporate

1. Which are the main legal enactments governing business activities in Romania?

Business activities in Romania are mainly subject to the Companies Law No. 31/1990 (Companies Law) and the Government Emergency Ordinance No. 44/2008 on the performance of business activities by authorised individuals, individual undertakings and family undertakings (GEO No. 44/2008). Also relevant is the new Romanian Civil Code in force as of 1 October 2011 (Romanian Civil Code). Listed companies also have to observe capital market regulations.

2. What types of legal entities may be incorporated under Romanian law?

As a rule, business activities in Romania may be mainly carried out by companies (owned by Romanian or foreign shareholders without restriction) or by other forms of business organisations established in accordance with the law, such as authorised individuals, individual undertakings or family undertakings.

A company may be established in Romania mainly in one of the following forms: general partnership (Romanian: *societate în nume colectiv*), limited partnership with shares (Romanian: *societate în comandită simplă*), limited stock partnership (Romanian: *societate în comandită pe acțiuni*), joint stock company (Romanian: *societate pe acțiuni*) and limited liability company (Romanian: *societate cu răspundere limitată*).

3. What types of legal entities are most frequently incorporated under Romanian law? Joint stock companies versus limited liability companies

The most frequent types of company incorporated in Romania are the joint stock companies (JSC) and the limited liability companies (LLC), especially due to the limitation of liability to the value of their subscribed share capital that these two types of companies afford shareholders.

LLCs may have up to 50 shareholders and are based on mutual trust among the shareholders. This feature justifies special conditions and limitations to be observed when transferring LLC shares, in contrast with JSCs where shares may be transferred freely (as described herein below). The Companies Law also permits establishing an LLC with a sole shareholder. The rules governing LLCs with two or more shareholders apply to LLCs with a sole shareholder as well, however two particular limitations need to be observed: (i) an individual or a legal entity may be the sole shareholder in one LLC only; and (ii) the sole shareholder of an LLC may not be itself an LLC owned by a sole shareholder. An LLC must have a share capital of at least RON 200 (approximately EUR 50), formed by contributions in kind and in cash. Contributions in receivables are not accepted for LLCs. The entire amount of the registered capital must be paid up upon establishment.

In JSCs, it is the stockholders' contributions to the company's share capital that are essential, while the personal features of each stockholder are less important. JSCs must have at least two shareholders and a share capital of at least RON 90,000. The company's share capital may be formed by contributions in kind, in cash and/or in receivables. Cash contributions are always mandatory upon establishment. Where the JSC is established by simultaneous subscription, at least 30% of the subscribed capital must be paid upon incorporation, while the remaining 70% must be paid within 12 months (for cash contributions) or within two years from the registration of the company (for in-kind contributions).

4. What business vehicles are most frequently established by investors in Romania? What are the distinctive features of a branch?

Most often, investors choose to establish an LLC with a sole shareholder. However, depending on the scope of the business activities, establishing branches is also a common alternative.

Under the Companies Law, a branch constitutes a sub-division of a company (a secondary office), having the following distinctive features:

- The branch has no legal personality of its own and therefore it is not able to establish legal relationships on its own behalf;
- The branch will not have its own debtors and/or creditors, and the parent company will be held directly liable for all operations performed by the local branch;
- The branch is economically dependent on the parent company hence the activities performed by the branch are entirely based on the material endowments provided by the parent company;

- Activities carried out by the branch will not exceed the parent company's scope of business, as authorised under the latter's domestic law;
- The branch may have its own governing bodies even though such bodies are necessarily subordinated to the governing bodies of the parent company.

Despite these limitations, the legal regime governing branches is similar in many respects to that applicable to companies, as branches have several obligations normally incumbent upon legal entities (e.g. the obligation to register with the Trade Registry Office and with the fiscal authorities, similar tax obligations, the yearly accounting obligations).

5. What are the procedure, timing and costs for incorporating a business vehicle in Romania?

Romanian companies are incorporated by registration with the Trade Registry Office.

First, one must obtain/draft the documents required for the registration procedures (e.g. certificate issued by the Trade Registry Office proving the availability and reservation of the company name, articles of association of the company, documents attesting to the payment of the subscribed share capital etc). The incorporation certificate will be issued within three days after the documentation for registration was submitted with the Trade Registry Office.

The registration costs are about EUR 200.

After the registration formalities with the Trade Registry Office are completed, the company must also be registered for VAT purposes with the competent fiscal authority, if the case, and with the labour authorities before starting to employ personnel. The VAT registration process has become particularly complex in the recent years, it being done on the basis of a scoring chart which is thoroughly reviewed by the tax authorities.

6. Can the corporate structure be changed further to establishing the business vehicle?

Yes, it is possible to change the legal form of a company during its operations, provided that the legal requirements for the new legal form are met. For instance, in case the corporate form is changed from LLC to JSC, the share capital of the company must be brought to at least to the minimum legal threshold required for a JSC.

7. Are shareholders' agreements permitted by Romanian legislation?

Shareholders' agreements are not explicitly regulated under the Romanian law. Unlike the articles of association, shareholders' agreements are deemed confidential among the shareholders, rather than a public deed subject to publicity requirements. Consequently, a shareholders' agreement may not be opposed to third parties unless they were aware of the agreement.

Lacking a legal framework to condition the contents of a shareholders' agreement, shareholders are at liberty to stipulate in their agreement any provisions they consider necessary for the good functioning of the company, to the extent they do not contradict or violate the Companies Law or the company's articles of association.

A shareholder failing to observe a shareholders' agreement may be held liable for damages towards the other shareholders.

8. Can a company acquire its own shares?

As a rule, a company may not subscribe its own shares. The Companies Law provides however for two exceptions when a JSC may acquire its own shares (i) in a restricted manner, and (ii) in an unrestricted manner.

JSCs may acquire up to 10% of their own shares provided certain conditions are met:

- That the acquisition is authorised by the extraordinary General Meeting of Shareholders (GMS) (the authorisation must provide the terms of the acquisition, the maximum number of the shares to be acquired, the duration of the authorisation which may not exceed 18 months as of the publication of the resolution in the Official Gazette, and where the acquisition is made for a consideration, the minimum and maximum value of the shares to be acquired);
- That the shares are fully paid; and
- That the payment of the acquired shares is made only from certain sources allowed by the law (e.g. the distributable profit registered in the previous annual statements).
- JSCs may acquire their own shares without the obligation to observe the above conditions when the acquisition is performed:
    - With a view to decreasing the share capital; or
    - By way of a transfer with universal title (e.g. following a merger or a de-merger procedure); or
    - Within the enforcement proceedings taken against a shareholder for debts due to the company; or

- For no consideration (freely).

In all cases, for as long as they are held by the company itself, the acquired shares do not give rise to the right to vote or to the right to receive dividends.

9. Piercing the corporate veil: What are the premises for pursuing the liability of shareholders?

Piercing the corporate veil is expressly regulated, so that shareholders abusing the limitation of their liability and the distinct personality of the company, thus deceiving the company's creditors, will be held liable without limitation for the company's outstanding debts. The law deems abusive the shareholder's using the company's assets as if they were his own, or diminishing the company's assets for his own or third parties' benefit, while aware that in doing so the company is hindered in performing its obligations.

10. Are there any restrictions for transferring the shareholdings? What is the timing for transfer?

In JSCs, shares may be transferred freely, unless the shareholders agree otherwise.

In LLCs, shares may be freely transferred among shareholders; the transfer to persons outside the company is only allowed if approved by the shareholders representing at least ¾ of the registered share capital. The GMS resolution approving the transfer must be submitted within 15 days to the Trade Registry Office for publication in the Official Gazette of Romania. The company's creditors and any other persons deeming themselves prejudiced by the shareholders' resolution may oppose the share transfer in court. Absent an opposition, the shares are deemed transferred upon the expiry of the 30-day opposition term; where there is an opposition, the transfer takes place on the date the court decision dismissing it is communicated to the parties.

11. Does the Romanian law permit a company to advance funds, make loans or provide security for the purpose of the acquisition of its shares by a third party?

The Companies Law expressly prohibits a JSC from performing such type of operations. The interdiction is however not applicable to (i) transactions performed by credit institutions and other financial institutions in their ordinary course of business; and (ii) transactions intended for the acquisition of shares by or for the company's employees,

provided in both cases that such transactions do not cause the company's net asset to fall below the threshold of the cumulated value of the subscribed share capital and the reserves that cannot be distributed according to the law or the articles of association.

Absent an express interdiction, in practice it has been considered that an LLC may advance funds, make loans, or provide security for the purpose of the acquisition of its shares by a third party.

12. What are the main bodies of a company?

The main management body of a JSC is the GMS. Depending on the matters to be submitted to the shareholders' approval, the GMS may be ordinary (e.g. for the appointment or dismissal of directors or auditors, for the approval of the yearly financial statements and of the management report etc) or extraordinary (e.g. for the increase/decrease of the share capital, for changes in the company's legal form, mergers, spin-offs, as well as for any other matter which does not fall under the exclusive competence of the ordinary GMS).

The Companies Law provides for two types of management systems available for JSCs: (i) the one-tier management system, where the management is entrusted to a board of directors (Romanian: *consiliu de administrație*) which can, or in certain cases is obliged to, delegate management powers to several managers (Romanian: *directori*), and (ii) the two-tier management system, where the effective administration of the company is ensured by an executive committee (Romanian: *directorat*) under the control of a supervisory council (Romanian: *consiliu de supraveghere*). In practice, the majority of the Romanian JSCs adopted the one-tier management system.

Decision making in an LLC belongs to the GMS. There is no statutory provision distinguishing between ordinary GMS and extraordinary GMS. However, shareholders may establish through the articles of association the two types of GMS with different duties and voting requirements. The LLC is managed by one or several directors.

13. Are there any legal restrictions on the quorum and majority necessary in the GMS and may the shareholders derogate therefrom?

In case of JSCs, the ordinary and the extraordinary GMS have different statutory quorum and voting requirements.

On the first call, the ordinary GMS may duly pass resolutions only (i) in the presence of the shareholders (or their representatives) holding at least ¼ of the total number of voting rights and (ii) with the majority of the voting rights exercised in the meeting. The articles of association may provide higher quorum and voting requirements regarding the first call. On the second call (which takes place when the necessary quorum is not met upon first call), there is no minimum quorum and the decision will be taken with the majority of the voting rights exercised in the meeting. The articles of association may not provide a minimum quorum or a higher majority for the second call of the ordinary GMS.

In the case of the extraordinary GMS, the presence of the shareholders holding at least ¼ of the total number of voting rights is required at the first call, and ⅕ of the total number of voting rights for the second call. Decisions may be duly passed with the vote of the shareholders representing at least ½ of the voting rights of the shareholders present or represented at the meeting. However, a special majority of ⅔ of the voting rights of the attending shareholders is required for decisions on major issues, such as the increase or decrease in the share capital, merger or wind-up operations. The articles of association may provide increased thresholds of quorum and voting majorities.

In the case of LLCs, there are no quorum conditions for the first and second calls. As regards the decisions, unless otherwise provided in the company's articles of associations, the decisions may be passed within the GMS with double majority: over 50% of the shareholders and over 50% of the share capital. The unanimous vote is required for amendments to the articles of association, except otherwise provided by the incorporation document. In the event that the GMS cannot validly take a decision due to lack of quorum, the GMS may decide at the second call irrespective of the number of the shareholders attending the meeting and of their quota to the company's share capital.

14. What are the main rights of minority shareholders?

The main rights that ensure the protection of the minority shareholders in JSCs are:

- The shareholders holding at least 5% of the share capital may request that a GMS be called, or that the agenda of an already convened GMS be supplemented;
- Any shareholder may request the auditors to review any act or operation of the company;
- One or several shareholders holding, severally or jointly, at least 10% of the share capital may request the court to appoint one or several experts for analyzing certain operations in the management of the company and draft a report to be submitted to

the board of directors, directorate and the supervisory council, respectively, as well as to the in-house auditors and the internal auditors of the company, as the case may be, for analysis and in order to propose adequate measures;
- In certain limited cases, the shareholders that did not vote in favour of one of the resolutions of the GMS have the right to withdraw from the company and request the purchase of their shares by the company;
- The shareholders representing, separately or jointly, at least 5% of the share capital, may file an action for damages, in their own name but on behalf of the company against the founders, directors or managers of the company for damages they caused the company.

Although expressly stipulated only for JSCs, most of the above rules are equally applied in practice in LLCs, unless otherwise provided in the Companies Law (for example, the shareholders of an LLC holding ¼ of the share capital may request the call of the GMS).

15. Are there any restrictions as regards transactions between the company and its shareholders or its directors in case of conflict of interests?

The shareholder of a JSC who, in a certain operation, holds personal interests or interests on the account of another person that are contrary to those of the company, cannot take part in any deliberation or resolution taken with regard to such operation. In case of breach, the shareholder is liable for the damages caused to the company if the required majority would not have been met without its vote.

Moreover, in LLCs, the shareholder may not vote where the decision refers to its own contribution to the share capital or to its own agreements concluded with the company.

The interdiction also applies to directors, who are not allowed to take part in any resolution concerning a transaction in which they have direct or indirect interest contrary to those of the company.

The law provides expressly for an example of conflict of interests between the directors and the JSC, where the company is not allowed to extend loans to its directors (or their spouses, relatives or kindred up to the fourth rank). The crediting restriction also applies to companies in which the aforementioned persons are directors or hold at least 20% of the subscribed share capital, alone or together with one of the aforementioned persons.

However, such crediting restrictions do not apply to: (i) any operations the cumulated enforceable value of which is lower than the RON equivalent of EUR 5,000; (ii) any

operations concluded by the company in its ordinary course of business, and where the terms of the operation are not more favourable to the abovementioned persons than those usually employed by the company with third parties.

16. Are there specific approval requirements for certain company transactions?

There are legal provisions requiring GMS approval on certain operations (such as acquisition, transfer or lease of assets amounting to over half of the book value of the company's assets) before the JSC's directors are allowed to conclude them. In addition, the articles of association may provide several other operations which require the GMS prior approval before allowing the management to conclude a transaction. The capital markets legislation provides for lower thresholds on certain company transactions.

17. What are the rules for challenging the company's resolutions?

The GMS resolutions in line with the applicable laws and the articles of association are mandatory even for the shareholders that did not take part in the meeting or voted against them.

Shareholders that did not attend the general meeting or voted against and requested their opposition to be recorded in the minutes may object against GMS resolutions contrary to the law or to the articles of association within 15 days from their publication in the Official Gazette of Romania or, in case of LLCs, from the date when the shareholder was informed about the GMS resolution. A challenge seeking to obtain the absolute nullity of the resolution may be filed at any moment and by any person (including third parties).

Within 30 days as of the publication of the GMS resolution in the Official Gazette of Romania, the company's creditors and any other persons prejudiced by it may request the court to hold the company or the shareholders liable for the damages caused.

18. How are directors appointed and removed? What are the special requirements which need to be observed?

The directors of a company are appointed through the articles of association, at the time the company is incorporated, and may be replaced or removed by the GMS throughout the company's existence.

In JSCs, further requirements must be observed, such as:

- The appointed director must expressly accept his/her designation, and must provide professional liability insurance;
- The duration of the term of office of the directors or members of the directorate or supervisory council is established by the articles of association and may not exceed a period of four years. However, they may be re-elected unless otherwise provided in the articles of association. The duration of the term of office of the first members of the board of directors and of the first appointed members of the supervisory council, respectively, will not exceed two years;
- An individual may at the same time be director and/or member of the supervisory board in no more than five Romanian-based joint-stock companies. This restriction equally applies to the individual that is a director or member of the supervisory board, and to the individual that is the permanent representative of the legal entity appointed as director or member of the supervisory board. The prohibition does not apply where the individual elected in the board of directors or the supervisory board own at least ¼ of the total shares of the company, or is a member of the board of directors or the supervisory board of a joint-stock company holding the aforementioned shareholding quota.

19. Can a director be the employee of the company?

In the case of JSCs, the members of the board of directors, the managers (in the one-tier management system), and the members of the executive and supervisory committee (in the two-tier system), may not be concomitantly employees of the company; their relationship with the company is regulated by a management contract.

In the absence of an express interdiction, the general view is that a director of a LLC can be employed by the company.

20. What is the extent of the directors' liability towards the company, shareholders and outsiders?

The directors' duties and liability are regulated by the Companies Law and established on a case by case basis in the appointment documents. As a rule, directors are jointly liable towards the company for the following: (i) reality of payments made by the shareholders; (ii) reality of paid dividends; (iii) existence and correct maintenance of the company ledgers required by law; (iv) appropriate enforcement of the resolutions of the general meetings; (v) strict fulfilment of the duties imposed by the law and the articles of association.

Directors are liable towards the JSC for the prejudices caused by the actions of the managers or of the hired staff, when the damage would not have taken place if they had exerted the supervision imposed by the duties of their position. Moreover, directors will be jointly liable with their immediate predecessors if, having knowledge of the violations committed by their predecessors, fail to disclose them to the in-house auditors or to the financial auditors, as the case may be. Also, in the case of JSCs managed by a number of directors, the liability for the perpetrated actions or omissions does not extend to directors who have had their opposition to such action/omission recorded in the registry of resolutions of the board of directors and who notified such opposition in writing to the in-house auditors or the internal auditors and the financial auditor.

Also, the directors can be held criminally liable for embezzlement, forgery, use of forgery, bribery and fraudulent management.

21. Who can initiate legal proceedings against the company's directors?

As a rule, management members could be held liable only by the GMS for their management operations, according to the applicable rules of quorum and vote. However, the shareholders holding more than 5% of the share capital may engage the liability of the management members in case the GMS did not exercise such right.

22. What are the methods for increasing and decreasing the share capital of the company?

The registered share capital may be reduced by: reducing the number of shares; reducing the nominal value of shares or participations; purchasing company's own shares, followed by their cancellation (in case of JSC). Also, should the decrease not be motivated by losses, the registered share capital may also be reduced by total or partial exemption of the shareholders from their obligation to make the due and payable deposits; refund to the shareholders of a share of their contributions, proportionally to the reduction of the registered share capital equally calculated for each share or participation; other methods provided by law.

The registered share capital can only be reduced two months after the day in which the resolution was published in the Official Gazette of Romania. Company's creditors whose receivables existed before the publication of the GMS resolution deciding the decrease of the registered share capital will be entitled to obtain securities for the receivables not due at the date of publication.

The registered share capital may be increased by issuing new shares or by increasing the nominal value of the existing shares in exchange for new contributions in cash and/or in kind. Also, the new shares will be fully paid-up by incorporating the reserves, except for the legal reserves, as well as the profit or share premiums, or by setting off liquid and payable claims against the company with shares thereof.

The articles of association or the GMS may authorise the board of directors or the directorate to increase the registered share capital of the company, within a period of time which cannot exceed five years from the date of its incorporation, up to a determined face value (authorised capital), by issuing new shares in exchange for contributions. The face value of the authorised capital cannot exceed half of the registered share capital existing at the authorisation above.

23. Do the shareholders have a pre-emption right to the shares issued in the increase process of the registered capital share?

The shares issued for the increase of the registered share capital will be offered for subscription, first to the other shareholders, proportionally to the number of shares they hold. The call option of the shareholders can be limited or revoked only by resolution of the extraordinary GMS.

The call option may only be exercised within the deadline established by the GMS or by the board of directors, or by the directorate, but after at least one month has passed from the publication in the Official Gazette of Romania of the resolution on the share capital increase.

