TUCA ZBARCEA
ASOCIATII

Better Business

IN ROMANIA

Published by Țuca Zbârcea & Asociații

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BETTER BUSINESS IN ROMANIA

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. 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 forced 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 challenges of doing business in a global marketplace, 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. What 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. Which 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. Which 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 company (JSC) and the limited liability company (LLC), due to the flexible rules governing their conduct and 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 40), formed by contributions in kind and in cash. Contributions in receivables held towards third parties 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 (approximately EUR 20,000). 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. Which business vehicles are most frequently established by investors in Romania? Which 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.

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 as a confidential

matter 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.

In the absence of a legal framework to condition the contents of a shareholders' agreement, shareholders enjoy an absolute freedom 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. Which are the premises of the shareholders' liability?

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. Furthermore, there are specific rules for keeping the shareholders liable under the insolvency laws and for tax liabilities.

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. Which 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 effective 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. Which 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 analysing 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? Are there special requirements 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. Which methods for increasing and decreasing the share capital of the company can be used?

The registered share capital may be reduced by: reducing the number of shares; reducing the nominal value of shares or participations; purchasing the company's own shares, followed by their cancellation (in case of JSC). Also, should the decrease not be caused 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 for a consecutive period of two years at least two of the following criteria have to prepare their financial statements in accordance with the EC IVth Directive and have them audited:

- The aggregate value of the assets is at least RON 16.000.000 (approximately EUR 3.5 million);
- Net turnover amounts to RON 32.000.000 (approximately EUR 7 million); 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 or which conduct their business in certain specified sectors (i.e. credit institutions, insurance companies, national companies, listed companies, etc.) and to companies opting for the two-tier management system.

BETTER BUSINESS IN ROMANIA

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. Which 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, their pre-emption right shall have priority over the other neighbours', provided the forest land of the State or territorial administrative unit is in the public domain. The seller must 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. For real estate transfers including constructions of any type and their related lands, by means of *inter vivos* deeds, as well as in case of lands of any type (without construction), individuals owe a tax which is calculated by applying the quota of 3% over the taxable income. The taxable income is determined by deducting from the value of the transaction the non-taxable amount of RON 450.000.

Such tax is not due in the following cases:

- The ownership right over lands and constructions was acquired based on special legislation;
- The ownership right was acquired by means of donation between the relatives and the affinities up to the 3rd degree inclusive, as well as between spouses;
- In the case of cancellation with retroactive of the transfer deeds;
- The finding based on art. 13 of Law No. 7/1996 regarding buildings subject to systematic registration where proof of the ownership right is lacking, which shall be subject to the registration of factual possession in the technical documents;
- For transfer of ownership over real estates from the personal patrimony, according to the provisions of Law No. 77/2016 on the payment of immovable property in order to settle the obligations assumed by way of credits, for a single payment transaction.

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 returned 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 the provisions of 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. Which 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. Which 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. Which rules of jurisdiction govern the 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 timeframe 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. Which means of evidence are 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. Which interim and urgent measures are 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. Which 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. Which 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. Which 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. Which 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. Which 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 6-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 Court of Appeals having jurisdiction over the place of the arbitration. The court settling the action for annulment may stay the enforcement of the award; motions for a stay require the placing of a bond by the interested party. The decision of the court is subject to 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. Which 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 (e.g. such as loan contracts concluded with banks), or documents authenticated by the notary public, provided certain conditions are met.

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

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

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. Which 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 the 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 having 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. Which conditions are 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. Which 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 the 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. What is the 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.

Considering Romania's membership 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.

Individual 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. Which is the maximum trial period permitted by the 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 public holidays under the law: 1 and 2 January; the first and second Easter days; 1 May; 1 June, the first and second Pentecost days; 15 August; 30 November; 1 December; the 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 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. Which 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 or a working permit.

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. Which types of labour conflicts are regulated?