24. Which companies have to ensure the external audit of their annual financial statements?

Companies that meet at least two of the following criteria have to prepare their financial statements in accordance with the EC IV Directive and have them audited:

- The value of the aggregate assets is at least EUR 3,650,000;
- Net turnover amounts to EUR 7,300,000; or
- The average number of employees within the financial year is 50.

The same obligation applies to the annual financial statements of companies of public interest (i.e., credit institutions, insurance companies, national companies, listed companies, etc) and to companies opting for the two-tier management system.

Real Estate

1. What are the main sources of real estate law?

The main sources of real estate law are: (i) the Romanian Constitution; (ii) the New Civil Code; (iii) the Fiscal Code; (iv) the Cadastral Law No. 7/1996; (v) Law No. 50/1991 on the authorisation of construction works; (vi) Law No. 10/1995 on quality in construction; (vii) Land Law No. 18/1991; (viii) Law No. 1/2000 on the reinstatement of ownership rights over agricultural and forest lands; (ix) Law No. 10/2001 on the legal regime of real estate abusively taken between 6 March 1945 and 22 December 1989; (x) Law No. 247/2005 for reform in ownership and justice; (xi) Law No. 165/2013 on certain measures for finalising the process of restitution, of real estate abusively taken by the State during the communist era; (xii) Law No. 213/1998 on public property; (xiii) Law No. 350/2001 on the management of the territory and urbanism, (xiv) Law No. 17/2014 on certain measures on the sale and purchase of *extra muros* agricultural lands the amendment of Law No. 268/2001 on the privatisation of companies that manage State's public and private property for agricultural purposes, and the establishment of the Agency of State Domains, (xv) Law No. 46/2008 regarding the Forestry Code, (xvi) Law No. 312/2005 regarding the acquisition of private ownership right over lands by foreigners and stateless persons etc.

2. Does the law classify real estate properties?

Real estate properties are mainly classified as either public or private property. Save for real estates that are exclusively part of the public property, any real estate can be subject to private property rights.

3. What real estate assets are deemed public property and who are the public property title holders?

Public property includes all real estate that under the law or by its nature is of public use or interest but only if acquired through the means provided by the law, namely: (i) by public acquisition performed under the terms of the law; (ii) by expropriation for public utility; (iii) by donation or convention, where the asset became of public use or

interest; (iv) by transfer from the state's private domain into its public domain, or from the administrative-territorial units' private domain into their public domain; (v) through other means provided by law. As an example, the public property of the Romanian State includes assets such as roads, beaches, parks, railway infrastructure etc.

The State and territorial-administrative units (communes, cities, municipalities and counties) own properties consisting of real estate that, according to certain legal principles, belong either to their public or to their private domain.

Under Romanian law, real estate in the public domain (i) may not be subject to transfer; (ii) may not be subject to enforcement procedures and (iii) may not be encumbered by security interests. Any transaction referring to an asset that is part of the public domain, and which does not observe the above-mentioned rules, is deemed to be null and void.

4. Can an investor develop a project on public property? How can such properties be exploited by investors?

Generally, it is not possible to develop a real estate project on a public property land. However, private real estate projects can be developed on such lands based on partnership with local authorities. Such projects may involve transfers of lands and buildings from public property into private property, or transfers from the public domain of the State to that of territorial units. The law imposes certain limitations on such transfers.

Assets in the public domain may usually be exploited by third parties by means of concession. Any sale, concession or lease of such assets must observe public procurement laws.

Exceptionally, the right to use real estate belonging to public property may be granted, free of charge and for a limited period of time, to public utility entities. Public property real estate may also be given into the administration of self-managed public companies, of local or central authorities, of other public institutions of local, county or national interest, as the case may be, based on Government or local council decision, as applicable.

5. Who can own land in Romania? Can a foreigner buy land directly?

As a general rule, any legal or natural entity may be the holder of private property

rights. However, the Constitution set forth limitations on the right of foreign citisens and stateless individuals to acquire lands in Romania.

In the Treaty of Accession of Bulgaria and Romania to the European Union, Romania undertook that it shall "liberalise" the land market. The principles of the "liberalisation" of the land market in Romania can be summarised as follows:

- As a general rule, foreign natural persons and legal entities of the European Union/ European Economic Area ("EEA") can purchase land in Romania under the same conditions as natural persons and legal entities from Romania, as provided under Article 3 of the Law No. 312/2005;
- For the sale of lands for secondary residences or headquarters: starting 1 January 2012, foreign natural persons and legal entities of the European Union/EEA that are not Romanian residents are entitled to direct purchase, as provided under Article 4 of the Law No. 312/2005;
- For the sale of agricultural lands, forests and forest lands: starting 1 January 2014, foreign natural persons and legal entities of the European Union/EEA are entitled to direct purchase, as provided under Article 5 of the Law No. 312/2005.

Law No. 17/2014 regulates the procedure for the sale of *extra muros* agricultural lands to both Romanian citisens and citisens of any European Union Member State, the States which are party to the EEA, or from the Swiss Confederation, and to stateless persons domiciled in an European Union Member State or a state that is a party to the EEA or to the Swiss Confederation, and to Romanian legal entities, respectively to legal entities from an European Union Member States, States that are party to the EEA or the Swiss Confederation.

Law No. 17/2014 imposes limits to the principle of direct access of entitled natural persons and legal entities to purchase *extra muros* agricultural lands in Romania by requiring observance of the pre-emption right of the following categories (listed here by priority): co-owners, lessees of the respective land, neighbours, owners of different lands located within the same agricultural parcel, (Romanian: *tarla*) the State of Romania through the Agency of State Domains. This pre-emption right is established in order to encourage the joining (Romanian: *alipire*) of agricultural lands and to facilitate their respective exploitation. Breach of the pre-emption right is sanctioned with relative nullity of the sale and purchase agreement in respect of the *extra muros* agricultural lands.

Law No. 17/2014 details on the procedure for selling *extra muros* agricultural lands (conditions, competent authorities deadlines): the holders of a pre-emption right may express their intent to purchase, in writing, within 30 days following the publication of the seller's request. Where more than one pre-emptor exercises the right, the order of

priority provided by law will apply and, where there are more pre-emptors of the same rank exercising the right, the seller may choose one of them and inform the competent city hall of its choice.

If a pre-emptor of inferior rank offers a price higher than the price offered by a pre-emptor of superior rank, the seller may resume the selling procedure in consideration of such price. This new procedure may be exercised only once, within 10 days following the expiry of the first 30-day period, and at the end of the new 10-day period, the seller must communicate to the city hall the name of the selected pre-emptor. If no pre-emptor exercises its right within the initial 30-day period (or within the 10-day period, during the procedure performed at a different price), the land may be sold freely. The sale purchase agreement concluded in consideration of a lower price, or under better conditions than those mentioned in the selling offer is deemed null and void.

Moreover, Law No. 46/2008 regulates a pre-emption procedure for the sale of lands from the forestry fund. The legal pre-emptors are the co-owners and the neighbours. In case the State or the territorial administrative unit is neighbouring the land to be sold, its pre-emption right shall have priority over the other neighbours, subject to the forest land of the State or territorial administrative unit be in the public domain. The seller has to notify in writing the pre-emptors, through the service of a bailiff or notary public, with the obligation of the pre-emptors to exert their right within a 30-day period. The sale purchase agreement concluded without notifying the pre-emptors or in consideration of a lower price, or under better conditions than those mentioned in the selling offer is affected by relative nullity.

Non-EU citizens and stateless individuals not domiciled in an EU Member State/EEA and legal entities outside EU/EEA may only acquire lands in Romania under reciprocity conditions, as regulated by international treaties (and by taking into consideration the conditions provided by special legislation – e.g. Law No. 17/2014 regarding *extra muros* agricultural lands).

Any foreign investors may acquire lands (including *intra muros* lands) in Romania by setting-up a special purpose vehicle with its headquarters in Romania. This will be a Romanian legal entity and, therefore, will be entitled to acquire land without the legal limitations imposed on foreigners.

6. Are there any formal conditions for the transfer of real estate property? Is authentication required?

Under Romanian law, deeds having as object the transfer of ownership over real estate must be concluded in writing and in authenticated form (i.e., signed in front of a

Romanian public notary), under the sanction of absolute nullity.

Corporate transfers (the transfer of the shares of a company owning real estate) may be made through corporate transactions that do not require notarised deeds.

7. Is there any transfer tax (or equivalent) payable on the sale or purchase?

For transfers of the ownership title or of any other right over real estate, an income tax is owed to the state budget by the transferor. The value of the income tax is computed and collected by the public notary upon the authentication of the transfer deed. The registration of the transfer deed with the relevant Land Book is conditional upon the payment of the income tax.

Under the Fiscal Code, individuals obtaining income from transferring the right of ownership (or dismemberments of ownership) over real estate (constructions of any kind and the affected land and/or land of any kind free of constructions) are compelled by law to pay income tax to the state budget. The value of such income tax depends on the transfer price, as well as on the time period between the date when the real estate was acquired by the seller and the date of the transfer, as follows:

- If the ownership (or the dismemberment of ownership) over the real estate was acquired by the seller within a 3-year period prior to transfer, the income tax amounts to: (i) 3% of the price, if the price does not exceed RON 200,000, respectively to (ii) RON 6,000 plus 2% of the value exceeding RON 200,000, if the price exceeds RON 200,000;
- If the ownership (or the dismemberment of ownership) over the real estate was acquired within a period exceeding three years prior to transfer, the income tax amounts to (i) 2% of the price, if the price does not exceed RON 200,000 and (ii) RON 4,000 plus 1% of the value exceeding RON 200,000, if the price exceeds RON 200,000.

Notary fees related to the execution of the transfer deed and the costs for the registration of the deed with the Land Book, generally paid by the buyer, are not included in the above-mentioned taxes.

8. How is title to real estate evidenced? Is there a public register?

A real estate title is evidenced and is made opposable to third parties by registration in

the relevant Land Book (Romanian: *Carte Funciară*).

The Land Book provides for a description of estates (cadastral number of the estate, dimensions of the estate, its categories of use and, as the case may be, the buildings and the location of the estate by indicating neighbouring areas), for various aspects related to the ownership right (name of the owner, the legal deed or fact which gives rise to the owner's right, any rights-of-way, legal facts, personal rights or other legal relations or actions taken in connection with the property) as well as for aspects regarding the background of various dismemberments of ownership (the right to use the land located under a construction, dwelling rights, easement rights, mortgages and real estate privileges, leases and assignments of income exceeding three years, encumbrances and related procedures including pursuit of the estate or of its proceeds).

The Cadastre Law sets forth the manner in which legal operations regarding real estate properties are to be published. The records are kept by the National Agency for Cadastre and Real Estate Publicity, through its territorial units. The general cadastre record system is designed to provide a public record of all transactions and relevant legal issues related to real estate located in the same territorial unit.

A right over real estate recorded in the Land Book is presumed to exist, if acquired or set up in good faith and lacking any proof to the contrary (registrations in the Land Book do not constitute absolute evidence). Where registration procedures related to a deed or right have been duly performed, third parties may not prove that they were not aware of such deed or right. The Civil Code establishes two legal relative presumptions: that the registered act or right exists, if it was not amended or de-registered; and that a de-registered deed or act does not exist.

Until the expected change in their legal regime, as detailed herein below, registrations with the Land Book shall be carried out according to the Cadastre Law, to the effect of opposability, rather than constitution of rights.

The right to demand fulfilment of registration formalities is protected under the Civil Code, while contractual clauses seeking to limit the right to perform certain registration formalities are deemed null and void.

9. Is a Land Book review of the previous registrations legally or mandatorily required?

A prior review of the registrations in the Land Book related to any specific real estate property is recommended. A Land Book excerpt is required upon the execution of a

transfer agreement, as to evidence proper registration of the previous owner and the lack of transfer prohibitions.

10. Are there any major legislative novelties regarding Land Book registrations?

As a major legislative novelty in real estate regulations, the Civil Code, in force as of 1 October 2011, provides that the final registration (Romanian: *intabularea*) of a certain right with the Land Book shall have a constitutive effect, i.e., leading to the creation of the respective right, rather than a mere opposability effect, as previously provided. However, this new rule shall only become applicable after the complete implementation of the unitary and mandatory cadastral system providing for a technical, economical and legal record of real estate, a system already initiated in Romania starting with 1996.

According to the new rules, the private ownership right over an immovable asset will cease upon the registration with the Land Book of the previous owner's waiver of the transferred right, given under certain regulated forms. However, the ownership right will be obtained without registration when derived from natural accession, inheritance, forced sale, expropriation for public utility reason or other cases expressly regulated under the law. Also, in certain expressly provided cases, registration may have acquisitive effects (for example, in the case of real rights).

Other new rules included in the Civil Code have already entered into force. Provisional Land Book registrations and Land Book notations may only be made in the cases expressly provided by the law. Real rights subject to a condition may not be registered with the Land Book and can only be recorded as provisional Land Book registrations.

The date on which a registration with the Land Book becomes effective is the date on which the application is registered with the Land Book. Where there are concurrent titles emanating from the same predecessor in title, the holder of a right registered with the Land Book is deemed to be the first person who made such registration, irrespective of the date of the title the Land Book registration relies upon.

In cases of transfer of leased asset, the lease contract shall be enforceable against the acquirer under the following conditions: (i) for immoveable assets registered with the Land Book, only if the lease agreement was noted; (ii) for immovable assets not registered with the Land Book, only if the certified/certifiable date of the lease agreement is previous to the date of the transfer; (iii) for immoveable assets subject to publicity formalities, if the lessee fulfilled such formalities; and (iv) for other immoveable assets, if the asset was used by the lessee at the time of the transfer.

11. Should an investor pay particular attention to any specific item during a due diligence over a real estate property?

Within the process of acquiring land for the purpose of developing real estate projects in Romania, investors should always consider the critical issue of claims filed by former owners abusively deprived of their property during the communist era (by way of abusive expropriation, abusive confiscation, abusive nationalisation, etc.). Starting with 1991, the Romanian Parliament issued a series of enactments regulating the restitution of such properties, among which Land Law No. 18/1991, Law No. 1/2000, Law No. 10/2001, Law No. 247/2005 and most recently Law No. 165/2013.

The general rule is that abusively taken property must be restituted in kind (the original real estate, on its original locations/site). Only should restitution in kind be impossible, former owners shall be granted compensation. By way of exception, ownership titles issued based on the laws on restitution of land properties are registered with the Land Book *ex officio*.

Law No. 247/2005 set forth the legal framework governing compensations, by way of establishing "*Fondul Proprietatea S.A*"., a securities collective placement body, in the form of a financial investment company. However, starting 20 May 2013, when Law No. 165/2013 entered into force, a new compensation framework was established, applicable for all cases of restitution, except where in kind restitution is still available. Under the new legal provisions, in case the restitution in kind is not available, there are two compensation procedures: (i) compensation by equivalent (by other lands or constructions - if possible) or (ii) compensation by the awarding of points, each point having a value of RON 1. A National Fund for agricultural lands and other properties, administered by the Agency of State Domains, is to carry out the new compensation scheme.

By 1 January 2015, each property part of the National Fund will be subject to evaluation based on the grid used by public notaries, the resulting value to be expressed in points. Starting 1 January 2017, the former owners will be able to use the points awarded to them to purchase property from the National Fund through public tender. Within a 3-year period from the date of the compensation decision but not earlier than the 1 January 2017, the holder of points will be able to opt for compensation in cash. Cash compensation is paid by instalments. In this respect, the holder of compensation points can request annually, staring with 1 January 2017, to the National Authority for Property Restitution the issuance of a payment order for no more than 14% of the total number of points issued by the compensation decisions which were not used during public

tenders. The last instalment must be of 16% out of the total number of compensation points. The points which are not used for obtaining cash compensation can be used for the acquisition of different real estate properties as found at the time in the National Fund.

All persons who acquire rights in connection with the restitution of abusively taken property are obliged under Law No. 165/2013 to notify the National Authority for Property Restitution about the transactions they concluded in connection with such rights within 15 days from the conclusion of such transactions. For persons having acquired rights in connection with the restitution of real estate abusively taken over by the State during the communist regime (i.e., the assignees), Law No. 165/2013 provides for compensation through points as the sole possible remedy, consisting in a number of points equal to the amount of the price already paid to the former entitled person (based on the private convention/agreement signed with the entitled persons) plus 15% out of the difference up to the value of the property determined based on the public notaries grid. The number of points cannot be higher than that granted based on the evaluation of the real estate in accordance with the public notary grid. The compensation granted where the price already paid by the assignees to the former owners is not mentioned in the restitution file, consists in a number of points equal to 15% out of the value of the real estate as established based on the public notary grid.

12. What is the institutional framework of planning control?

Urban planning policies are carried out by public administration authorities, according to Law No. 350/2001, which establishes the general directives for urban policy, among other matters.

13. Are there any mandatory town planning documents?

The main town planning documentations are the General Urbanism Plan (Romanian: *Plan Urbanistic General*-PUG), the Local Urbanism Plan (Romanian: *Plan Urbanistic Zonal*-PUZ) and the Detailed Urbanism Plan (Romanian: *Plan Urbanistic de Detaliu*-PUD).

The PUG is the guideline for the development of a certain locality and establishes, *inter alia*, the city limits, the use to which lands located within the city limits may be put, the protected areas, the development of the technical infrastructure, requirements for constructions location and features. The PUG may be updated from time to time, every 10 years at most.

The PUZ mainly ensures coordination between the development plans and the PUG of a specific locality. The PUZ is prepared for certain specific areas of a locality and includes regulations relating to street network organisation the construction regime, function of the area, buildings alignment, receding planes and distances to lateral and backside limits of the plot, architectural features of the buildings, permitted construction materials, maximum permitted height, land use coefficient, land occupancy ratio, infrastructure development etc. Once approved by the Local Council of the City Hall where the land is located, the PUZ becomes compulsory for the respective area in relation to the technical parameters contained.

The PUD is a specific regulation that sets forth detailed requirements regarding the location and area of a construction on a specific plot, including regulations regarding accessibility and connection to the urban networks; general constraints regarding the built volumes and the fittings; functional and esthetical harmonisation with the surrounding areas. The PUD is a specific regulation of a plot in relation to the neighbouring plots and cannot change the higher ranking plans.

14. Who has the initiative of preparing land development and town planning documents?

The initiative of preparing land development and town planning documentations such as Local Urbanism Plan regarding central areas, protected areas and areas for monuments protection and also Local and Detailed Urbanism Plans for the development of public interest objectives, exclusively belongs to the public administration authorities. Other kinds of town planning documents may also be initiated by legal and natural persons and not only by the public administration authorities.

15. Are any amendments allowed to existing town planning documents?

Should an investor seek an amendment to the town planning documentations approved for a certain area, or should the specific conditions of the location or nature of the project require it, the local public authority is entitled, for specific cases, to condition the authorisation of the investment on the preparation by care of the private investor of an amended PUZ and on the approval thereof by the local public authority or, in certain cases, to condition the authorisation of the investment on the preparation and approval of a PUD.

16. May town planning documents be initiated or approved for the purpose of bringing unauthorised/non-compliant constructions into conformity with the law?

Starting from the 1 January 2012, no town planning documentations (such as PUZ or PUD) may be initiated or approved for the purpose of bringing into conformity with the law constructions built without a building permit or in disregard of the provisions in the building permit.

17. Which is the document listing the construction requirements for a specific plot of land?

The construction requirements established under the town planning documentation are described, for individualised parcels of land, through urbanism certificates (Romanian: *certificat de urbanism*). The purpose of such certificates, which may be issued at the request of any interested person, is mainly to provide information on the legal, economical and technical regime of a certain plot, including in relation to the buildings constructed on it, to detail the town planning requirements as applicable to it and to indicate the approvals and permits required in order to begin construction on the plot.

The urbanism certificate is issued by the local public authorities (the Mayor of the locality where the land is located, or the Presidents of the County Council, if the land on which construction works are going to be performed exceeds the boundaries of a single territorial-administrative unit), and does not grant its holder the right to perform construction works.

18. Which is the document that entitles an investor to perform construction works?

Construction works can only be performed on the basis of a building permit (Romanian: *autorizație de construcție*) issued by the local public authorities with a view to ensuring compliance of the future construction with the legal provisions regarding location, design, and purpose.

Building permits are issued by the same authorities empowered to issue urbanism certificates. If the beneficiary is changed before completion of the works, the building permit remains valid and is automatically transferred to the new beneficiary, which is bound to observe its provisions.

19. Are there any conditions or steps to be carried out prior to obtaining the building permit?

Depending on the type of land (within or without the city limits), as well as on its purpose of use (agricultural or industrial), certain steps have to be taken before applying for a building permit.

If the plot is classified as farming (agricultural) land, its class might be required to be changed prior to obtaining a building permit, a process that requires a certain administrative procedure (including preparing cadastral documentation and obtaining approvals from various governmental agencies) and entails costs.

The building permit may only be issued after the fulfilment of the following steps: (i) obtaining the urbanism certificate; (ii) obtaining the relevant endorsements and approvals by the authorities indicated in the urbanism certificate and (iii) submitting the technical documentation of the future construction.

20. Whom are the building permits issued to? Is there a specific prerequisite condition for the investor?

Building permits may be issued to the holder of a real right on the estate (land and/or construction), such as: ownership, usage right, usufruct right, or superficies. A building permit may be issued based on a free-lease or lease agreement only for temporary buildings, and only provided that the owner expressly consents to such constructions being built on its land.

21. Are there any fees or taxes applicable for the issuance of building permits?

The building permit is issued subject to the payment of a tax of (i) 0.5% of the estimated value of residential construction works; (ii) 3% of the estimated value of works related to site organisation, provided that such works are authorised individually, and not together with the main construction works to which they refer; (iii) 2% of the estimated value of construction works for camping facilities, cottages, camps or caravans or (iv) 1% of the estimated value of any construction works (such tax is further adjusted at the end of the project based on the final construction price).

Should the extension of the building permit be required, an additional tax amounting to 30% of the initial authorisation tax has to be paid.

22. Is there any procedure to ascertain that the construction works have been finalised?

The completion of the construction works and their compliance with the requirements laid down in the building permit are ascertained by means of reception minutes - a deed prepared by the representatives of the local authorities, of the constructor and of the beneficiary. The reception minutes constitute the deed ascertaining the completion of the construction works and is one of the documents based on which the new building may be registered with the Land Book.

Absent a building permit, constructions completed before 1 August 2001 may be registered with the Land Book based on (i) the tax certificate attesting payment of all tax obligations due to the local public authority and (ii) the relevant cadastral documentation.

23. What documents are required for the Land Book registration of a building?

Under the current legal provisions, constructions are registered with the Land Book based cumulatively on the building permit, the reception minutes and cadastral documentation.

As an exception, the ownership right over constructions may also be registered with the Land Book by execution phases in which case the following documents are required: (i) the building permit certificate attesting to the stage of the construction works, issued by the Mayor of the administrative-territorial unit; (ii) the minutes ascertaining the physical stage of the construction works, endorsed by the representative of the public administrative authority which issued the building permit, as well as (iii) the cadastral documentation.

24. Is there any limitation imposed to the transfer of real estate?

As a general rule, privately owned real estate may be freely transferred. Exceptions to the free legal circulation rule are included in special laws.

For instance, a limitation to the free transfer of real estate is included in the Romanian Forestry Code with respect to the transfer of forest lands, which may only be permitted subject to observing the co-owners' and neighbours' pre-emption rights. Where the forest lands subject to the transfer of ownership right are located at the limit/adjacently

to public property, the Romanian State prevails over the other pre-emptors.

Under Law No. 422/2001 on the protection of historical monuments, the Romanian State, respectively the territorial-administrative units, also enjoy a pre-emption right in the case of transfers of properties classified as "historical monuments" under the applicable legal provisions.

Certain limitations to the free transfer of real estate are regulated by specific restitution laws, such as the interdiction of transfer of such properties while they are subject to an ongoing administrative procedure and/or litigation.

Under Law No. 17/2014, sale and purchase agreements regarding *extra muros* agricultural lands concluded in breach of the pre-emption rights of the co-owners, lessees of the respective land, neighbours, owning different lands located within the same agricultural parcel (Romanian: *tarla*) and of the Romanian State through the Agency of State Domains are sanctioned by relative nullity.

Creditor & Debtor Disputes

GENERAL

1. What is the structure of Romanian Courts?

The Romanian judiciary system consists of four levels of courts: local courts, tribunals, courts of appeal and the High Court of Cassation and Justice, Romania's Supreme Court.

2. What are the rules of jurisdiction regarding creditor & debtor disputes?

As a general rule, a debt recovery claim will be issued in the court holding jurisdiction over the respondent's business headquarters or domicile[1] . In terms of material jurisdiction, claims may be issued in first instance in the local courts or tribunals, depending on the value of the claim. The current threshold is set at approximately EUR 45,000, with no distinction being made between civil and commercial matters[2] .

3. Are there any applicable pre-action protocols to be pursued before commencing litigation?

As of 15 February 2013, the New Civil Procedure Code (NCPC) has repealed the mandatory conciliation procedure for creditor–debtor disputes. The creditor is expected to notify the debtor of delay before issuing claim, if not otherwise provided by way of exception in the law or agreed by the parties. The notice of delay will have to include a reasonable deadline for the payment of debt. If such prior notice is omitted, the debtor

1 Alternative criteria to determine the court having territorial competence as first instance are provided for certain cases, such as the place where the agreement is performed. Other exceptions are provided for claims bearing on immovable assets, where the competency is determined by *locus rei sitae.*

2 The distinction between civil and commercial claims, a pinnacle of former civil proceedings legislation, has been repealed with the entry into force of the New Civil Code on 1 October 2011. All matters covered in the New Civil Code, which also contains regulations in matters formerly included in the Commercial Code, are henceforth deemed "civil". New rules of procedure included in the New Civil Procedure Code are meant to implement this reunification.

will benefit from a reasonable time-frame inside which payment of debt will lead to the dismissal of the claim, with legal fees to be borne by the creditor.

4. What are the applicable claim formalities?

Unlike other jurisdictions, no claim forms are made available or required by the courts in Romania, even though the law requires minimal contents for the application. The NCPC provides a minimal content of the claim but certain formalities may be fulfilled after the registration of the claim, within the term set by the judge.

Any claim issued in court must attach evidence that legal stamp in the required amount has been paid. The amount of the legal stamp depends generally on the value of the litigation.

5. What are the means of evidence accepted in Romanian courts?

Romania is a jurisdiction where the types of evidence admissible in courts are limitedly provided by law. They include documents (privately made, authenticated and, since 2001, electronic documents provided with electronic signature), witnesses, interrogatory, expert reports, legal assumptions, confessions and on site assessments.

All evidence must be approved and is taken by the court. The court may permit requests for production of documents in the possession of the adversary or a third party to the trial provided the evidence proposed is legal (including legally obtained), credible, relevant and conclusive and the requested documents do not contain privileged information.

6. What are the interim and urgent measures available to a creditor in Romanian Courts?

The NCPC makes available interim applications for creditor-debtor disputes such as injunctions to seise tangible assets or place liens on bank accounts in order to preserve the rights of the creditor. The applications are adjudicated in urgent procedure. In assistance of creditors seeking to preserve rights that may be jeopardised by delay, or prevent, mitigate or remedy damages, or remove impediments that may forestall enforcement, the NCPC provides the urgent application for an injunction, an urgent procedure available prior to or after issuing claims.

RIGHTS OF APPEAL

7. What are the legal means of challenging a judgment?

Judgments passed in first instance are usually challengeable by first appeal, in 30 days as of service. The first appeal is an ordinary application seeking to obtain revision of the judgment on its merits and the appellate court may take new evidence.

Decisions passed in appeal or without right of appeal may be challenged by final appeal within 30 days of service. The final appeal is an extraordinary challenge to be retained within the jurisdiction of the High Court of Cassation and Justice, its scope being limited to examining the legality of judgments without any reassessment of the factual premises of the dispute.

Other extraordinary forms of legal redress are revision (mainly for discovery of new evidence or contradictory decisions or minus or plus petita) and the motion to annul (mainly for breach of competency rules or failure to fulfil the summoning procedure).

SPECIAL URGENT APPLICATIONS

8. What urgent procedures of debt recovery are available to creditors?

The NCPC regulates the procedure of an injunction to pay, available to creditors holding a receivable that is certain (there is no dispute on its existence), liquid (accurately determined or determinable), outstanding (matured and enforceable) and payable in money. To satisfy the urgency test required by such a procedure, the creditor must be capable of evidencing the debt by documents (agreements, invoices) as other evidentiary means, such as witnesses or expert reports, are not admissible.

The injunction to pay provides significant advantages to the creditors: expedited and simplified procedures, reduced legal fees (a fixed legal stamp fee is required-currently set at the equivalent of approximately EUR 45 -, rather than a pro rata fee from the value of the claim). However, in practice, debtors generally contest the certainty of debts claimed by urgent application in order to obtain denial of the application as inadmissible, and provoke a settlement on the merits under the general rules, which require *pro rata* legal stamp fees, ample evidence and a broader range of available legal challenges.

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AVAILABLE FOR DEBT RECOVERY

9. What alternative dispute resolution (ADR) procedures are available to creditors seeking debt recovery?

Arbitration, conciliation and mediation are available in Romania as alternative methods of adjudicating claims to the courts. Among them, arbitration is the most common, while the practice of mediation is still at an incipient stage, despite legislative efforts for increased adherence.

10. What are the legal coordinates of conciliation as an ADR procedure?

Conciliation as an ADR form is available in Romania under the Rules for facultative Conciliation approved by the College of the Court of International Commercial Arbitration at the Romanian Chamber of Commerce and Industry in 1999.

11. What are the legal coordinates of mediation as an ADR procedure?

The Romanian Chamber of Commerce and Industry has been offering the service of mediation since 2003, but this alternative dispute resolution method caught the attention of the general public only after 2006, when a law to regulate it was passed. Mediation was expected to develop a significant practice after a December 2012 legal amendment requiring all parties subject to certain types of litigation (including debt recovery under RON 50,000 - approximately EUR 11,500) to take part in informative meetings on the benefits of mediation. However, this amendment has been struck down by the Constitutional Court in June 2014, reducing the frequency of this procedure even further.

12. What are the legal coordinates of arbitration as an ADR procedure?

Under the NCPC, the parties may submit disputes to arbitration either to an ad hoc tribunal or to one organised at a permanent court. In ad hoc arbitrations, parties may choose the rules to govern the arbitration, either directly or by reference to an established set of norms, and within the confines of public policy rules.

The most used form of arbitration, however, is institutionalised arbitration carried out under the auspices of permanent courts. Most arbitration requests are referred to the Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry, established in 1953 and seated in Bucharest, which handles international as well as local, commercial and civil disputes. The Arbitration Rules of the Court, available on its website[3] , as enacted on 5 June 2014, are completed by the general rules provided by the NCPC. The arbitration tribunal will be formed by one or three arbitrators, "depending on the agreement of the parties" Article 11 of the Rules. Absent such agreement, the matter will be judged upon by three arbitrators, with each party nominating one and the third elected by the already appointed arbitrators.

Unless the parties otherwise agree, arbitral tribunals must deliver the award within six months from constitution. During interim requests the six-month term is suspended. These terms are doubled for international arbitrations. Arbitral awards are final and binding for the parties and may only be challenged by action for annulment, within one month of the issue of the award, for reasons provided limitedly by the NCPC (such as invalidity of the arbitration clause, non-arbitrability of the matter, breach of public policy rules through the award). The action to annul the award is filed at the immediately superior court to the court competent to settle the dispute lacking the arbitration agreement. The court settling the action for annulment may stay the enforcement of the award provided a bond is placed by the interested party. The decision of the court is challengeable by final appeal.

The number of arbitrations has significantly increased in the past years, especially in commercial matters, but arbitrations are not yet very common, due especially to the costs of the proceedings, which are perceived as exceeding the costs of a dispute in court and which, if the parties do not agree otherwise, are borne by the losing party. Also, with limited grounds to appeal against an award, parties may prefer to issue their claims in court, where a double level of jurisdiction is available. In practice, annulments of arbitral awards are rare.

ENFORCEMENT OF DOMESTIC JUDGMENTS AND ARBITRAL AWARDS

13. What legal documents constitute writs of execution under Romanian law?

Enforceability is, in Romania's jurisdiction, specific in principle to domestic judgments (issued upon first appeal or without right to first appeal, depending on the matter) and

3 http://arbitration.ccir.ro.

domestic arbitral awards, which are recognised enforceability *ipso jure* on the territory of Romania. There are other instruments to which law recognises enforceability, such as certain agreements (such as loan contracts concluded with banks), or documents authenticated by the notary public in certain conditions.

14. What is the general procedure of enforcement under Romanian law?

The enforcement procedure begins with the creditor's request towards a bailiff having jurisdiction over enforcement procedures. The request must contain the following information: (i) the debtor's and creditor's name and address/registered office, (ii) the pursued asset or the type of debt that is owed and (iii) the types of enforcement requested by the creditor. The title, along with the enforcement procedure request, is then handed over to the bailiff, who will ask for the approval of forced execution from the enforcement court.

Writs of execution may be enforced within three years as of the moment the creditor is allowed to request enforcement, with the exception of writs bearing on rights *in rem*, for which the prescription term is of 10 years.

15. What types of enforcement does the Romanian law permit?

Enforcement, governed by the NCPC, may be direct, whenever the creditor seeks to satisfy his right by a performance in kind (for instance, when the debtor owes the creditor an asset and the creditor pursues the debtor for that asset), or indirect, when the debt is satisfied from amounts the creditor obtains from enforcement (either from selling the debtor's assets, or directly from the debtor's accounts or from third parties owing money to the debtor). Enforcement is carried out by bailiffs, a professional body organised under the supervision and control of the Ministry of Justice.

16. How can enforcement be challenged by the debtor?

A debtor can resort to legal requests aimed to forestall, stay, or even cancel the enforcement procedure. The procedure may be forestalled by way of a preliminary request for a stay, which is filed by urgent application in advance to the adjudication of a "main" request for a stay.

The main request for a stay is filed concomitantly with the opposition to enforcement,

and requires the debtor to deposit a bail, generally established *pro-rata* from the amount of the debt under enforcement. Oppositions to enforcement seek to cancel the enforcement, wholly or partially, usually for formal miscarriages, such as invalidity of the enforcement formal papers, which are prepared by the bailiff, or the absence of a valid writ of execution.

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

17. Which are the general principles regarding recognition and enforcement of foreign judgments and arbitral awards?

Foreign judgments may be recognised enforceability and enforced in Romania by procedures which differ depending on the place of issue being inside or outside the EU. Neither procedure allows the courts competent to adjudicate applications for recognition and enforcement to review the judgment on its merits.

18. What is the legal procedure for recognition and enforcement of judgments issued in EU Member States?

The procedure for the recognition and enforcement in Romania of judgments issued in Member States is governed by European Parliament and Council Regulation No. 1215/2012 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters. According to this simplified procedure, the interested party submits its application for enforcement to the competent local authority, having attached (i) a copy of the judgment which satisfies the conditions necessary to establish its authenticity, as well as (ii) a certificate issued by the court that passed the judgment, certifying that the judgment is enforceable and containing an extract thereof. The local enforcement authority will limit its verifications to the enforceability of the judgment.

19. What is the legal procedure for recognition and enforcement of judgments issued in non-EU Member States?

The procedure for the recognition and enforcement in Romania of judgments issued in non-Member States is regulated by the NCPC. In order to obtain recognition, the creditor must prove that the foreign judgment is final, that the foreign court had jurisdiction to rule on the case (without such jurisdiction being exclusively based

on the presence of the defendant or assets belonging to him in the State of the said jurisdiction, if this presence held no direct relation to the dispute) and that reciprocity exists with respect to the acknowledgement of the effects of foreign judgments between Romania and the State of the issuing court. The enforcement of non-EU foreign judgments in Romania is conditional upon the petitioner proving the fulfilment of conditions similar to the ones for recognition, as well as the enforceability of the judgment.

20. What is the legal procedure for recognition and enforcement of arbitral awards?

Foreign arbitral awards are recognised and enforced in Romania under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and under the NCPC.

In case of inconsistencies, the New York Convention prevails. The above presented conditions in relation to the recognition and enforcement of foreign judgments issued in Non-Member States will apply, in principle, to the recognition and enforcement of foreign arbitral awards.

INSOLVENCY

21. What is the general insolvency legal framework in the Romanian system?

Insolvency in Romania is governed by Law No. 85/2014 (Insolvency Law) passed in the process of harmonising domestic laws with the legal principles applied in the European Community.

22. What are the conditions to be met for entering insolvency status?

According to Romanian law, insolvency means the debtor's manifest incapacity to pay its matured debts out of the available liquidity. Within the meaning of Romanian law, "debtor" is represented by any professional, i.e., legal person carrying out an enterprise, as well as a *regie autonome*.

The insolvency procedure may be initiated at the request of the debtor itself, of any

of its creditors, or at the request of certain especially enabled institutions, such as the Fiscal Supervision Authority for debtors-listed companies.

The following conditions must be cumulatively met to ground and application:

- The debtor owes amounts in excess of RON 40,000 (approximately EUR 9,000) or in excess of six national average salaries for debts arising from labour or civil relations;
- The debtor is unable to pay its matured debts with cash for more than 90 days;
- The debtor may declare itself insolvent and place itself under the protection of a judicial reorganisation procedure should its insolvency be imminent.

23. Who are the participants to an insolvency procedure?

All applications under the Insolvency Law are, in first instance, within the jurisdiction of the insolvency division of the tribunal where the debtor is headquartered. The participants to the insolvency procedure are: the court, the syndic judge appointed by the president of the court, the creditors' collegial bodies (the assembly and the committee), the official receiver (appointed by the creditors), the special administrator of the debtor (appointed by the debtor's shareholders) and the liquidator (appointed by the syndic for liquidation/bankruptcy).

24. What are the main steps of an insolvency procedure?

The Insolvency Law makes available two types of procedures for debtors unable to pay their outstanding debts: the general insolvency procedure and the simplified procedure.

The general procedure is formed of two phases:

- The judicial reorganisation procedure, aimed at allowing the debtor to pursue its activity and pay its debts under a reorganisation plan. If the debtor does not comply with the plan or the continuance of its activities causes losses or novel debt, the official receiver or any of the creditors may request, at any time, the syndic judge's approval to open bankruptcy procedures;
- The bankruptcy procedure, wherein the debtor's assets are liquidated and the amounts obtained are distributed to satisfy the creditors. The liquidation of a debtor's assets is carried out by the liquidator under the control of the syndic judge. In order to maximise the value of the debtor's assets, the liquidator will take all measures necessary to publicise the sale, in whatever manner deemed adequate. The liquidation costs are borne from the debtor's assets.