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, Utilities Procurement, Concessions & Public-Private Partnerships

1. What is the relevant legislation regulating public procurement and concessions?

The 2004 European legal framework on public procurement and concessions was reviewed by the representatives of the European Commission and the findings and conclusions of the review were comprised in a report called the Monti Report.[1] Pursuant to the Monti Report, the European Commission enacted a document called "Strategy 2020 a strategy for smart, sustainable and inclusive growth" ("Europe 2020 Strategy") aiming to achieve a sustainable future: smart growth – developing an economy based on knowledge and innovation; sustainable growth – promoting a more resource efficient, greener and more competitive economy; inclusive growth – fostering a high-employment economy delivering social and territorial cohesion. These three priorities are mutually reinforcing and they offer a vision of Europe's social market economy for the 21st century. These priorities are put in place by seven flagships referring to the actions to be taken by the Member States for the transformation of Europe in the next decade.

All those priorities and flagships are implemented in the Directives recently adopted in the public procurement field:

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC;
- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC;
- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

1 The former President of the European Commission, Jose Manuel Barroso, sent to Professor Mario Monti a letter called "Mission letter from the President of the European Commission" on 20 October 2009, asking him to prepare a report containing options and recommendations for an initiative to relaunch the Single Market as a key strategic objective of the new Commission.

Romania enacted a legislative package, comprised of Law No. 98/2016 on public procurement ("Public Procurement Law") for transposing Directive 2014/24/EU, Law No. 99/2016 on utilities procurement ("Utilities Procurement Law") for transposing Directive 2014/25/EU, and Law No. 100/2016 on works concession and services concession ("Concession Law") for transposing Directive 2014/23/EU. The new legislative package on public procurement was supplemented by the adoption of Law No. 101/2016 on remedies and review procedures and the organisation and functioning of the National Council for Solving Complaints (the "Remedy Law") transposing Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, and Council Directive 92/13/EEC of 25 February 1992 coordinating 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 telecommunications sectors.

Also, for the purposes of implementing the Public Procurement Law, the Utilities Procurement Law, and the Concession Law, the following legislative acts were adopted:

- Government Decision No. 395/2016 approving the Methodological Norms for the application of the provisions on the award of the public contract/framework-agreement as provided for by Law No. 98/2016 on public procurement (the "Norms for the application of the Public Procurement Law");
- Government Decision No. 394/2016 approving the Methodological Norms for the application of the provisions on the award of the sectoral contract/framework-agreement as provided for by Law No. 99/2016 on sectoral procurement (the "Norms for the application of the Utilities Procurement Law");
- Government Decision No. 867/2016 approving the Methodological Norms for the application of the provisions on the award of the works concession and services concession (the "Norms for the application of the Concession Law").

A separate piece of legislation was enacted to regulate the award and the execution of the public-private partnerships contracts, namely Law No. 233/2016 on public-private partnerships ("Public-Private Partnerships Law").

2. What are the main novelties brought by the Public Procurement Law?

The reform of public procurement brought by the Public Procurement Law is substantial, both in relation to the matters concerning the award procedures and in relation to the implementation stage of the public procurement contracts.

Amongst these novelties, for the first time in the European legal framework on public procurements, the market consultation was expressly regulated as a tool for contracting authorities to prepare a procurement and to inform the economic operators of their future projects and requirements. The Norms for the application of the Public Procurement Law provide that market consultation will be applied in case of highly complex procurements or procurements in areas of advanced technology. Also, the Norms for the application of the Public Procurement Law regulate the market consultation mechanism. Another novelty is the full use of electronic means, as a rule, in the application of all the award procedures, including the negotiation stage which may also be carried out by electronic means. By exception, specific categories of contracts were expressly identified, which cannot be awarded by electronic auction.

For the first time in the European framework on public procurements, the European Commission will have implemented and managed an electronic system, called *e-Certis*, comprising information on certificates and other attestations that are most commonly requested by the contracting authorities, and which can enable small and medium-sized enterprises of the Member States to take part in the award procedures.

Also, in order to facilitate the participation of the small and medium-sized enterprises of the Member States in the award procedures, the European framework on public procurements introduced the drafting of official lists of economic operators to be invited to take part in the award procedures, which is expected to streamline participation in the award procedures.

As regards the evaluation of tenders/applications, by contrast to the repealed legislation in the public procurement field, the novelty brought by the Public Procurement Law is that the outcome of the evaluation shall be communicated to the tenderers/candidates after each stage of evaluation, and the interim evaluation reports shall be published in SEAP in a dedicated section.