After a period of observation, insolvency under the general procedure allows for reorganisation. The legal text highlights that assistance provided to the debtor in view of surviving financial distress, reorganising its activity on an efficient basis and satisfying its creditors' claims best satisfies the goal of insolvency procedures, which is not limited to the paying of creditors, but also includes debtor's economic redress.

The simplified procedure, applicable in certain cases (such as the debtor having been already placed under judicial reorganisation within the previous five years from application), permits the bankruptcy procedure be opened without the preliminary phase of the judicial reorganisation.

Employment

OVERVIEW

1. Legal framework regulating employment in Romania?

Romania is a civil law jurisdiction and the core employment regulation is the Labour Code. Besides the Labour Code, specific enactments regulate other labour-related aspects, such as employment safety and health, insurance for work accidents and professional diseases and social dialogue.

Collective bargaining agreements also provide binding rules and obligations to be complied with by the employers.

Finally, considering Romania's accession to the European Union, EU law and CJEU decisions are also relevant.

INDIVIDUAL EMPLOYMENT AGREEMENTS

1. Is it mandatory to conclude written employment agreements with the employees? If yes, are there mandatory clauses or information to be included in the written agreement?

The individual employment agreement must be concluded in writing, based on the parties' consent. The written form represents a prerequisite for the validity of the agreement.

Prior to concluding the employment agreement, the employer is required to inform each employee of the general clauses to be included in such agreement.

The employer's failure to conclude written employment agreements constitutes administrative offence, where the number of deprived employees is less than five, and

criminal offence for bigger numbers. I

ndividual employment agreements must include the following mandatory data:

- The identity of the parties;
- The place of work or, if the work place is not stable, a provision that the employee may work at various places;
- The position or occupation of the employee according to the specifications of the classification of occupations in Romania or other regulatory acts, as well as the job description;
- The evaluation criteria of the professional activities performed by the employee;
- The specific risks of the job position;
- The effective date when the agreement shall enter into force;
- The duration of the employment agreement when concluded for a determined period;
- The duration of the rest leave the employee is entitled to;
- The duration and the specific conditions of the notice term (both for dismissal and for resignation);
- The wage, other elements of the wage, as well as the payment terms;
- The working time, expressed in hours per day and hours per week;
- Provisions on the applicable collective bargaining agreement; and
- The duration of the trial period (if applicable).

Aside from these compulsory terms, the parties may also agree on any other terms (such as confidentiality, non competition and intellectual property rights), provided they are no less favourable then certain statutory rights.

2. Can individual employment agreements be concluded for a determined duration?

As a general rule, the individual employment agreements are concluded for an undetermined period. By means of exception, the parties may conclude employment agreements for a determined duration, subject to certain conditions.

The maximum period of employment agreements concluded for a determined duration is of 36 months.

In certain cases, the above term may be extended if the employment agreement was concluded to substitute a certain employee whose employment agreement was suspended for more than 36 months.

3. Is there a minimum level of rights and benefits for the employees provided by the law?

Employees cannot be given rights and benefits which are below the level established in the labour legislation and the collective bargaining agreements. Any derogations from or waivers of such rights shall not be considered valid, even if accepted by the employee or expressly provided in the individual employment agreement.

Besides the monthly remuneration received by the employees in exchange for their work, there are also other benefits provided by the law such as mandatory bonuses (e.g. for overtime or night work, etc.); paid health insurance; childcare leave; disability leave; food, gift, nursery or holiday vouchers; holiday entitlement, etc.

4. What is the maximum trial period permitted by law?

The trial or probation period cannot exceed 90 days for employees holding a non-management position, and 120 days for employees holding a management position. Other probation periods are provided by the Labour Code for specific situations. The employer cannot, however, extend the trial period at his or her sole discretion beyond the limits set up by the law.

5. What is the regular working time? Is overtime allowed under the Romanian law?

Regular work time is eight hours per day and 40 hours per week. Employees' consent is required for overtime work.

The maximum work time is 48 hours a week, including overtime. Additional overtime is exceptionally accepted, provided that the average work time computed on a 4 month basis does not exceed 48 hours per week.

The employee or the employer cannot set up different working hours outside the legal framework provided in this respect.

All categories of workers who perform overtime work are entitled to receive corresponding paid time off within the next 60 days after performing such work. If the compensation of overtime work with free paid days is not possible, the employees are entitled to receive an allowance in an amount of a minimum of 75 per cent of the base salary for the overtime work performed.

6. Is the employees' right to annual vacation and holidays expressly regulated by the law?

The minimum paid leave provided under Romanian law is of 20 working days. A longer period for paid leave may be provided under collective bargaining agreements concluded at the levels of different industries or at the companies' level.

As a rule, employees must take their annual leave every year. Exceptionally, where the employees for objective reasons cannot fully or partially exhaust their annual leave, the employer is obliged to grant the remaining annual leave within the next 18 months starting with the following year.

The duration of the annual leave cannot be affected by the employee's temporary disability, by maternity leave, maternal risk leave, or childcare leave. Such periods shall be deemed as periods of actual work.

Employees are entitled to annual leave even where their temporary disability lasts for a whole calendar year. In such a case, the employer shall grant the employee the annual leave within the next 18 months starting with the year following the medical leave.

The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated. In such cases, holiday entitlement is calculated on a pro rata basis with the time the employee has worked in that same enterprise during the respective year. In addition to the annual paid leave, employees can be granted paid or unpaid leave in certain circumstances.

Also, the Labour Code provides for a number of days off that must be observed by the employers. The following days are declared public holidays under the law: 1 and 2 January; first and second Easter days; 1 May; first and second Pentecost days; 15 August; 30 November; 1 December; first and second Christmas days.

7. Is the employees' right to sick leave or sick pay expressly regulated by the law?

Romanian law recognises sick leave and the allowance for temporary incapacity for work. The allowance for temporary incapacity cannot exceed 183 days per calendar year running from the first sick day. A longer period of paid leave is available for certain diseases, such as heart disease, tuberculosis and AIDS.

8. Is it possible under the Romanian law to impose any non-

competition obligations on the employees?

Under the Labour Code, employees have a general obligation of loyalty towards their employers preventing them from performing similar activities for other employers throughout their employment.

The parties may agree to turn this obligation of loyalty into a non-competition obligation applicable after the termination of the individual employment agreement for a maximum of two years.

In such a case, a monthly indemnification shall be granted by the employer to the employee for the entire non-competition period following employment termination, which indemnification cannot be less than 50 per cent of the employee's average gross salary for the previous six months.

9. How can an employer terminate the individual employment agreement?

The employment agreement can only be terminated in specific and limited cases as provided by the Labour Code, always provided procedural requirements are met.

Romanian law recognises two main categories of dismissals: for causes unrelated to the employee (i.e., restructuring, redundancy); and dismissal for causes related to the employee.

Employers may undertake dismissals for causes unrelated to the employees where economic or operational reasons require a reduction in the number of jobs.

Dismissals for bad performance and for disciplinary reasons are among the most common types of dismissal for causes related to the employees.

In both cases, specific procedures must be followed. Employers' failure to comply with such procedures may trigger the annulment of the dismissal decisions in court. The same sanction shall apply if the employers cannot prove that the causes for dismissal are real and fall within the categories recognised by the Labour Code as entitling employers to perform dismissals.

Employers are obliged to observe a 20-day notice term for all categories of dismissal, except when the dismissal is done for disciplinary reasons or when the employee is arrested for more than 30 days.

10. Are there any special rules applicable to collective dismissals?

Special rules on collective dismissals provided by the Labour Code apply where, within a period of 30 days, the number of redundancies is of at least:

- 10 employees out of a total of more than 20 and less than 100 employees;
- 10 per cent of the employees, where the total of employees is of at least 100 but less than 300; or
- 30 employees out of a total of 300.

The procedure that must be followed in the case of collective dismissals entails the prior information and consultations with the trade unions or the employees' representatives in respect to any available means of avoiding collective dismissals and the appropriate means for mitigating the consequences of the collective dismissals (such as support for requalification and professional retraining). The labour authorities must also be informed in writing about the initiation and outcome of the information and consultation process.

11. Does the law provide for specific compensations to be paid to dismissed employees?

Employees whose individual employment agreements are terminated for reasons not related to their person, including those collectively dismissed, are entitled to receive severance payments according to the provisions of the applicable collective bargaining agreements (if any). Such compensation is mainly computed based on the length of service.

FOREIGN EMPLOYEES

1. What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

For this specific issue, it is important to distinguish between EU, EEA and Swiss nationals and non-EU, non-EEA and non-Swiss nationals. EU, EEA and Swiss nationals have the right (subject to certain exceptions) to enter and work freely in the Romanian territory without the need to obtain a visa.

For non-EU, non-EEA and non-Swiss nationals, working in Romania is permitted only for those who obtain a visa and a working permit. The following conditions must be fulfilled in order for non-EU, non-EEA and non-Swiss nationals to be employed in Romania:

- The vacancies cannot be filled by Romanian citisens or citisens of other EU Member States or EEA countries, or permanent residents of Romania;
- The workers fulfil special conditions regarding professional qualifications, experience and authorisation required by the employer according to the legal provisions;
- The workers prove that their state of health is such as to enable them to carry out the relevant activity, and that they have not been convicted for crimes that are incompatible with the activity they carry out or intend to carry out in Romania;
- The number of admitted workers remains within the limits of the yearly contingency approved by government decision;
- The employer has paid its contributions to the state budget regularly throughout the last quarter;
- The employee shall effectively perform the activity for which it obtained the working permit, and
- The employer has never been sanctioned for undeclared work or illegal employment.

The number of working permits issued every year is limited and is determined by a government decision. The employees working for a corporate entity with its seat in one jurisdiction may work for the same corporation with a second seat in the Romanian territory based on secondment permits which can be obtained following a similar procedure as in the case of working permits.

Hiring non-EU, non-EEA or non-Swiss nationals without working/secondment permit constitutes misdemeanour and is punished by fine.

TRADE UNIONS

1. Is the employees' right to establish a trade union expressly provided by the law?

Employers cannot ban employees from establishing or joining trade unions, as such rights are guaranteed by the law. A few conditions however apply. A minimum of 15 people working in the same unit are required to set up a trade union. A person may only belong to one trade union organisation within the same employer at the same time. Certain categories, such as public officials, members of the military and members of certain government ministries may not establish trade unions.

In defending the rights of their members, trade unions are entitled to undertake any action provided for by the law. This includes the ability to bring court action on behalf of their members based on an express mandate from the persons concerned (the action cannot be brought to court or continued if the person concerned opposes or renounces the trial).

The trade union is entitled to receive from employer any necessary information for the negotiation of collective bargaining agreements and other agreements relating to employment relations.

Employees who are elected to the management body of a trade union are protected against all forms of constraint or limitation on the exercise of their functions.

In addition, the European Directive on the Establishment of European Works Councils has been implemented within Romanian law. The main provisions regulate the creation of a European works council (or an alternative procedure) for informing and consulting employees at the European level.

COLLECTIVE BARGAINING AGREEMENTS

1. Are collective bargaining agreements regulated by the Romanian law?

The Labour Code obliges companies with more than 21 employees to conduct collective negotiations in view of concluding a collective bargaining agreement.

The obligation is to carry out negotiations only, and not to actually conclude the collective bargaining agreement.

Collective bargaining agreements may be concluded at different levels: company, group of companies and industry/sector level. Collective bargaining agreements concluded at lower levels cannot provide for rights inferior to those set forth by those concluded at applicable higher levels.

The provisions of collective bargaining agreements are compulsory for the parties and apply to all employees, irrespective of whether they are members of a trade union or not.

Collective bargaining agreements may be concluded for minimum 12 months and for maximum 24 months.

BUSINESS TRANSFERS

1. Is there any legislation to protect employees in the event of a business transfer?

The main enactments regulating the transfer of an undertaking, business or part of an undertaking or business are the Labour Code and Law No. 67/2006 on safeguarding of the employees' rights in cases of the transfer of undertakings, businesses or parts of undertakings or businesses (transposing Council Directive No. 2001/23/EC of 12 March 2001 on the approximation of laws of the member states relating to the safeguarding of employees' rights in the event of the transfer of undertakings, businesses or parts of undertakings or businesses). Under the statutory protection rules in the event of transfer, the transferee is liable to observe the rights that the transferred employees had with the transferor under their individual employment agreements and the applicable collective bargaining agreement. Both the transferor and the transferee shall be under the obligation to consult their employees about the transfer and to inform them on specific issues. For the purpose of the transfer, no consent from the employees is required. However, the transfer of undertakings, businesses or parts of undertakings or businesses shall not be used as grounds for the transferor or the transferee to perform individual or collective dismissal of employees. If a transfer involves a substantial change of work conditions to the detriment of the employee, the employer is liable for the termination of the individual employment agreement.

LABOUR CONFLICTS

1. What types of labour conflicts could occur?

Labour conflicts may regard collective or individual rights of the employees. Collective labour conflicts may occur when:

- The employer refuses to proceed with the negotiation of the collective bargaining agreement, where no such agreement was signed or the existing one has expired;
- The employer refuses to accept the employees' demands;
- The parties do not reach an agreement until the date set up for completing the collective negotiations.

Collective labour conflicts may culminate in strikes. However, strikes are unlawful as long as there is a collective bargaining agreement in force at the unit level. As a matter

of principle, strikes may be declared only in order to protect professional, economic and social interests of the employees and cannot have political goals. During strike, hiring employees to replace those on strike, or dismissing employees on strike, are strictly forbidden. Unlike other legal systems, Romanian labour legislation does not recognise "lock-out" as strike counter-measure.

Individual labour conflicts may occur whenever the employees' rights provided expressly by the law or by the applicable collective bargaining agreements are breached by the employer. Individual labour conflicts are settled directly by the courts of law.

2. May an employee agree to waive statutory and contractual rights?

Employees may not waive the statutory rights provided in their favour by the labour enactments. Any transaction seeking for the employee to waive his legal rights, or to limit such rights, shall be null and void. However, the law does not prohibit an employee from waiving the contractual rights through negotiation with the employer.

3. What is the status of limitation for bringing employment claims?

The law provides for several time limits, considering the specific object of the claim.

- Claims referring to the execution, suspension or termination of the individual employment agreement may be brought before the court within 45 days from the date when the employee became aware of the criticised measure;
- Claims referring to the payment of any compensation may be challenged within three years from the date the employee was entitled to ask for that compensation; and
- Actions seeking nullification of an individual employment or collective bargaining agreement may be filed throughout the duration of that agreement.

Public Procurement

1. What is the relevant legislation on public procurement?

Public procurement contracts are mainly regulated by GEO No. 34/2006[1], which transposes European Parliament's Directives and European Council's Directives on public procurement[2] and sets forth the principles governing the awarding of public procurement contracts[3] . Specific sector regulation and/or supplementary clarifications of GEO No. 34/2006 can be found in the secondary legislation (government decisions and the ANAP orders[4]).

2. Which are the most recent relevant European enactments on public procurement?

On 15 January 2014, the European Parliament adopted three directives[5] which greatly modernise the public procurement legislation in all Member States. Directive 2014/24/EU of the European Parliament and Council on public procurement and repealing Directive 2004/18/EC incorporates the challenges of sustainable development and is consistent with the Europe 2020 Strategy for smart, sustainable and inclusive growth.

1 Government Emergency Ordinance No. 34/2006 regarding the award of public procurement contracts, public works concession contracts and service concession contracts.

2 Directive 2004/18/EC regarding the coordination of procedures for the award of public works contracts, public supplies contracts and services contracts, Directive 2004/17/EC regarding the coordinating of the procurement procedures of entities operating in the water, energy, transport and postal services sectors, except for article 41 (3), Article 49 (3) to (5) and Article 53, which are transposed by Government Decision, Directive 1989/665/EEC regarding the coordination of the laws, regulations and administrative provisions relating to the application of the appeal procedures concerning the award of public supply and public works contracts, and Directive 1992/13/EEC regarding the coordination of the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunication sectors, except for Articles 9 - 11, which are transposed by Government Decision.

3 Government Emergency Ordinance No. 34/2006 regarding the award of public procurement contracts, public works concession contracts and service concession contracts (GEO

4 The current National Agency for Public Procurements resulted after the reorganisation of the National Authority for the Regulating and Monitoring of Public Procurements.

5 Directive 2014/23/EU of the European Parliament and Council on the award of concession contracts was published in the Official Journal of the European Union L94/1 of 28 March 2014; Directive 2014/24/EU of the European Parliament and Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC was published in the Official Journal of the European Union L94/65 of 28 March 2014; Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC was published in the Official Journal of the European Union on L94/243 of 28 March 2014. The directives were voted by the European Parliament on 15 January 2014 and adopted by the Council on 11 February 2014. The directives came into force on 17 April 2014.

The Member States have until 18 April 2016 to transpose the new rules into their national law (except with regard to e-procurement, where the due date is 18 October 2018).

As a European Union Member State, Romania's legislation on public procurement should transpose the European directives accordingly. Thus, a national working group[6] was appointed, which was formed of the main public authorities with responsibilities in the public procurement field, with a view of coordinating the reform of the legislative and institutional framework in the public procurement sector. Currently, the drafts[7] of the Law on public procurement ("Law on Public Procurement"), Law on utilities procurement, Law on works concession and services concession, and Law on remedies and challenging mechanisms of the public procurement contracts, utility sectors procurement contracts and concession contracts and for the organisation and functioning of the National Council for Solving Complaints ("Law on Remedies") have been adopted by the Senate and are in process of being adopted by the Deputies Chamber which is the decision-making body.

3. Which are the most recent relevant amendments of the domestic public procurement legislation?

Although the new laws on public procurement are in process of being adopted, recent relevant amendments to the applicable domestic legislative framework have been enacted and include:

- The contracting authorities are under the obligation to use the electronic means to apply the award procedures and direct procurements amounting to 60% of the total value of the public procurements completed in 2016, which can be carried out by electronic means;
- When the bidder demonstrates its economic and financial capacity and the technical and professional capacity by reliance on the support of a third party, then the bidder

6 The working group was named by Decision No. 218/2014 issued by the Prime Minister establishing the Interministerial Committee for the performance of the reform of the legislative and institutional framework in the public procurement sector. Our team of lawyers has drafted the Public Procurement Law Draft and supported the efforts of the working group in transposing the new EU package. We have carried out the national public consultation on the Public Procurement Law Draft and reviewed and incorporated the comments made by various contracting authorities, economic operators and civil society, including non-governmental organizations. Also, our experts have prepared the first draft of the secondary legislation to implement the Public Procurement Law Draft and the guides to support the contracting authorities and the economic operators.

7 The draft of the Law on public procurement adopted by the Senate may be found at http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=15472; the draft of the Law on utilities procurement may be found at http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=15471; the draft of the Law on works concession and services concession may be found at http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=15474; the draft of the Law on remedies and challenging mechanisms of the public procurement contracts, utility sectors procurement contracts and concession contracts and for the organisation and functioning of the National Council for Solving Complaints may be found at http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=15473.

has the obligation to submit the supporting documents to demonstrate the actual means of third party support it benefits of, in addition of its firm commitment;
- When the bidder demonstrates the fulfilment of the qualification criteria related to the economic and financial capacity and the technical and professional capacity by reliance on the support of a third party, the capacities of the bidder and third party shall be cumulated in respect with those requirements;
- The awarding factors may refer to the organisation, qualification and experience of the personnel who will actually perform the activities forming the scope of the public procurement contract;
- The contracting authorities shall not provide the qualification and the experience of the personnel appointed to perform the activities under the public procurement contract as qualification criteria;
- The possibility to rectify the arithmetical errors found in the financial offer and implicitly amend the total price by recalculation, based on the information available to all the participants in the awarding procedure;
- The possibility to correct the total price set out in the financial offer based on the unitary prices, where discrepancies were found between the unitary prices and the total price, except where the contract documents set out that the awarding is done based on the total price quoted in the tender;
- Introducing the definition of the minor technical deviations as omissions/deviations from the technical proposal, and which can be completed/rectified in a manner not involving in fact the submission of a new offer;
- The cases when an amendment to the technical proposal cannot be deemed as a minor technical deviation from the initial offer;
- The obligation of the contracting authorities to issue a certifying document in case the public procurement contract is rescinded due to the contractor's exclusive fault within 14 days as of the rescission date;
- The obligation of the contracting authority to publish the certifying document in the Electronic System of Public Procurement (SEAP)[8];
- Detailed rules on the amendment of the public procurement contract clauses during its validity, and qualifying those amendments as material/substantial or not.

4. Which are the entities subject to public procurement legislation?

The contracting authorities obliged to apply the provisions of GEO No. 34/2006 are:

- Public authorities or public institutions, acting at a central, regional or local level;

8 The equivalent term in Romanian is "Sistemul Electronic al Achizițiilor Publice".

- Any other body acting at a central, regional or local level, having legal personality, which was set up to fulfil needs of general interest without commercial or industrial character, and which meets at least one of the following conditions:
  - It is financed, in majority, by a contracting authority, public authority or public institution acting at a central, regional or local level, or by another body governed by public law;
  - It is subordinated to/submitted to the control of, a contracting authority, public authority or public institution acting at a central, regional or local level, or other bodies governed by public law;
  - In the structure of its board of directors/management or supervision body more than half of members are appointed by a contracting authority, public authority or public institution acting at a central, regional or local level, or by another body governed by public law;
- Any association formed of one or more of the above-mentioned contracting authorities;
- Any public enterprise performing one or more public utility sector activities whenever it awards public contracts or concludes framework agreements for the performance of such activities;
- Any legal subject, other than the above-mentioned, which performs one or more public utility sector activities based on a special or exclusive right, granted by a competent authority, whenever it awards public contracts or concludes framework agreements for the performance of such activities.

5. Which are the contracts regulated by the public procurement legislation?

The contracts regulated by the public procurement legislation include: works contracts, supply contracts or services contracts.

The general rule is that all the contracting authorities as defined by GEO No. 34/2006 are obliged to apply its provisions when awarding public procurement contracts.

Depending on their estimated value and object, public procurement contracts may be:

- Public contracts entirely governed by GEO No. 34/2006;
- Public contracts only partially governed by GEO No. 34/2006; where the contracting authority awards a contract concerning services of the categories included in Annex 2B, GEO No. 34/2006 is only to be applied for contracts the value of which is EUR 135,000 (excluding VAT) or higher, and even to those only as regards clauses referring to the principles governing public procurement contracts and the obligation to issue technical specifications and awarding notices;

- Public contracts that can be awarded directly, without following the procedural requirements set out by GEO No. 34/2006; the contracting authority has the right to purchase directly products, services or works, if the estimated value of the purchase is not higher than the equivalent in RON of EUR 30,000 (excluding VAT) per purchase of products/services, or of EUR 100,000 (excluding VAT), per purchase of execution of works.

Particular rules are provided in GEO No. 34/2006 for contracts awarded in the public utility sectors (water, energy, transport, postal services).

6. Are there special public procurement awarding procedures?

Depending on its specifics, a contract is awarded, by one of the following public procurement awarding procedures:

- The open procedure, wherein any interested economic operator may submit a tender;
- The restricted procedure, wherein any economic operator may apply but only the candidates selected during the first stage may submit tenders;
- The competitive dialogue, wherein any economic operator may participate, and where the contracting authority leads a dialogue with the admitted candidates in view of identifying one or more suitable alternatives capable of meeting its requirements; the selected candidates prepare the final tender based on these alternatives[9];
- The negotiation procedure, wherein the contracting authority carries out consultations with the shortlisted candidates and negotiates contractual clauses, including the price, with one or more of them;
- A call for tender, which is a simplified procedure whereby the contracting authority requests tenders from several bidders, applicable to cases where the values of the contract to be awarded are below the regulated thresholds;
- A contest of solutions, which is a special procedure whereby a plan or a project is acquired by competitive selection carried out by jury, with or without a prise, and which is more often employed in domains such as land development, town planning and landscaping, architecture or data processing.

7. Must public procurement procedures be publicised?

In view of ensuring the necessary transparency in awarding public procurement

9 This type of public procurement procedure is used for the awarding of contracts of significant complexity.

contracts, mandatory rules require that the tender notice, invitation to tender and award notice must be published. A notice of intention is also to be published where a contracting authority intends to apply for reducing the minimum period from contract notice until submission date. The contract notice, contract documents and answers to clarifications must be published in the SEAP.

Where the contracts are awarded by electronic auction, the evaluation must be performed automatically through the electronic means employed. The contracting authorities must observe SEAP publication procedures, which differ by reference to the estimated value of the contract to be awarded.

8. Which are the grounds for disqualification?

It is compulsory for the contracting authority to reject in the opening session:

- Such tenders not accompanied with a guarantee for participation precisely as required by the contract documents in terms of amount, validity, form and currency;
- Such tenders that have been submitted belatedly or at an address other than as stipulated in the contract notice.

After this stage, the evaluation committee named by the manager of the contracting authority must verify:

- Whether the qualification criteria have been met by each tender, and the required documents have been provided;
- Whether the price stipulated in the financial proposal does not exceed the available funds for the respective public procurement contract, or where the offered price is unusually low that the amount of the price can be properly justified;
- Whether the technical tender is compliant with the technical specification set forth in the contract documents.

Depending on the nature of their lack of compliance with the law or with the contract documents, tenders may be rejected as unacceptable and/or irregular. If any of the irregularities mentioned above is found, the tender shall be rejected without applying the award criterion provided in the contract documents.

9. Are foreign economic operators allowed to submit tenders under the same conditions as domestic operators?

Foreign bidders are allowed by law to participate in public procurement procedures and

the contracting authorities are obliged to observe the fundamental principles governing public procurement, such as equal treatment and non-discrimination.

Since the public procurement legislation defines the concept of "bidder" without differentiation between Romanian and foreign bidders, foreign bidders are not obliged to establish any subsidiary or branch in Romania in order to participate to public procurement contracts awarding procedures, as such an obligation would be considered restrictive. However, if awarded the contract, the foreign bidder must register in Romania for taxation purposes only (including by tax representative), as required by the applicable taxation regulations.

10. What types of information on evaluation methodologies must be disclosed up-front? Which are the aspects that may be taken into account in evaluating a tender?

All the qualification requirements, the documents to be provided by interested economic operators in demonstrating compliance with the qualification and selection criteria, the awarding criterion, the tender evaluation factors and their proportional weights, as well as the calculation algorithm or the actual methodology used to score the advantages resulting from the technical and financial proposals provided by bidders, must to be included in the contract documents. Any subsequent amendment and/or addition to the evaluation factors results in cancellation of the public procurement awarding procedure. Awarding criteria indicated in the contract documents may not be modified during the procedure and may only consist in either the most economically advantageous option, or in the lowest price.

The contracting authority must make sure that the contract documents are made available to any interested economic operator. Technical specifications contained in the contract documents (requirements, prescriptions, technical characteristics that allow each product, service or work to be objectively described in compliance with the requirements of the contracting authority) shall be defined in such a manner as to meet, to the extent possible, the requirements/standards of any potential user, including disabled people. Technical specifications must afford equal access to bidders, and must not result in the creation of unreasonable obstacles to the opening up of public procurement to competition.

The contracting authority must define technical specifications either by reference to national standards transposing European standards, European technical approvals, international standards or other technical reference systems established by the European standardisation bodies, or by specifying the requested performances and/or operational requirements. No tender may be rejected if the bidder proves, by

whatever appropriate means, that its technical proposal meets in an equivalent manner the requirements of the contracting authority. In order to prove compliance with the requested technical specifications, the contracting authority must accept certificates issued by bodies acknowledged in any Member State.

Performances and functional requirements may also include environment-related characteristics. In this case, the contracting authority has the right to use, in full or in part, specifications defined by "eco-labels", European or (multi-) national. The contracting authority may not consider a technical proposal noncompliant merely because the tendered products or services do not bear the "eco-label" required, if the bidder proves, by whatever appropriate means, that the tendered products/services are compliant with the requested technical specifications.

The contract documents may not set out technical specifications referring to a specific make, source, production or a particular process or to a brand name or trade mark, a patent or a production license to the effect of favouring or disqualifying certain undertakings or products. Contract documents may set out special requirements for the fulfilment of the contract, seeking to obtain social effects or environmental protection effects, and to promote sustainable development.

11. What are the authority's disclosure obligations and the parties' right of access to information during the public procurement awarding procedure? Are there confidentiality obligations?

In principle, access to the information available in a contract awarding public procedure is open to all interested bidders, except where special regulations provide for the confidentiality of certain documents and/or the stage of the procedure does not yet allow the disclosure of particular data. Domestic enactments regulating access to information are consistent with the general principles applicable in this sector. For instance, bidder is granted access to the entire contract documents, to the answers given by the contracting authority to requests for clarification addressed by another bidder, and to the public procurement file. The contracting authority must report decisions on the outcome of the procedure to the interested bidders; the information must be communicated in writing, no later than three business days from taking the decision. Each bidder shall be informed in detail of the reasons for rejecting a tender.

Also, bidders have the right to participate in the opening session organised by the contracting authority's evaluation committee. The opening session shall be documented by a set of statements recording the formal issues ascertained upon opening the tenders, the list of documents and the main elements of each tender

submitted by each bidder; a copy of the statements shall be delivered to all the bidders, regardless of whether they participated in the opening session or not.

Contracting authorities must secure the protection of any information that the bidders classified as confidential, insofar as the disclosure of such information would objectively damage the legitimate interests of the bidders (especially with regard to commercial secrecy and intellectual property).

The disclosure of such information may be made only having the prior written approval of the bidder.

12. Challenging the result of public procurement awarding procedures. Who has the right to challenge and by what procedure? Is there a litigation stage? Is there a mechanism for review available?

The national legal framework provides for two mechanisms governing bidders' complaints:

- The special challenging mechanism under GEO No. 34/2006;
- The general challenging mechanism under Law No. 554/2004 on administrative jurisdiction, as further amended and supplemented "Law No. 554/2004", which constitutes the rule in respect of challenging administrative acts.

As a matter of practice, the general challenging mechanism is rarely used (compared with the special challenging mechanism) by participants to award procedures.

The special challenging procedure has two stages:

- The administrative-jurisdictional stage, where a person believing herself prejudiced by a deed of the contracting authority may apply to the National Council for Solving Complaints (CNSC) for the cancellation of that deed, for the contracting authority to be obliged to issue a deed, for the claimed right or legitimate interest to be recognised;
- The litigation stage, where the interested party challenges the decision adopted by the CNSC by way of appeal filed with the Court of Appeal.

A challenge must be filed within a certain period of time, the length of which varies under the law by reference to the estimated value of the contract to be awarded. The legal term to challenge the result of the public procurement awarding procedure varies from five to ten days from service of the deed deemed to have caused the damage

depending on the estimated value of the public procurement contract.

The challenge does not automatically result in a stay of the public procurement awarding procedure. However, the CNSC may order a stay at the party's request. Whether the procedure is stayed or not, the public procurement contract may not be signed and concluded before the CNSC settles the challenge.

The challenge may either claim that a deed of the contracting authority is unlawful, or that it has not been accomplished within the legal term. Many such challenges (approximately 6,000) are filed with the CNSC every year. Since June 2014, when the obligation to set up a "proper conduct bond" for any entity that files a complaint against an act of the contracting authority has been enacted, under the sanction of the bidder' being rejected, the number of the complaints submitted to CNSC has considerably decreased[10]. However, the Constitutional Court of Romania upheld through final and binding Decision No. 5 of 15 January 2015[11] the unconstitutionality of the legal provision regarding the obligation of the contracting authority to retain the proper conduct bond if the complaint is rejected by the CNSC or if the complainant waives the complaint. Further to Decision No. 5 of 15 January 2015, the obligation to retain the proper conduct bond, under the conditions described above, ceased their legal effects within 45 days from the publication of the decision in the Official Gazette of Romania.

The CNSC carries out a legality check of the deeds issued by the contracting authority and may, as the case may be, order the public procurement awarding procedure to continue or to be cancelled.

Where deciding that the public procurement awarding procedure must continue, the CNSC is empowered to order to the contracting authority to re-evaluate the tenders, to issue a certain deed or to provide remedies. The CNSC decision is binding to the contracting authority and a complaint by any party does not suspend its enforcement.

The CNSC is not empowered to re-evaluate the submitted tenders, but may usually order a reassessment by the evaluation committee formed within the contracting authority. Matters decided by the CNSC are binding on the contracting authority during revaluation. If the CNSC rejects the challenge, public procurement regulations allow the contracting authority to retain amounts from the challenger's tender guarantee, calculated by reference to the estimated value of the contract.

The CNSC decision is binding on the contracting authority as well as on all the

10 See http://www.cnsc.ro/wp-content/uploads/2016/02/raport/raport2015_RO.pdf (page 15).

11 Our law firm provided legal assistance to the claimant before the Constitutional Court of Romania. The court stated that the obligation of the contracting authority to withhold the proper conduct bond breaches the free access to justice, as provided by the Romanian Constitution, by discouraging the claimant to file a complaint.

bidders and may be challenged by way of complaint, filed with the competent court of law within ten days from service. The complaint does not automatically stay the enforcement of the CNSC decision. The court judgment is final. The court of appeal may award indemnifications for the damages incurred during a public procurement awarding procedure. The interested party may seek to obtain indemnification by way of a separate action; such indemnification may only be awarded where the damaging deed has been cancelled. If indemnification is sought for the expenses incurred in connection to preparing the tender or to participating in the public procurement awarding procedure, the prejudiced party is only required to prove that there was a violation of applicable public procurement legal provisions, and that such violation thwarted the prejudiced party's otherwise good chances of being awarded the contract.

As regards the general challenging mechanism, before filing a claim in front of the administrative chamber of the competent court of law, any interested person shall request by a prior complaint filed to the contracting authority to re-assess the allegedly illegal administrative act with a view to cancelling or amending it, within a period of 30 days from the communication (or otherwise the acknowledgment) thereof. The answer to the prior complaint filed to the contracting authority in accordance with the provisions of Law No. 554/2004 shall be communicated exclusively to the applicant. The claim against the answer must be submitted by the applicant to the court of law within 6 months from the date the answer of the contracting authority has been communicated to the applicant (or from the expiry of a 30-day period from the date the prior complaint has been submitted to the contracting authority, if no answer is given by the contracting authority).

13. Where there are significant variations to contracts or changes to the contracting parties, does the authority have to competitively tender the amended contract?

Ongoing contracts that have been awarded through a competitive procedure may be amended under certain conditions, sometimes requiring a new awarding procedure and sometimes not. While pre-contractual relationships fall squarely under public and procedural law, contract performance is governed by a combination of public and private law.

Therefore, European Parliament's Directives and European Council's Directives on public procurement and domestic laws do not contain any express provisions on cases where the amendment of a public procurement contract results in a new contract, which should be awarded under a public competitive procedure.

Amendments to an existing contract[12] create a new contract and a new contract awarding procedure must be organised in the following cases:

- Where the amendment marks a substantial departure from the initial contract and indicates that the parties intend to renegotiate the essential terms of the contract;
- Where the amendment, had it been made prior to awarding, would have allowed the participation of other bidders, or the selection of another tender in the awarding procedure;
- Where the amendment considerably extends the scope of the contract, including services that were not covered by the initial contract.

However, by way of derogation, contracting authorities are expressly allowed to increase the offered price of a works or services contracts by up to 20% of the initial value by organising a mere negotiation procedure without a prior publication of a contract notice. Such a procedure is completed by the execution of an addendum to the initial contract. The price may be thereby increased in the event that, due to unforeseeable circumstances, the procurement of supplementary or additional works or services becomes necessary for the fulfilment of the initial contract and if the following conditions are cumulatively met:

- The award is made to the initial contractor;
- The additional/supplementary works/services cannot be separated, from a technical and financial perspective by the initial contract without occurrence of a major inconvenient for the contracting authority or, even separable by the initial contract, the additional works/services are strictly necessary for the fulfilment thereof; and
- The maximum aggregate value of additional/supplementary works/services does not exceed 20%.

Subcontractors may also be replaced after execution of the contract (in fact, this is a frequent practice) provided that the contracting authority agrees and the initial technical and financial tenders are not modified.

14. Are there any special contractual forms?

The procedures to be followed for the award of public procurement contracts differ by reference to value thresholds, the scope and particularities of the contract, and the special conditions to be met by the bidder that will be awarded the contract.

12 Instruction No. 1/2016 issued by the National Agency for Public Procurements which transposes the conclusions of Case C-454/06: Pressetext Nachrichtenagentur GmbH v Republik Österreich (Bund), APA-OTS Originaltext-Service GmbH and APA Austria Presse Agentur registrierte Genossenschaft mit beschränkter Haftung.

Special methods for the awarding of public procurement contracts are applicable when a framework agreement is executed, when the authority obtains, on its own behalf, products and/or services meant for another contracting authority, and when the dynamic purchasing system and/or the electronic auction is applied.

A framework agreement is a written arrangement between one or several contracting authorities and one or several economic operators, the purpose of which is to determine the essential elements/terms of the public contracts to be awarded during a given period, in particular with regard to price and, when appropriate, the quantities envisaged. As a rule, the framework agreement is concluded further to an open or restricted tender. The maximum period covered by a framework agreement is four years.

Besides the framework agreement, GEO No. 34/2006 regulates two other special public procurement awarding procedures: the dynamic purchasing system and the electronic auction.

The dynamic purchasing system is a fully electronic time-limited process, open, throughout its entire term, to any interested economic operator that meets the qualification and selection criteria and has submitted a non-binding tender in accordance with the terms of reference requirements. The contracting authority is obliged to comply with open tender rules at all stages of the dynamic purchasing system and is entitled to use a dynamic purchasing system only for the purchase of consumable goods with features generally available on the market which meet its needs. The bidder is entitled to improve its non-binding tender at any time, provided that the technical proposal still complies with the terms of reference requirements.

Electronic auction may be used in the following cases: as the final stage of an open tender, restricted tender, negotiation with prior publication of a tender notice, or a call for tender, and only if the technical specifications were accurately defined in the tender books; in resuming the contest among bidders that signed a framework agreement; and when submitting binding tenders for the awarding of a public procurement contract under a dynamic purchasing system.

Intellectual services and works contracts cannot be awarded by electronic auction. Under such a procedure, it is mandatory to indicate the elements of the tender for which the contest will be resumed, and maximum values up to which the respective elements may be improved. At each round of the electronic auction, the contracting authority must immediately inform all bidders of at least the minimum data that they need to determine their rank at any time.