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

The contracting authorities which shall apply the provisions of the Public Procurement Law are:

- Public authorities or public institutions, acting at a central, regional or local level;
- Any other body acting at a central, regional or local level, having legal personality, which was established for meeting needs in the general interest without commercial or industrial character, and which meets at least one of the following conditions:
  - It is financed, for the most part, 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/under 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;
    - Have an administrative, managerial or supervisory board, more than half of whose 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 abovementioned contracting authorities.

The contracting entities which shall apply the provisions of the Utilities Procurement Law are:

- Contracting authorities;
- Public undertakings;
- Any legal subject, other than those referred to above, 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;
- Any association comprising at least one of the contracting entities listed above.

The contracting entities which shall apply the provisions of the Concession Law are:

- Contracting authorities;
- Public undertakings;
- Any legal subject, other than those referred to above, which operates on the basis of exclusive or special rights granted to pursue any of the relevant activities.

4. 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 the Public Procurement Law/Utilities Procurement Law shall 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 the Public Procurement Law/Utilities Procurement Law;[2]
- Public contracts only partially governed by the Public Procurement Law/Utilities Procurement Law, having a special procurement regime;
- Public contracts that can be awarded directly, without following the procedural requirements set out by the Public Procurement Law/Utilities Procurement Law.

5. 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 submit applications, 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;
- The competitive 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;
- The innovation partnership, wherein the contracting authority carries out successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works;
- A simplified procedure, applicable to cases where the values of the contract to be awarded are below the regulated thresholds, but greater than the threshold for the direct purchase;
- 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 prize, and which is more often employed in domains such as land development, town planning and landscaping, architecture or data processing.

2 The contracting authority has the right to directly purchase products, services or works, if the estimated value of the purchase is not higher than the RON equivalent of EUR 30,000 (net of VAT) per purchase of products/services, or of EUR 100,000 (net of VAT), per purchase of execution of works.

6. What are the novelties regarding the awarding procedures?

In order to implement the priority areas of the Europe 2020 Strategy, namely a smart, sustainable and inclusive growth related to the research and innovation field, a new award procedure was introduced, i.e. the "innovation partnership", used if the contracting authorities intend to purchase innovative works, services, products or processes, given that the solutions available on the market, at any given time, do not satisfy the contracting authority's needs.

7. Must public procurement procedures be publicised?

In view of ensuring the necessary transparency in awarding public procurement contracts, mandatory rules require that the tender notice, invitation to tender and award notice must be published. A prior information notice 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.

As a novelty, the contracts are awarded by electronic auction and the evaluation must be performed automatically through the electronic means employed.

8. Is participation in procedures for the awarding of procurement contracts more flexible than before?

The use of the European Single Procurement Document ("ESPD") was introduced with a view to removing the administrative burden faced by economic operators submitting tenders/applications. Thus, the ESPD replaces the tenderer's/candidate's former declaration on own responsibility, and the ESPD template was approved by Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document. Pursuant to the Norms for the application of the Public Procurement Law, the contracting authority shall generate an electronic ESPD filled with the information required by the tenderers with respect to the qualification and selection criteria.

9. Which are the grounds for disqualification?

All grounds for rejecting an economic operator from the awarding procedures provided by Directive 2014/24/EU were regulated under the national legislation as being

compulsory, noting that, although a tenderer/candidate may, *in abstracto*, fall within one of the exclusion cases, the same has the possibility to prove its reliability *in concreto*. A special emphasis was placed on the self-clearing actions which shall be scrutinised by the contracting authorities, on a case-by-case basis. Another novelty is the active role played by the Competition Council, as it will be requested by the contracting authorities to issue its point of view prior to taking decisions to exclude economic operators on grounds of possible breaches of the competition rules. The Competition Council's involvement in drafting a guide to draw attention to the best practices in the economic operators' submission of a joint tender to the award procedures should also be noted.

The evaluation committee appointed by the head 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 specifications 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.

10. Which awarding procedures are applicable for contracts with an estimated value below the thresholds provided by Directive 2014/24/EU and transposed into the Public Procurement Law?