15. Can tenders be amended?

Once tenders have been submitted in accordance with the published contract documents, the evaluation process begins. Financial and technical proposals can no longer be amended/supplemented after the expiry of the deadline for submission, otherwise the tender will be rejected as irregular. The only accepted amendments to tenders are those that may be classified as corrections of clerical, arithmetical errors or minor technical deviations.

16. Outlook

Further to adoption of the new draft laws on public procurement which will repeal the current legislation, it is expected that the public procurement field will undergo significant changes in order to be compliant with the scope of the new European directives, namely to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds.

The reform expected to be brought by the new legislation, subject to the adoption of the final version of the Law on Public Procurement, is to simplify the awarding procedure by allowing more flexibility, both to the contracting authorities and the economic operators, mainly through the following:

- Introducing the European Single Procurement Document which is a self-declaration by economic operators replacing the certificates issued by public authorities or third parties;
- Introducing a new awarding procedure, the innovation partnership in order to encourage the research and innovation;
- Introducing the possibility of the contracting authorities to conduct a transparent preliminary market consultation, before launching an awarding procedure, which should facilitate better specifications of the tender documentations;
- Introducing the concept of the most economically advantageous tender as the overriding concept instead of an award criterion in order to provide the best value for money for procurements;
- Encouraging the division of contracts into lots in order to facilitate the access of the Small and Medium Enterprises to the awarding procedures; encouraging to award several contracts to the Small and Medium Enterprises, rather than a single contract to a large enterprise;
- The minimum deadlines set out for awarding procedures will be shorter;
- Introducing clarity about the extent to which an existing contract can be amended after award without the need to re-launch a new tender;
- Making e-submission mandatory for all contracting authorities and all awarding

procedures by October 2018.

As regards the challenging mechanism, a better cooperation between the contracting authorities and the claimants is expected with a view to identifying the remedial measures before referring a complaint to CNSC/court, subject to the adoption of the final version of the Law on Remedies. In this respect, it is mandatory that any person which considers itself harmed by a contracting authority's breach of legislation should submit a preliminary notification; otherwise, a potential complaint filed to CNSC/court may be rejected as inadmissible. Shall the contracting authority decide to remedy such breach, it will inform the claimant and the other participants. By way of exception, the preliminary notification is not mandatory for a person which considers itself harmed by the remedial measures taken by the contracting authority before referring a complaint to CNSC/court. Last but not least, the potential removal of the proper conduct bond due to the repealing of the legislation in force, subject to the final version on the Law on remedies, is expected to normalise the challenging mechanism.

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Competition

1. What are the competition rules applicable in Romania?

Competition Law No. 21/1996 (Competition Law) stands at the core of competition legislation in Romania. The provisions on competition set forth in Articles 101 and 102 of the Treaty on the Functioning of the European Union (Treaty/TFEU) also apply. As provided by Article 5(6) of Competition Law, when applying national competition rules, the Romanian Competition Council (RCC) may also apply Articles 101 and 102 of the Treaty, provided that trade between Member States is (susceptible to be) affected.

Second-tier norms issued by the RCC for the application of the Competition Law as well as the EU guidelines and regulations are relevant as well.

2. Are there any notable recent updates of the Romanian competition legislation?

As a matter of principle, the Romanian competition rules are reflecting, to a significant extent, the legislation applicable at the European Commission level.

One important recent development of local competition law consists in a more detailed settlement procedure in case a company admits to a breach of competition law as identified by the competition authority for the benefit of 10%-30% discount to the final level of the fine. As a result of the settlement procedure the authority aims to decrease the number of court cases challenging the sanctioning decisions.

In order to obtain a reduction of the fine under the settlement procedure:

- An express, clear and unequivocal application must be filed by the company requesting access to the settlement procedure;
- The company must provide a statement indicating that it accepts the maximum level of the fine;
- The company benefiting from a reduction of reduction based on the settlement loses such benefit in case of subsequent court challenge of the sanctioning decision issued by the competition authority. The latter may use in court the recognition formulated

during the administrative phase.

Also, the law now clearly states that the settlement and leniency procedures may be cumulated in order to obtain a reduction in the fine level. However, the cumulated value of such fine reduction cannot exceed 60% of the final fine amount.

On the short term, the competition authority envisages to reform the ancillary norms so that such would be fully in line with the norms issued by the European Commission in the implementation of competition rules..

3. Given that Romania is part of the EU, how is competence split between the national authority and the European Commission?

The system of parallel competences of the European Commission and the national competition authorities, instituted at the EU level, is directly applicable in Romania.

While the European Commission usually intervenes to investigate anti-competitive practices affecting more than three Member States or justifying a Community interest (i.e., where the respective practice affects the internal markets' freedoms, or where the case has a novelty character at Community level), the RCC remains competent to examine practices affecting mainly the Romanian market.

4. What are the main concerns of the Romanian competition authority in terms of agreements between undertakings? How about the authority's sanctioning record?

Agreements between competitors aimed at distorting market competition (commonly known under the name of "cartels") are top targets for the RCC and well as for the European Commission, being severely sanctioned.

However, in the RCC's records, one may find a significant larger number of sanctioned vertical anticompetitive agreements (agreements between non-competing undertakings acting on different levels of trade, such as distribution agreements, supply agreements, outsourcing agreements) than cartels.

In the relatively recent past, the RCC increased its focus on bid rigging and market sharing in public procurement procedures. The RCC established a special division to deal with complaints from authorities or bidders affected by anticompetitive bidding practices.

The RCC record of enforcements on agreements between undertakings covers various industries:

- Cartels (recent highlights):
  - 2015 – The RCC sanctioned 3 motor gas wholesalers with approximately EUR 3,700,000 for a price fixing and client sharing cartel. The companies admitted guilt and got a fine reduction;
  - 2014 – The RCC sanctioned 11 media companies with a fine of RON 14.567.555 (approximately EUR 3,200,000) for agreeing to eliminate a competitor from the market;
  - 2012 - The National Union of Bailiffs in Romania was sanctioned with a fine of RON 593.089 (approximately EUR 131,798) for fixing tariffs and setting barriers to entering the profession;
  - 2011 - Six oil companies were fined with RON 891,729,966 (approximately EUR 200,000,000), the largest fine ever applied by the RCC, for a cartel having as object the removal of a type of gas (Eco Premium) from the market;
  - 2010 - Market allocation (based on a 50-50% principle) between the 14 administrators of mandatory private pension funds during the initial sales window upon market set-up (total fine of EUR 1,220,000);
  - 2010 - Minimum price fixing by the members of the Romanian Body of Expert and Authorised Accountants (RBEAA) (total fine of EUR 950,000).
- Vertical agreements:
  - 2015 – The RCC sanctioned Hidroelectrica, the main hydro power producer and 10 energy wholesalers with approximately EUR 37,000,000 for concluding long-term agreements of power supply;
  - 2014 - The RCC sanctioned 25 companies active on the retail market (4 retailers and 21 food products suppliers) with fines totalling RON 154.029.538 lei (approximately EUR 35,000,000) for direct (minimum) price fixing during certain promotions. The RCC also sanctioned the suppliers and retailers for indirect price fixing, identifying promotional forms bearing a so-called "promotions clause" providing that the supplier shall not offer promotional reduced supplier prices to competitor chains (in certain cases such competitors were expressly identified by name) for the period when the respective promotion was available with that retailer.
  - 2011 – Total fines of RON 51.522.130 (approximately EUR 11,500,000) imposed on Bayer and its distributors for entering into anticompetitive limiting parallel trade;
  - 2011 – Total fines of RON 5.993.657 (approximately EUR 1,350,000) imposed on Baxter and its distributors for entering into anticompetitive limiting parallel trade;
  - 2011 – Vertical agreement between Interfruct S.R.L., Albinuța Shops S.R.L. and Profi Rom Food S.R.L. fruits on resale price maintenance sanctioned with fines of RON 16.700.000 (approximately EUR 3,700,000).

- Bid rigging:
  - 2014 - Four companies active in the oil and gas drilling industry were sanctioned for bid-rigging arrangements in connection with bids organised by Romgaz. The fine amounted to RON 12.968.298 (approximately EUR 2,890,000). The RCC's investigation was triggered following the submission of a leniency request by one of the participants in the cartel. The leniency applicant was granted full immunity;
  - 2013 - Bid rigging by sharing the tendered products in public procurement procedures organised by the Ministry of National Defence. The highest fine imposed by the RCC amounted to approximately EUR 1,569,700;
  - 2012 – Two consortia of companies acting in the road works sector were fined for bid rigging in public procurement procedures organised by the Romanian National Company for Highways and National Roads for the installation of markings on national roads. The total amount of the fines imposed by the RCC was more than EUR 660,000;
  - 2012 - Bid rigging in public procurement procedures organised by Transgaz S.A. The case also included a component of transfer of sensitive commercial information;
  - 2008 - Bid rigging between distributors on the dialysis market (total fine EUR 1,600,000): three distributors participated in a bid rigging in the context of the national tender organised by the Ministry of Health in 2003.

5. What competition law requirements should be considered by companies when entering into agreements for their activities on the Romanian territory?

Article 5(1) of Competition Law, in line with Article 101(1) of the TFEU, prohibits any explicit or tacit agreements between undertakings or associations of undertakings, any decisions of associations or any concerted practices between them, pursuing among others (i) price fixing, (ii) customers or markets allocation or (iii) bid rigging. Such agreements include cartels and anticompetitive vertical agreements.

Cartels are illegal secret agreements concluded between competitors as to fix prices, restrict supply and/or divide up markets. The agreements may take a wide variety of forms (tacitly agreed practices included), but often relate to sale prices or increases in such prices, restrictions on sales or production capacities, sharing out of product or geographic markets or customers, and collusion on the other commercial conditions for the sale of products or services.

Although generally considered less restrictive than cartels, vertical agreements also require particular awareness.

Several types of agreements are qualified as hardcore restrictions and consequently banned irrespective of the parties' market share. Such agreements mainly consist in (i) resale price fixing (setting a fix or minimum resale price), (ii) market or clientele allocation; (iii) parallel trade restrictions and (iv) bid rigging. Some examples in this respect are provided herein below.

Other restrictions included in vertical agreements may be exempted, either by the application of specific block exemptions (the EU block exemption regulations, namely Regulation No. 330/2010 are directly applicable), or following an individual examination undertaken on a case-by-case basis.

In this later case, the individual exemption requires a balance between the negative effects of the vertical agreements (e.g. raising the artificial market entry barriers, restriction on inter-brand and intra-brand competition etc) and the expected positive effects (e.g. products quality improvement, investments for entering new markets, better distribution services etc).

6. Does leniency policy apply in Romania?

In line with the EU legal framework, the RCC issued guidelines providing for different types of incentives for companies that voluntarily disclose the existence of a cartel, or of restrictive vertical agreements, and bring evidence to prove the infringement or cooperate during the procedure. The immunity or reduction of the fine varies widely depending on the timing and significant added value of the information and evidence provided by the cartel members.

Unlike the EU, where leniency is available only in cartel cases, the RCC broadened the leniency policy scope and opened the procedure also for distributors or suppliers to report vertical anticompetitive agreements, but only if the vertical arrangement relates to resale price maintenance (RPM).

However, although at the national level the leniency policy is available from 2004 (new guidelines being adopted on 7 September 2009), no major cartel case has so far been discovered and sanctioned by the RCC following a leniency policy application.

The first leniency case finalised before the RCC (2010) was a local cartel formed by the taxi drivers in Timiș County. In 2014, the RCC granted a new immunity under a leniency procedure in the oil and gas drilling services cartel finalised at the end of 2014.

The RCC does not miss any opportunity to reaffirm clearly that "whistle blowers" are warmly welcomed at the RCC.

Moreover, the RCC launched an on-line platform where, under the protection of anonymity, any person or company may provide information to the authority in connection with anticompetitive practices. A financial reward up to EUR 100,000 was introduced for individuals who denounce information on illegal practices.

In order to obtain total immunity under the leniency policy, a company which participated in a cartel or a vertical RPM anticompetitive practice must be the first to inform the RCC of the undetected illegal activity, providing sufficient information to allow the authority to open an investigation and launch an inspection at the premises of the companies allegedly involved in the anticompetitive practice. If the RCC is already in possession of enough information to launch an investigation, or has already opened one, the company must provide evidence that enables the RCC to prove the infringement. In all cases, the company must also fully cooperate with the RCC throughout its procedure, provide it with all evidence in its possession and put an end to the infringement immediately.

Companies that do not qualify for total immunity may benefit from a reduction of fines if they provide evidence that constitutes "significant added value" to that already in the RCC's possession and if they have ceased involvement in the anticompetitive practice. Evidence is considered to be of a "significant added value" for the RCC when it reinforces RCC's ability to prove the infringement. The first company to meet these conditions may receive 30% to 50% reduction, the second 20% to 30% and subsequent companies up to 20%.

Moreover, companies may also admit guilt during the hearings before the RCC Plenum the latest, and benefit of 10% to 30% fine reduction. Such form of cooperation is deemed as special mitigating circumstance which may even trigger a reduction of the fine below its minimum threshold set at 0.5% of the turnover obtained in the year preceding the sanctioning decision.

Since February 2014, leniency for criminal charges has been introduced. The Competition Law now limits criminal liability to persons holding a management position within the undertaking involved in an infringement of Article 5(1) of the Competition Law (corresponding to Article 101(1) TFEU): "manager(s), legal representative(s), or any other person in a management position who intentionally conceive(s) or organise(s) one of the prohibited practices are subject to criminal liability." This amendment limits the subjects of criminal liability to persons with executive powers, who have the ability to initiate and organise cartel activities.

Moreover, leniency from criminal charges is available subject to the fulfilment of several conditions: (i) an executive must inform the prosecution authorities regarding his involvement before the opening of criminal proceedings, and (ii) the information must

lead to the identification and sanctioning of other participants. If criminal proceedings have already started, the executive may benefit from a reduction to half of the initial sanction, provided that the information disclosed is still relevant to the authorities, and enables them to prosecute other participants.

7. How unilateral conduct is treated under Romanian competition rules?

Unilateral conduct is not relevant for Competition Law, unless the undertaking concerned holds a dominant position.

Dominant players on the market could also infringe the antitrust rules, both national (Article 6 of Competition Law) and European provisions (Article 102 of the Treaty), by adopting unilateral market strategies which could harm consumers and/ or competitors.

Dominance is traditionally defined as the ability of a company to act to a large extent independently from its competitors (actual and potential) and its clients in that particular market.

However, the recently revised Competition Law introduced a relative presumption of dominance. Notably, firms which hold more than 40% of the relevant market in question and presumed to be dominant, should other factors not prove the contrary. The market share is however just one factor in assessing dominance. The structure of the relevant market, position of the main competitors, entry barriers or specific advantages enjoyed by a company may also influence the dominance assessment.

In Romania, holding a dominant position is not prohibited; it is abusing that position that falls within the scope of the antitrust rules. Abusive behaviour may consist in: (i) exploitative practices by abusing market power in trading relationships with customers or suppliers (e.g. unfair purchase or selling prices, tying arrangements, price discrimination) and (ii) exclusionary practices, i.e., abusing market power with an aim to harm competitors (e.g. refusal to deal, predatory pricing etc).

Article 6 of the Competition Law provides an exemplificative list of behaviours that are deemed as abuse of the dominant position:

- Imposing, directly or indirectly, of selling and buying prices, price lists or other inequitable contractual clauses and refusing to negotiate with certain suppliers or beneficiaries (the practice relates mainly to excessive pricing against customers and predatory prices aimed at eliminating competitors);

- Limiting production, distribution, technological development to the disadvantage of the consumers;
- Applying to commercial partners dissimilar conditions for equivalent performances, to the effect of creating disadvantages in the competitive position of some of them;
- Conditioning the conclusion of certain contracts on the partner's acceptation of clauses stipulating supplementary performances which, neither by their nature nor according to commercial practices, have any connection with the object of such contracts.

8. Are there any recent local abuse cases of relevance?

The Competition Council has applied significant fines in two abuse cases, namely (i) one case against the national post-office operator for discriminatory prices, where a fine of approximately EUR 24,060,000 was applied (ii) the other, against the two main telecom operators (Orange and Vodafone) resulting in fines of approximately EUR 34,800,000 and EUR 28,300,000, respectively, for actions related to restriction of access to essential facilities. Such cases are currently at the top of the fine record applied by the authority in its practice. In Vodafone case, the fine has been significantly reduced before Bucharest Court of Appeal.

It should be noted that according to the recently revised Competition Law, companies may now offer commitments during the investigation procedure that they will comply with a certain conduct as to end the alleged infringement.

9. What consequences are faced in case a competition law infringement is detected by the national competition authority?

The sanctions for violations of the Competition Law may amount to between 0.5% and 10% of the involved party's turnover on the year prior to the sanctioning decision.

Other sanctions include invalidation of contract terms, damages claims requested in court by the damaged competitors and restrictions imposed by the Competition Council or the courts on the business activity. The Competition Law also provides cases of criminal liability of the individuals responsible for the violation. So far, the RCC has only once remitted the case to criminal prosecution.

Throughout more than 19 years of practice, the RCC applied significant fines, which place the local competition authorities among the most active in Europe in terms of level of fines. The fine level as well as number of cases have been increased during

the last few years, where the RCC accelerated the investigation process in key sectors identified as priorities (retail, financial sector, telecom, oil, public procurement etc.).

Independently from the sanctions applied under the Competition Law, natural and legal persons are reserved the right to claim for the recovery in full of the damages resulting from the anticompetitive practice prohibited by the Competition Law under the private enforcement principles.

Private enforcement relates to legal actions that can be brought before a national court by one private party against an undertaking that infringed the competition regulations. Private enforcement of competition rules can take different forms, including actions for compensation of damages, actions for injunctive relief (to stop the behaviour contrary to the competition rules), actions for nullity, etc.

The recently revised law provides that the status of limitation of the damages compensation action is of two years starting from the date the Competition Council's decision is final.

Companies having blown the whistle in cartel cases or hardcore vertical agreements which benefit of leniency are also exonerated from the joint liability resulting from a damages compensation action, which bears on all participants to the infringement.

As regards the quantum of the damages, the Romanian law system acknowledges the full compensation principle in case of tort liability. Thus, the author of the anticompetitive practice could be compelled to reimburse both the actual prejudice and the loss of benefit.

10. Is there any competition law requirement in case of mergers & acquisitions occurring or impacting the Romanian market?

The merger of two or more previously independent parties, or the direct or indirect control brought about by share capital/assets acquisition, by contract or by other means qualifies as an economic concentration and may trigger a notification obligation in the competent jurisdiction. In merger cases, a division of competence between the European Commission and the RCC applies.

The Commission has exclusive power to examine concentrations with a Community dimension determined on the basis of very high turnover thresholds set under EU Merger Regulation No. 139/2004, while the RCC assess concentrations with national dimension.

Should the merger not fall within the jurisdiction of the European Commission, it would require clearance by the RCC if the following thresholds are cumulatively met in the fiscal year preceding the transaction:

- The parties' combined worldwide turnover exceeds EUR 10,000,000; and
- At least two of the parties involved in the transaction have a turnover in Romania exceeding EUR 4,000,000.

The concept of parties is rather complex one and does not refer only to the entities signing the transaction documents, but also includes group structures. The turnover thresholds should be verified on a case-by-case basis.

The turnover thresholds triggering the notification obligation are considered as low by the business environment. Further to recent amendments, Competition Law allows the Romanian Competition Council to adjust the turnover thresholds triggering the notification requirement. Such an adjustment can be performed after obtaining approval by the Ministry of Economy, Trade and Tourism. However, based on recent statements of the competition authority there is no short or medium term plan to adjust the notification thresholds.

Romania is considered to be a "suspensive jurisdiction", where a transaction may not be implemented prior to clearance issued by the RCC.

For justified cases, the buyer may obtain derogation from the above rule from the RCC (however, derogation decisions were issued on few occasions).

Within a 5-year statute of limitation period, the Competition Council can impose a fine between 0.5% and 10% of the Romanian turnover achieved by the buyer for completing a notified merger before clearance.

Apart from the merger related procedures in front of the RCC, any economic concentration occurring in Romania should be notified to the Superior Council of State Defence for reasons of verifying compliance with the state defence rules.

11. What is the normal merger review period?

The RCC shall issue a decision to either authorise a merger or open an in-depth investigation within 45 days after the submission is effective (upon registration at the RCC or, upon submission of additional required information).

In practice, the review period (phase I) is likely to take up to 60-90 days, since the

authority usually takes 15-25 days before it declares the submission complete and the statutory time starts to run. In certain cases, a simplified procedure is available.

If an investigation is opened (phase II), the Competition Council shall issue a decision of refusal/authorisation/conditional authorisation within a 5-month term after the notification is effective.

12. Are there any fees applicable in case transactions are subject to local competition review?

Where prior RCC clearance is required, the notifying party/parties must pay an initial review fee of RON 4,775 (approximately EUR 1,000).

If the authorisation of the economic concentration is granted, an authorisation fee ranging from EUR 10,000 up to EUR 25,000 shall be paid. In addition, in case of transactions triggering phase II assessment (i.e., an investigation is opened in view of performing the merger assessment), the authorisation fee is set from EUR 25,001 to EUR 50,000.

13. Is there any possibility for companies to obtain State Aid in Romania?

The Treaty rules and principles on State aid are directly applicable in Romania (in particular Article 107-109 of the Treaty). The European Commission has sole competence in State aid matters, while the RCC acts as contact authority for the Romanian State.

In Romania there are aid schemes in place for different sectors of activity (a list is available at www.ajutordestat.ro). Such were either subject to prior authorisation from the Commission, or issued under an EU exemption regulation or *de minimis* aid principles.

Also, the Commission authorised, in certain cases, individual aid for companies located in Romania.

Energy

LEGAL FRAMEWORK AND REGULATORY AUTHORITY

1. Which are the main legal enactments governing the Romanian power sector?

The power sector is regulated mainly by Title I of the Power and Gas Law No. 123/2012 (Energy Law)[1]. The Energy Law implements Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Power Directive)[2].

2. Which is the authority regulating the power sector?

The Romanian power sector is regulated by the National Authority Regulating the Energy Field (ANRE), an independent authority, under the control of the Parliament, which operates based on its own organisation and operation regulation.

ANRE is entirely financed from its own incomes deriving from tariffs charged for the release of authorisations and licenses, annual contributions of the participants to the power market and funds granted by international bodies.

POWER MARKET

1. Who can perform activities in the power sector and what are the licensing requirements?

The participants in the power sector are the operators licensed by ANRE to carry out the activities specific to such sector as briefly described below.

1 The Energy Law was published in the Official Gazette of Romania, Part I, No. 485 of 16 July 2012, and was subsequently amended and supplemented.

2 The Power Directive was published in the EU Official Journal L 211 of 14 August 2009.

- Generation is carried out by legal entities licensed by ANRE, through the operation of generation capacities the construction of which was also authorised by ANRE (if the capacity is above 1 MW). The producers are entitled to trade the power they generate on the wholesale market, as well as to supply it to final consumers directly connected to their generation capacities. The main power producers on the Romanian market are Hidroelectrica, Nuclearelectrica and CE Turceni S.A.
- Transmission is a natural monopoly activity carried out by Transelectrica, the Romanian Transmission and System Operator (TSO). Transelectrica operates, based on the concession granted by the Ministry of Economy, the entire power transmission grid (i.e., the grid having a voltage exceeding 110 kv) belonging to the public property of the State.
- Distribution entails the transportation of the power through the high, medium and low voltage grid having a voltage of up to 110 kv. Similarly to transmission, distribution is a natural monopoly activity carried out by eight entities holding (i) the concession awarded by the Ministry of Economy over the distribution service in a certain area and (ii) the distribution license issued by ANRE.
- Trading entails power sale or acquisition exclusively on the wholesale power market or on the import/export market and may be carried out by entities which hold a specific trading license issued by ANRE[3].
- Supply can be carried out by entities holding the power supply license issued by ANRE [4]. As a general rule, the suppliers can sell the power on the competitive market at negotiated prices. However, from among the licensed suppliers, ANRE appoints several last resort suppliers, which are obligated to supply power, under terms and prices regulated by ANRE, to certain categories of consumers.

2. Are there any unbundling and independency requirements imposed to the activities in the power sector?

In line with the principles laid down by the Power Directive, the Energy Law imposes unbundling of distribution and supply activities, as well as measures for ensuring the independency of the TSO from the power generation and supply activities.

Unbundling is required of vertically integrated undertakings carrying out both distribution and supply activities, except for vertically integrated undertakings serving less than 100,000 connected customers, or small isolated systems.

Distribution operators part of vertically integrated undertakings are required to become

3 The procedure for obtaining the trading license is provided for by the newly adopted Regulation for granting licenses and authorizations in the power sector, approved by ANRE Order no. 12/2015 published in the Official Gazette of Romania, Part I, No. 180 of 17 March 2015.

4 The holders of an existing supply licenses may currently carry out both supply and trading activities.

independent from activities not connected to power distribution, at least in terms of legal form (legal unbundling), organisation and decision making process (functional unbundling).

All eight distribution and supply operators have completed the unbundling of distribution and supply activities through spin-off into two separate entities, one for each activity[1].

As regards the TSO, the Energy Law imposes its organisation and operation in line with the model of the certified independent system operator, and establishes criteria to be observed for ensuring its independency from the power generation and supply activities.

In August 2014, the TSO has been certified by ANRE as "independent system operator"..

3. To what extent is the power market liberalised?

The Romanian power market was fully opened starting 1 July 2007, further to a gradual process which started in 2000. Nevertheless, ANRE continues to regulate several segments of the market, i.e., the natural monopoly activities (transmission and distribution), the supply by last resort suppliers, as well as the transactions between the producers and the last resort suppliers for the power supplied on the regulated market. Regulated activities are carried out based on prices and tariffs established by ANRE. In line with EU regulations, it is intended to progressively liberalise the power supply market, for which purpose the Energy Law provides for gradual elimination of the regulated tariffs for end customers. While for non-residential customers, the market was fully liberalised as of 1 January 2014, the liberalisation calendar for residential customers is 1 July 2013 – 31 December 2017.

4. What are the rules for trading power?

Power transactions are performed (i) under a wholesale system (for suppliers' acquisitions of power from producers or from other suppliers for re-selling purposes) or (ii) under a retail system (for acquisitions of power by end customers for their own consumption).

While the former energy law (in force until 19 July 2012) allowed for wholesale

1 Similar provisions were also reflected in the former Energy Law which relied on now repealed Directive 2003/54/EC and which imposed the unbundling of the distribution and supply activities by 30 June 2007.

power transactions both by means of bilateral agreements concluded through direct negotiations (including import/export agreements), as well as on the centralised markets operated by the Power Market Operator OPCOM S.A. (OPCOM), the current Energy Law requires transactions to be concluded in a transparent, public, centralised and nondiscriminatory fashion. According to ANRE's official interpretation of such legal provisions, power transactions can only be performed on the centralised markets operated by OPCOM, namely:

- Bilateral agreements executed on the Centralised Market of Bilateral Agreements operated by OPCOM;
- Bilateral agreements executed on the Over the Counter Market;
- Transactions closed on the Day Ahead Market and Intra-Day Market operated by OPCOM;
- Transactions on the Centralised Market for the Universal Service[2];
- Transactions concluded on the centralised Balancing Market operated by Transelectrica;
- Transactions for technological system services.

By way of exemption from the above, as of 17 March 2014, certain exemptions were implemented in relation to some categories of producers benefiting from the support system. As concerns import/export transactions, according to a new ANRE's official interpretation, such activities fall under the above restrictions set forth by the Energy Law; therefore, the current interpretation indicates that bilateral agreements may not support import/export transactions. On the retail market, suppliers sell power to end customers based on bilateral agreements, either at negotiated prices or at regulated tariffs.

PROMOTION OF GENERATION OF POWER FROM RENEWABLE ENERGY SOURCES THROUGH THE SYSTEM OF MANDATORY QUOTAS COMBINED WITH GREEN CERTIFICATES TRADING

1. Has Romania implemented any support scheme for promoting the generation of power from renewable energy sources? If so, what type of support scheme is currently implemented?

Romania undertook towards the EU the obligation to reach certain percentages of power generated from renewable energy sources out of the total final power

2 Such is the most recent centralised market administered by OPCOM, where the first transactions have been concluded in March 2015.

consumption, namely 35% in 2015 and 38% in 2020. In view of encouraging the investments in the renewable energy sectors (which are essential for fulfilling such targets), Romania implemented the system of mandatory quotas for green certificates acquisition combined with green certificates trading.

2. What is the legal framework governing the green certificates support scheme?

The main piece of legislation regulating the support scheme is Law No. 220/2008 establishing the system for promoting the power produced from renewable sources of energy, as further amended and supplemented (Renewable Energy Law)[3].

The support scheme was notified to and approved by the European Commission in July 2011. However, during the authorisation process, the Romanian authorities undertook to bring some amendments to the then existing legal framework with the purpose of aligning it with the clearance to be obtained from the European Commission. Hence, the support scheme became applicable starting 1 November 2011 after the amendment of the Renewable Energy Law through Government Emergency Ordinance No. 88/2011 (GEO No. 88/2011)[4] and after the issuance by ANRE of secondary legislation for the implementation thereof.

Recently, the Renewable Energy Law has been amended by means of Government Emergency Ordinance No. 57/2013 (GEO No. 57/2013)[5], whereby severe limitations have been introduced to the support scheme effective as of 1 July 2013. Several other amendments have also been implemented further to the enactment of Law No. 23/2014 approving GEO No. 57/2013 (Law No. 23/2014)[6] and of the Law No. 122/2015[7].

Since the Renewable Energy Law has been successively amended after its initial clearance from the European Commission, a new review of the Renewable Energy Law thus amended is currently ongoing.

3 The Renewable Energy Law was republished in the Official Gazette of Romania, Part I, No. of 577 of 13 August 2010.

4 Government Emergency Ordinance No. 88/2011 for amending and supplementing Law No. 220/2008 establishing the system for promoting the power produced from renewable sources of energy was published in the Official Gazette of Romania, Part I, No. 736 of 19 October 2011.

5 Government Emergency Ordinance No. 57 of 4 June 2013 amending and supplementing Law No. 220/2008 for the establishment of the system for promoting the energy from renewable energy sources, was published in the Official Gazette of Romania, Part I, No. 335 of 7 June 2013 and is in force as of 1 July 2013.

6 Law No. 23/2014 for the approval of Government Emergency Ordinance No. 57 of 4 June 2013 amending and supplementing Law No. 220/2008 for the establishment of the system for promoting the energy from renewable energy sources was published in the Official Gazette of Romania, Part I, No. 184 of 14 March 2014.

7 Law No. 122/2015 for the approval of certain measures in the field of the promotion of the production of electricity from renewable energy sources and for the modifying and supplementing of certain normative acts was published in the Official Gazette of Romania, Part I, No. 387 of 3 June 2015.

3. What is the application period of the support scheme?

The support scheme shall apply for a period of (i) 15 years for energy generated by new units, (ii) 10 years for power generated by refurbished hydropower plants, with an installed capacity of no more than 10 MW, (iii) seven years for wind power generated by units previously used on the territory of other states, if such units are used in the isolated energy systems or have been commissioned prior to application of the support scheme regulated by the Renewable Energy Law, (iv) three years for power generated by non-refurbished hydropower plants with a maximum installed capacity of no more than 10 MW. Such periods shall be diminished accordingly in case of power producers which received green certificates prior to the entry into force of the Renewable Energy Law.

4. Are there any accreditation limits during the application period of the support scheme?

The support scheme shall apply to all producers accredited by ANRE provided that the commissioning, the refurbishment respectively, of the generation units occurs by the end of 2016.

5. What are the annual mandatory quotas of renewable energy benefiting from the support scheme?

As of the entry into force of Law No. 23/2014, the annual quotas of renewable energy benefiting from the support scheme for the period 2014-2020 provided by the Renewable Energy Law (which increased gradually from 15% in 2014 to 20% in 2020) have been eliminated. These quotas will be estimated, published and communicated by ANRE to the Government by 30 June for the subsequent year and will be approved by the Government within 60 days of the communication thereof by ANRE.

The 2016 quota has been determined by ANRE and approved by the Government at 12.5% of the final gross power consumption. The grounds presented by ANRE for such a low quota is that Romania is already close to reaching its 2020 target concerning the percentage of renewable power in the final gross power consumption.

6. How many green certificates are issued to renewable power producers?

The number of green certificates to be distributed by the TSO for each MWh of power

generated by power plants using renewable sources of energy (with the exception of the power used for own technological consumption) shall vary depending on the renewable energy source, as follows: (i) three green certificates for each MWh of power generated in the new hydropower units having an installed capacity of maximum 10 MW, two green certificates for each MWh of power generated in the refurbished hydropower units having an installed capacity up to maximum 10 MW and one green certificate for each 2MWh of power generated in other hydropower units than the new and refurbished units mentioned above, having an installed capacity of maximum 10MW; (ii) two green certificates up to 2017 and one green certificate as of 2018 for each MWh of wind power; (iii) two green certificates for each MWh of power generated from geothermal energy, biomass, liquid biofuel, biogas (an additional green certificate/MWh is awarded for biomass resulting from energetic cultures), (iv) one green certificate for each MWh of power generated from landfill gas and sewage treatment plant gas; and (v) six green certificates for each MWh of solar power. During testing period, irrespective of the renewable source of energy used, TSO shall award one green certificate/MWh.

However, for the period 1 July 2013 – 31 March 2017, GEO No. 57/2013, as amended by Law No. 23/2014, postponed the allocation from trading of: (i) one green certificate for each MWh of power generated in wind power plants and in new hydro power plants with installed capacities not exceeding 10 MW and (ii) two green certificates for each MWh of photovoltaic energy. The postponed green certificates will be recovered gradually starting with 1 April 2017 (for photovoltaic and hydro energy) and starting with 1 January 2018 (for wind energy), but not later than 31 December 2020. The mechanism under which the green certificates will be recovered is left to the regulatory competence of ANRE, which should issue secondary legislation on this matter. Such postponement measures apply to all power producers already accredited by 31 December 2013.

In addition, ANRE has the obligation to monitor on an annual basis the producers benefiting from the support scheme. Should the monitoring report conclude that the support scheme leads to overcompensation for one or more technology(ies), the Government may decrease the number of green certificates for the respective technology(ies) by means of Government decision; the measures of reducing the number of green certificates shall apply to power producers accredited after 1 January following the enactment of said Government decision . The first monitoring report referred to the year 2012 and, based on its conclusions, the Government adopted Decision No. 994/2013 approving the measures for reducing the number of green certificates in the situations provided under Article 6, para (2) letters a), c) and f) of Law No. 220/2008 establishing the promotion system for the production of power from renewable energy sources[8].

8 Government Decision No. 994/2013 was published in the Official Gazette of Romania, Part I. No. 788 of 16 December 2013.

According to this decision, the power producers in the wind, solar and hydro sectors, accredited after 1 January 2014, shall benefit from a reduced number of green certificates, as follows: (i) wind power plants - 1.5 green certificates/MWh until 2017 and 0.75 green certificates/MWh starting with 2018; (ii) solar power plants - 3 green certificates/MWh and (iii) new hydro power plants with installed capacities not exceeding 10 MW - 2.3 green certificates/MWh.

In the report related to the year 2016, ANRE found that there is an overcompensation risk in relation to the photovoltaic plants.

7. Is there any specific exclusion from the application of the support scheme?

GEO No. 57/2013 excludes from the application of the support scheme the quantities of renewable power delivered by dispatchable generation units, which exceed the quantities notified through the hourly physical notifications submitted by the power producers to the TSO.

An additional exclusion from the support scheme refers to the photovoltaic plants built on lands which are qualified as agricultural lands on 31 December 2013. No such restrictions apply to other types of renewable technologies.

Law No. 122/2015 introduced a new exclusion from the application of the green certificates promotion system in respect of the electricity generated from renewable sources sold at negative prices.

8. How many green certificates are issued to power producers benefiting from State aid?

In the case of power plants benefiting from one or several forms of State aid(s) (including EU grants), within the accreditation process ANRE shall reduce the number of green certificates to be awarded to such producers in order to maintain the internal rate of return considered during the authorisation process of the promotion system by the European Commission.

However, in this scenario, to the extent the reduction of the number of green certificates leads to sub-unitary number of green certificates, the postponement measure introduced by GEO No. 57/2013 will no longer be applied.

Also, such reduction mechanism shall apply only after the European Commission will

have issued its clearance on the latest amendments of the Renewable Energy Law.

9. Are there any market players under the legal obligation to purchase the green certificates?

The power suppliers have the obligation to purchase a number of green certificates corresponding to the quantity of power purchased for final consumers and for own consumption purposes multiplied by the mandatory quota of green certificates acquisition determined by ANRE for the respective year. Similarly, the power producers have the obligation to purchase a number of green certificates corresponding to the quantity of power used for own consumption purposes (other the technological consumption) and for supplying consumers connected directly to the power plant, multiplied by the mandatory quota of green certificates acquisition determined by ANRE for the respective year.

The mandatory quota of green certificates acquisition is first estimated by ANRE in December of the previous calendar year, while the final quota is determined by ANRE not later than 1 March of the subsequent year.

For the year 2016, the estimated mandatory acquisition quota of green certificates is of 0.317 GC/MWh.

10. What are the sanctions for failing to meet the mandatory quotas for green certificates acquisition?

The amount to be paid by the power suppliers and producers failing to observe the annual mandatory quota of green certificates acquisition shall amount to EUR 110 for each green certificate that was not acquired; such amount shall be indexed with the average inflation rate of the Euro zone within the European Union calculated for the previous year and communicated by Eurostat. For the year 2016, such indexed value amounts to EUR 119.7702. These amounts shall be collected by the Environmental Fund Administration[9] and shall be further allocated to the natural persons for investments in renewable power generation units having an installed capacity up to 100 KW.

In addition, the electricity suppliers and producers failing to meet the annual acquisition quota for the previous quarter in a percentage of at least 90% compared to the annual mandatory quota are sanctioned with legal fine computed as the maximum value of the green certificates annually established by ANRE and the number of non-acquired green

9 The Environmental Fund Administration is an economic-financial instrument targeted at supporting and performing environmental protection projects and programs, in accordance with the applicable laws in the environmental field.

certificates (up to a percentage of 90% of the mandatory acquisition quota).

11. Who bears the costs entailed by the application of the support scheme?

The value of the green certificates acquired by the suppliers for meeting the mandatory green certificates acquisition quota is invoiced by suppliers to consumers.