A more flexible awarding procedure was regulated for contracts having an estimated value below the thresholds provided by Directive 2014/24/EU - which was transposed into the Public Procurement Law - but exceeding the thresholds which entitle the contracting authorities to organise direct procurement procedures. A simplified procedure was introduced, with shorter periods for submitting and evaluating the tenders. Such simplified procedure can be conducted in one or several stages which may also involve a negotiation stage.

As regards the direct purchase of goods and services having an estimated value less

than approximately EUR 30,000 and, respectively, approximately EUR 100,000 for works, the contracting authorities are encouraged to use electronic catalogues which display and organise information in a way that is common to all participating tenderers, and can be electronically processed.

11. Do the social services benefit from a special regime of procurement?

The Public Procurement Law mirrors the regulation of a light regime for the procurement of a special category of services, also referred to as "services to persons", by establishing a special procurement regime, due to the important role of such services in social protection, healthcare and education.

Specifically, for the procurements having an estimated value above the threshold of the RON equivalent of EUR 750,000 net of VAT, the sole obligations of the contracting authorities are to make known their intention to purchase by means of a contract notice or by means of a prior information notice, which shall be published continuously, and to publish an award notice.

As regards the procurements having an estimated value less than the threshold of the RON equivalent of EUR 750,000 net of VAT, the contracting authorities shall apply their own simplified award procedures by observing the public procurement principles.

12. 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 distinction between Romanian and foreign bidders, foreign bidders are not bound to establish any subsidiary or branch in Romania to participate in 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 tax regulations.

13. 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 minimum 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.

The contracting authority must ensure 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 persons. 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.

14. Which are the authority's disclosure obligations and the parties' right of access to information during public procurement awarding procedures? Are there any 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.

15. Which are the rules for amending a public procurement contract?

The concept of "substantial amendment" of a contract is introduced as a benchmark for the amendment thereof, in the sense that only those amendments that are not substantial are allowed. Also, the cases and requirements that must be fulfilled in order to amend a public procurement contract without organising a new award procedure are

regulated, including the cases where the replacement of the initial contract is allowed. Another novelty is the possibility to increase the value of a public procurement contract up to a certain ceiling, without analysing whether such amendment could be deemed substantial.

16. Which are the award criteria to be applied for the award of public procurement contracts?

Unlike the previous procurement legislation which regulated the "most economically advantageous tender" as a distinct award criterion alternative to the "lowest-price" award criterion, the Public Procurement Law regulates the "most economically advantageous tender" as a general concept which may be implemented using several award criteria, namely "the lowest price", "the lowest cost", "the best price-quality ratio", "the best cost-quality ratio". A series of evaluation factors have been established to achieve procurements based on relevant quality criteria.

17. What are the novelties regarding subcontractors?

As a novelty in the field of public procurement, the law introduces the possibility for the contracting authority to make payments for the corresponding part executed by the subcontractors. The Norms for the application of the Public Procurement Law regulate the payment method which will be used for the corresponding part executed by the subcontractors.

Also, the conditions for appointing a new subcontractor or to replace a subcontractor during the execution of a public procurement contract are clearly defined by the Norms.

18. Does the Public Procurement Law regulate the termination of public procurement contracts?

For the first time in the European legal framework in the public procurement field, the cases where a contracting authority may unilaterally terminate a public procurement contract were regulated and thus transposed into the Public Procurement Law, as follows:

- If a material change to the public procurement contract was concluded;
- If the contractor found itself in one of the cases that triggered the exclusion from the awarding procedure;
- If a decision was enacted by the Court of Justice against the contractor.

19. What are the novelties brought by the Utilities Procurement Law?

The Utilities Procurement Law regulate the procurement by entities operating in the water, electricity, heat, gas, transport and postal services sectors, ports and airports, as well as in the exploitation of a geographical area.

The law defines the concept of "utilities procurement", as well as the concept of "contracting entity" and the categories of entities held to apply the Utilities Procurement Law by organising the relevant award procedures.

As establishing the existence of "exclusive or special rights" proved difficult in practice, the Utilities Procurement Law identifies benchmarks for application.

20. Which are the changes brought by the Concession Law?

In addition to public procurement issues, the Concession Law introduces a series of novelties with respect to the legal structuring of concession projects. For the first time in the concession legislation, the operating risk has been defined by identifying its characteristics. The fact that a concession contract always implies a significant transfer of the operating risk to the concessionaire was also clarified.

Also, for any contract exceeding five years, the duration of the concession is determined by taking into account the period necessary to the recoupment of investments made by the concessionaire, to the recovery of the costs incurred with the operation of works or services, and to achieving a reasonable profit on invested capital.

In addition, with respect to the awarding procedures, the contracting entities shall apply, as a rule, the open tender procedure or the competitive dialogue procedure. As a novelty, a second stage consisting in the negotiation of admissible tenders may also be applied during an open tender procedure. By way of exception from the two procedures mentioned above, and in the cases expressly stipulated by the law, negotiation without prior contract notice may also apply.

As regards the awarding criteria, concession contracts are awarded based on the most cost-effective offer, assessed based on objective criteria to ensure real competition. The objective criteria relate to the degree to which certain risks are undertaken by the concessionaire, the level of the updated payments made by the contracting authority, the level of user charges, the duration of the concession, and innovation.

21. Which are the mechanisms enabling the challenge of an awarding procedure?

The disputes arising during the procedures for awarding a public procurement contract, a sectoral procurement contract or a concession contract shall be settled by administrative and jurisdictional means, before the National Council for Solving Complaints (the "Council") or in court, before the courts of law, pursuant to the Remedy Law.

The novelty brought by the Remedy Law is the prior notice procedure. Thus, before referring to the Council or to the competent court, the aggrieved bidder has to notify the contracting authority of the remedy, in whole or in part, of the alleged breach of legal provisions. The contracting authority shall communicate within three days whether it passes the remedial actions; if the contracting authority decides to pass the remedial actions, it shall be given a 7-day term to implement said actions.

The person that deems itself aggrieved by the reply received to the prior notice, the person that did not receive any reply or any person that deems itself aggrieved by the remedial measures passed by the contracting authority may file a challenge with the Council or before the court. If challenges are filed with both the Council and the court, they shall be joined and resolved in court.

A complaint may be filed against the Council's decisions with the competent court of law, without the possibility to change the procedural framework before the Council or file new claims. A final appeal may be filed against the judgment of the tribunal which ruled on the challenge on the merits.

In well-grounded cases and to prevent impending damages, both the Council and the court may determine the suspension of the award procedure. If the court orders suspension of the award procedure and/or the performance of the contract, the party requesting it shall deposit a court bond.

The Remedy Law regulates the right of any interested person to seek in court the nullification of the contract/addendum concluded in breach of the validity conditions required under the public procurement legislation, the sectoral procurement legislation or the concession contracts legislation. The cases in which the court may find the nullity of the contract/addendum and order *restitutio in integrum* are identified.

22. Outlook

Further to adoption of the new legislative package on public procurement, concessions

and public-private partnerships which repealed the entire former legislation, significant changes will occur to ensure compliace with the scope of the new European directives and the priorities of Europe 2020 Strategy, 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 legislative package is to simplify the awarding procedure by allowing more flexibility, both to the contracting authorities and the economic operators.

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.

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.

In addition, Government Emergency Ordinance No. 39 of 31 May 2017 on actions for damages in case of breach of competition law (GEO 39/2017) provides an extensive procedure for cases where damages for anticompetitive behaviour are asked in court.

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 is of the passage of GEO 39/2017, which implements Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union and is part of the EU package legislation aimed at encouraging civil damages cases for breach of competition law.

The RCC is also currently focused on updating and fine-tuning the second-tier norms. This project is ongoing.

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 Member States or justifying an EU-wide interest (i.e. where the respective practice affects the internal markets' freedoms, or where the case has a novelty character at EU-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:**
  - 2016 - Five companies were sanctioned for bid-rigging arrangements in connection with a high profile governmental support project "the milk and the croissant" for school pupils;
  - 2015 - The RCC sanctioned 3 motor gas wholesalers with approximately EUR 3.7 million 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:**
  - 2015-2016 – the RCC sanctioned various vertical price fixing arrangements on the decorative coating/painting sector;
  - 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 (approximately EUR 35,000,000) for direct (minimum) price fixing during certain promotions. The RCC 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:**
  - 2016 – The RCC sanctioned the Romanian Chamber of Auditors for restricting competition by setting a minimum fee value. Apart from the EUR 182,000 fine, the RCC also imposed the Romanian Chamber of Auditors the obligation to eliminate the norms triggering the minimum fee value for services;