However, as per GEO No. 57/2013, as amended by Law No. 23/2014, certain final consumers will be exempted from the obligation to pay the green certificates value for part of their energy consumption. The requirements for qualifying for the exemption, as well as the exempted quantities have been approved through Government decision and authorised by the European Commission on 15 October 2014.

12. What are the rules for trading renewable power?

Renewable power is traded following the general trading rules described above. However, in accordance with Law No. 23/2014, as of 17 March 2014, the following categories of producers may conclude power sale-purchase agreements by means of direct negotiations with the suppliers of the final consumers: (i) the power producers operating power plants accredited for the green certificates support scheme, the aggregated capacity whereof does not exceed 1 MW per producer; and (ii) the power producers operating high efficiency cogeneration plants based on biomass, the aggregate installed capacity whereof does not exceed 2 MW per producer.

In addition, as per the latest amendment of the Renewable Energy Law, renewable power producers operating power plants with installed capacity (a) between 1 MW to 3 MW per producer and (b) between 2 MW to 3 MW per producer in case of high efficiency cogeneration based on biomass, which benefit from the support scheme and qualify as small and medium sized enterprises under the law, may conclude electricity sale-purchase agreements through direct negotiation.

Furthermore, the power generated from renewable energy sources in power plants having an installed capacity of no more than 1 MW or 2 MW, in case of high efficiency cogeneration plants, can be sold at regulated prices to be further established by ANRE. The trading conditions and the regulated prices shall be notified to the European Commission. The quantity of power sold at regulated prices shall not benefit from the green certificates promotion system . Likewise, a measure envisaged by the recent legislation amending the Renewable Energy Law is the implementation of a new State aid scheme relying on regulated prices for each type of technology, aimed at supporting generation of electricity from renewable energy sources in units having

an installed capacity of less than 500kW. The State aid scheme should be drafted by ANRE together with the competent ministry within 90 days as of the entry into force of the latest amendments to the Renewable Energy Law and approved by Government decision within another 30 days.

Until the fulfillment of the national targets regarding the percentage of power obtained from renewable energy sources out of the total final consumption, the power produced from renewable sources which benefits from the promotion system may be traded only with a view to cover the gross final consumption of power in Romania.

13. What are the rules for green certificates trading?

GEO No. 57/2013 introduces the same principles as those imposed by the Energy Law in 2012 for the power trading: green certificates must be traded in a transparent, centralised and non-discriminatory manner, on the centralised markets managed by OPCOM. Consequently, as of 1 July 2013, the green certificates may no longer be traded through sale purchase agreements concluded by means of direct negotiations.

Nevertheless, Law No. 23/2014 has implemented an exception to such rule, namely the same producers listed under the previous item (which may sell power to the final consumers' suppliers further to direct negotiations) may also sell the green certificates based on directly negotiated agreements concluded with the suppliers of the final consumers. Furthermore, according to GEO No. 57/2013, the green certificates may be traded solely by renewable power producers and by the power producers/suppliers who have the obligation to acquire a certain quota of green certificates, holders of power supply license which do not fall under the acquisition obligation being excluded.

For the period 2008-2025, the trading value of the green certificates varies from EUR 27 (minimum value) and EUR 55 (maximum value) per green certificate; starting from 2011, such values are indexed with the average inflation rate of the Euro zone within the European Union calculated for the previous year and communicated by Eurostat. For the year 2016, such indexed values amount to EUR 29.3971 and EUR 59.8856 respectively.

14. Are there any specific rules regarding renewable energy projects having an installed capacity exceeding certain threshold?

As per the 2011 form of the Renewable Energy Law, developers of power plants generating renewable energy which have an installed capacity of more than 125 MW

shall be subject to a detailed assessment to be performed by the European Commission and shall be entitled to benefit from the support scheme only after the completion of such assessment. In this case, ANRE may modify the number of green certificates to be awarded to the developer of the respective power plant, in accordance with the provisions of the authorisation decision of the European Commission.

However, producers which on the date of entry into force of GEO No. 88/2011 (i.e., 19 October 2011) already operated or benefited from a connection agreement for power plants generating renewable energy that have an installed capacity of more than 125 MW shall be accredited by ANRE, and be entitled to receive the number of green certificates provided by the Renewable Energy Law for a period of 24 months. Such producers have the obligation to notify the European Commission within three months as of accreditation, and any positive differences between the number of green certificates received during the 24 month period and that provided by the authorisation decision of the European Commission shall be settled within 24 months as of such decision.

However, meanwhile, new EU guidelines have been issued which raise the 125 MW threshold to 250 MW and, upon Law No. 122/2015, the Renewable Energy Law was aligned with such EU guidelines.

15. Are there any difficulties encountered by developers of renewable energy projects in securing the access to the grid?

Considering the limited capacity of the Romanian power grids, access thereto proved to be one of the crucial steps in the development of a new power generation project in Romania. The projects for which grid connection permits have been issued and grid connection agreements have been concluded (and which are not yet developed) significantly exceed the capacity of the power grid.

As such, most of the grid connection permits issued during the last period of time (especially those approving the connection to grids located in the most overloaded grids, i.e., Dobrogea, Moldova and Banat) provide that the connection to the grid is conditional upon the performance of specific reinforcement works to the existing transmission/distribution power grid. To this end, as per the recently enacted Regulation for connecting users to the public interest power grids[10], to the extent that the generation capacity has an installed capacity of more than 1 MW and for the connection thereof to the grid, grid reinforcement works are necessary, the beneficiary of the grid connection permit has the obligation to provide financial guarantees to

10 Approved by ANRE Order No. 59/2013, which was published in the Official Gazette of Romania, Part I, No. 517 of 19 August 2013, and was subsequently amended and supplemented.

the benefit of the grid operator. Until 31 December 2014, the maximum value of the guarantee could have not exceeded 20% of the connection tariff; following such date, the maximum value should be revised annually upon the proposals of the grid operators.

PROMOTION OF THE PRODUCTION OF HIGH EFFICIENCY COGENERATION POWER

1. What is the legal framework governing the support scheme for the promotion of high efficiency cogeneration power?

The system for promoting high efficiency cogeneration of power and heat, was initially regulated at European level by Directive 2004/8/EC[1], and has been implemented in Romania starting with 2007 by Government Decision No. 219/2007[2]. After the high efficiency cogeneration support scheme has been authorised by the European Commission, ANRE has adopted, during the course of 2010 and 2011, extensive secondary legislation for the implementation thereof, the scheme being applied as of 1 April 2011. At the end of 2012, Directive 2004/8/EC was repealed and the principles regarding the promotion of the production of high efficiency cogeneration power were taken over by Directive 2012/27/EU[3]. Consequently, in October 2015, the Government Decision No. 219/2007 was amended.

Note should be made that producers of power and heat from cogeneration which use renewable energy sources have the obligation to choose one of the support schemes, i.e., either the system of mandatory quotas combined with green certificates trading, or the bonus support scheme for high efficiency cogeneration.

2. What are the main features of the support scheme?

The support scheme for high efficiency cogeneration is administered by Transelectrica and entails the awarding of bonuses to qualified power producers, on a monthly basis, for each MWh of power produced from high efficiency cogeneration and delivered into the grid, irrespective of whether the power is sold on the competitive or on the

1 Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC has been published in the Official Journal of the European Union No. L 52 of 21 February 2004.

2 Government Decision No. 219/2007 on the promotion of cogeneration based on the demand of useful heat, published in the Official Gazette of Romania, Part I, No. 200 of 23 March 2007.

3 Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and Directive 2006/32/EC has been published in the Official Journal of the European Union No. L 315 of 14 November 2012.

regulated market.

ANRE establishes, on an annual basis, the producers who benefit from the support scheme, the amount of the bonus to which each is entitled, and the quantities of high efficiency power benefiting from the support scheme. The bonus to be awarded to each producer may not exceed the annual reference bonus which has been approved by the regulatory authority for the entire applicability period of the scheme depending on the type of fuel used in the cogeneration process (i.e., solid fuels, gas fuel taken over from the transmission system and gas fuel taken over from the distribution system). The bonuses are granted from the monthly contributions collected by Transelectrica (the value of which is established by ANRE) from all power consumers (through their suppliers). Suppliers which import power produced in high efficiency cogeneration, certified as such through guarantees of origin, and deliver it directly to consumers in Romania are entitled to the reimbursement of the contributions they paid.

ANRE analyses the costs and revenues corresponding to the high efficiency cogeneration activity estimated for the next year by the producers benefiting from the support scheme. Should the analysis reveal overcompensation, ANRE may diminish the value of the bonus to be granted for the respective period and, should the analysis prove that the cogeneration unit has been fully depreciated, no bonus shall be granted. Additionally, ANRE will assess in respect of each beneficiary whether the bonus granted in the previous year gave rise to overcompensation and, if so, the concerned beneficiary shall have to pay the amounts indicated by ANRE. The first period for which ANRE assessed the overcompensation was of three years (2011-2013), the analysis being completed at the beginning of 2014; starting with 2014, overcompensation is analyzed on an annual basis.

3. What is the application period of the support scheme?

The support scheme is applicable for the period 2011-2023, provided that no producer can benefit from it for more than 11 consecutive years. Should the aggregate capacity of combined heat and power units benefiting from the scheme reach 4000 MW, then only high efficiency cogeneration units replacing the existing ones shall be eligible for the support scheme.

4. Are there any specific rules for trading the power by the producers benefiting from the support scheme?

In view of benefiting from the bonus, the producers have the obligation to trade the high efficiency power on the competitive power market. The remaining quantity which

was not sold on the competitive market may be traded on the regulated market for regulated prices set yearly by ANRE at the level of 90% of the average power trading price on the Day Ahead Market, during the previous year.

HEAT

Legal framework and regulatory authority

1. What is the legal framework governing the heat provision service?

The heat provision service is regulated mainly by Law No. 51/2006 on the municipal services of public utility and by Law No. 325/2006 on the heat provision public service.

2. Which are the main regulatory authorities in heat provision sector?

The main authority regulating the heat provision sector is the National Authority for Regulating the Community Services of Public Utilities (ANRSC), a public body of national interest, subordinated to the Ministry of Regional Development and Public Administration. However, the production of heat in cogeneration falls under the exclusive regulatory competence of ANRE which is responsible for aspects such as licensing process, approval of prices and tariffs and the elaboration of specific provisions to be inserted in the framework agreements and in the documentation issued by ANRSC.

Organisation of the heat provision service

1. Who is responsible for the management of the heat provision service?

The management of the heat provision falls under the competence of the local public administration authorities or of the community development associations (i.e., associations established by two or several administrative territorial units for the purpose of jointly providing the community services of public utilities).

2. What are the different systems for managing the heat provision service?

The local public administration authorities and the community development associations can decide to carry out the management either directly or by delegation to third parties.

The delegated management is awarded either through concession or through public-private partnership.

3. Can there be more operators involved in the performance of the heat provision service within the same territorial administrative unit?

All activities part of the heat provision service corresponding to a single territorial administrative unit (i.e., heat generation, distribution, transmission and supply) must be carried out by a single operator.

Exceptionally, based on the decision of the local public administration authorities or the community development associations, the heat generation activities may be carried out by several operators.

4. What are the licensing requirements for carrying out the activities corresponding to the heat provision service?

All activities in the heat sector (heat generation, transmission, distribution and supply) may be performed based on the license issued by ANRSC.

By way of exception, the license for producing heat from cogeneration falls under the exclusive competence of ANRE.

Considering the general requirement for a single operator within a territorial administrative unit, only one license is issued for all activities in the heat sector.

However, if several heat producers are operating within the same territorial unit, or if the heat production is carried out as cogeneration, a single license is issued by ANRSC for heat transmission, distribution and supply and separate generation licenses are issued by ANRSC or by ANRE, as the case may be.

NATURAL GAS

Legal framework and regulatory authority

1. What is the legislation governing the Romanian gas sector?

The gas sector is regulated mainly by Title II of the Energy Law. The Energy Law implements Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Gas Directive)[4].

2. Which is the authority regulating the natural gas sector?

The Romanian natural gas sector is regulated mainly by ANRE. Limited competencies are also granted to the National Agency for Mineral Resources (ANRM) as regards the awarding and execution of the oil concession agreements concerning exploration, development and exploitation activities and operation of the national transmission system and the underground storage facilities.

Natural gas market

1. Who can carry out activities in the natural gas sector and what are the licensing requirements?

The participants in the natural gas sector are the operators licensed to perform the activities specific to such sector.

Generation can be carried out by legal entities (i) having concluded with ANRM a concession oil agreement in respect of a defined perimeter, (ii) holding a setting up authorisation and an operation license for the upstream pipelines related to the generation activity and (iii) holding a gas supply license. The main producers of gas on the Romanian market are Romgaz and Petrom, which ensured almost 94.85% of the internal gas production of 2015, with the remaining 5.15% covered by four other local producers.

4 The Gas Directive was published in the EU Official Journal L 211 of 14 August 2009.

During 2015, the internal production of gas covered around 97.61% of the gas consumption, the remaining 2.39% having been ensured from the imports contracted mainly by GDF Suez Energy Romania (now Engie), and E.ON Energie Romania.

Storage entails all activities and operations performed for or in connection with the reservation of storage capacities in the underground storages and for the injection, storage and extraction of gas from these capacities.

The gas storage is a natural monopoly activity which may be carried out subject to concluding a concession agreement for the underground storage facilities with ANRM, and to obtaining the corresponding license from ANRE. Currently, there are two operators of the gas storage service, namely Romgaz and Depomureș.

Transmission (i.e., transportation of gas through high pressure grids, with the exception of upstream pipelines and high pressure distribution grids for delivery to customers) is also a natural monopoly activity carried out by Transgaz. Based on the concession agreement concluded with ANRM, Transgaz operates the national transmission system and related assets belonging to the public domain of the State.

Distribution entails the transportation of gas through a system of distribution pipelines for delivery to customers. Gas distribution is a monopoly of entities holding (i) the exclusive concession over the distribution service in a certain area based on a concession agreement awarded by and concluded with the Ministry of Economy and (ii) a distribution license issued by ANRE. The main operators of the distribution service are Distrigaz Sud Rețele and E.ON. Gaz Distribuție.

Supply is carried out by ANRE licensed operators. As a matter of principle, the suppliers have the right to carry out transactions on the competitive market under negotiated terms and conditions, but part of the gas supply continues to be regulated by ANRE. In view of protecting end customers in case the supply license of their suppliers is withdrawn or in any other cases identified by ANRE where end customers no longer have any source of gas supply, the special category of last resort suppliers has been established. Such suppliers are nominated by ANRE and perform the gas supply activity based on regulated agreements and against regulated prices.

2. Are there any unbundling and independency requirements imposed to the activities in the power sector?

In line with the principles laid down by the Gas Directive, the Energy Law imposes the unbundling of gas distribution and supply activities, as well as independency criteria to be observed by Transgaz and underground storage operators.

The unbundling requirements apply to the vertically integrated undertakings carrying out both distribution and supply activities, with the exception of the gas distributors serving less than 100,000 connected end customers. Such undertakings are placed under the obligation to become independent from activities not connected to gas distribution, at least in terms of legal form (legal unbundling) and of the organisation and decision making process (functional unbundling). Following such legal requirements, each of the main distribution and supply companies (Distrigaz Nord and Distrigaz Sud) was divided into two separate companies, one of which carrying out gas distribution and the other carrying out gas supply (Distrigaz Sud Rețele and GDF Suez Energy Romania, in the case of Distrigaz Sud, and E.ON. Gaz Distribuție and E.ON. Energie România, in the case of Distrigaz Nord)[5].

As regards Transgaz, the Energy Law imposes the organisation and operation thereof as per the model of the independent system operator, certified by ANRE, and establishes independency criteria to be observed in order to ensure an effective separation from distribution and supply activities. In August 2014, Transgaz has been certified by ANRE as "independent system operator".

Storage operators, part of vertically integrated undertakings, are bound to observe independency criteria in terms of legal form, organisation and decision making process from activities not connected with gas transmission, distribution and storage. Such limitation applies only as regards the storage facilities that are technically and/or economically necessary in order to ensure an efficient access to the system for the purpose of supplying customers.

3. To what extent is the natural gas market liberalised?

The Romanian natural gas market was fully opened starting 1 July 2007, further to a gradual process begun in 2001.

Nevertheless, ANRE continues to regulate several segments of the gas market, as follows: (i) the natural monopoly activities (i.e., transmission, storage and distribution of gas) and ancillary activities, (ii) the gas supply to end customers until full market liberalisation; and (iii) the gas supply provided by the last resort suppliers. Activities on the regulated market are performed against prices and tariffs established by ANRE.

In line with EU regulations, it is intended to progressively liberalise the natural gas supply market, for which purpose the Energy Law provides for gradual elimination of the regulated prices for end customers.

5 Similar provisions were also reflected in the former Energy Law which relied on now repealed Directive 2003/55/EC and which imposed the unbundling of the distribution and supply activities by 30 June 2007.

As such, in respect of industrial customers, the market is fully liberalised as of 1 January 2015, while in respect of household customers, the full liberalisation should occur by 30 June 2021.

Until full market liberalisation and the convergence of the price of imported gas with the price of domestic gas, a specific structure of import/domestic gas shall be established by ANRE for the quantities of natural gas meant for the consumption of household customers and heat producers (only the quantities of natural gas used to generate heat in cogeneration/heat plants meant for the population).

To this end, the internal gas production must be made available to suppliers for covering with priority the consumption of household customers and heat producers (only the quantities of natural gas used to generate heat in cogeneration/heat plants meant for the population), in accordance with ANRE regulations and observing the price liberalisation schedule, suppliers and non household customers benefiting from such quantities of natural gas being bound to observe its dedicated purpose of use; the remaining own production, save for the quantity of natural gas used for technological consumption, shall be made available on the competitive market.

The acquisition price of domestic natural gas for household customers and heat producers (only the quantities of natural gas used to generate heat in cogeneration/heat plants meant for the population) is determined by means of Government decision in accordance with the price liberalisation schedule; currently, until 1 July 2016, such price is RON 60/MWh.

4. What are the rules for trading natural gas?

On the competitive market, transactions are performed (i) under a wholesale system or (ii) under a retail system (for acquisitions of gas by end customers for their own consumption). On the wholesale market, transactions are performed as follows: (i) bilateral agreements between operators in the gas sector, (ii) transactions on the centralised markets (i.e., the Centralised Market of Bilateral Agreements operated by OPCOM and the one operated by the Romanian Commodities Exchange), (iii) other types of transactions/agreements. On the retail market, gas supply is performed (i) either based on negotiated agreements or (ii) on standard offers.

As per the recently enacted amendments to the Energy Law[6], between 1 January 2015 and 31 December 2016 licensed suppliers have the obligation to conclude transactions on the centralised markets, in a transparent and non-discriminatory manner for the

6 Within the meaning of the Energy Law, an affiliated economic operator means any other economic operator which, directly or indirectly controls or is controlled by the said economic operator or is under joint control together with such operator.

sale/acquisition of a minimum quantity of gas, in accordance with the secondary legislation issued by ANRE. Similarly, between 15 July 2014 and 31 December 2018, Romanian natural gas producers or their affiliates , as the case may be, have the obligation to conclude transactions on the centralised markets in Romania in a transparent and non-discriminatory manner for the sale of a minimum quantity of natural gas resulted from their own production and meant for internal consumption, in accordance with the secondary legislation issued by ANRE.

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