- 2014 - Four companies active in the oil and gas drilling industry were sanctioned for bid-rigging arrangements regarding bids organised by Romgaz. The fine amounted to RON 12.968.298 (approximately EUR 2,890,000). 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 - Bid rigging in public procurement procedures organised by the National Company for Highways and National Roads for the installation of markings on the national roads. Two consortia of companies acting in the road works sector were sanctioned with more than EUR 660,000 in fines;
- 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 amounting to 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. Which competition law requirements should companies consider 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 scope of the leniency policy and opened the procedure to 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.

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%. Companies that admit guilt during the hearings before the RCC Plenum at the latest may benefit of 10% to 30% fine reduction. This 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 (discrimination);
- 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 the 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 20 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 increased in 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 and not limited to only 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, the Competition Law allows the RCC to adjust the turnover thresholds triggering the notification requirement. Such adjustment requires prior 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 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. What authority regulates 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 which licensing requirements should be observed?

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 Oltenia.
- 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.
- Supply can be carried out by entities holding the power supply license issued by ANRE.[3] 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 independent from activities not connected to power distribution, at least in terms of legal form (legal unbundling), organisation and decision making process (functional unbundling).

3 The holders of an existing supply license may currently carry out both supply and trading activities.

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.[4]

As regards the TSO, the Energy Law imposes criteria to be observed for ensuring its independency from the power generation and supply activities in line with relevant EU legislation. As such, while initially (in August 2014), Transelectrica has been certified as "independent system operator", further to a reassessment carried out in 2015 by the European Commission, Transelectrica was certified as the transmission and system operator, as per the property separation model.

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. Which are the applicable 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 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

4 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.

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;
- Bilateral agreements executed on the Over the Counter Market;
- Transactions closed on the Day Ahead Market and Intra-Day Market operated by OPCOM and
- Transactions on the Centralised Market for the Universal Service.[5]

By way of exemption from the above, certain categories of renewable producers benefiting from the support system are allowed to conclude bilateral agreements (as presented herein below). As concerns import/export transactions, according to a new ANRE's official interpretation issued in 2015, 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 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.

However, only renewable projects which were commissioned or refurbished by the end of 2016 were eligible to benefit from the green certificates support scheme.

5 Such is the most recent centralised market administered by OPCOM and is destined to last resort suppliers for purchasing part of the electricity further sold on the retail market under regulated terms.

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).[6]

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)[7] and after the issuance by ANRE of secondary legislation for the implementation thereof.

The Renewable Energy Law has been amended by means of Government Emergency Ordinance No. 57/2013 (GEO No. 57/2013),[8] whereby severe limitations have been introduced to the support scheme effective as of 1 July 2013. Subsequently, 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)[9] and of Law No. 122/2015.[10]

Whereas the limitations introduced by GEO No. 57/2013 have led to dysfunctionalities of the green certificates market (in principle, an excess of green certificates which determined financial difficulties for producers) and considering also the ongoing concern for the financial impact on the final consumers (which bear the costs of such scheme), further changes have been recently enacted through Government Emergency Ordinance No. 24/2017 (GEO No. 24/2017).[11]

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

7 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.

8 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.

9 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.

10 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.

11 Government Emergency Ordinance No. 24/2017 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. 224 of 31 March 2017.

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.

These 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 and shall also consider any periods during which the application of the promotion system has been suspended or interrupted.

4. 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. Starting with 2014, these quotas were estimated, published and communicated by ANRE to the Government by 30 June for the subsequent year and approved by the Government within 60 days of the communication thereof by ANRE.[12]

However, further to the entry into force of GEO No. 24/2017, the above-mentioned quota mechanism was replaced by a new one to be applied as of 2017. Based on this mechanism, once every two years, ANRE shall calculate a so-called "annual static quantity of green certificates" (i.e. aggregate number of green certificates estimated to be issued by 2031 when the scheme closes, including those postponed from trading divided by the number of years left until the expiry of the application duration of the scheme) to be applied in the next two years, which will be approved by Government Decision. These annual static quantities of green certificates shall be relied upon by ANRE when calculating the mandatory annual green certificate acquisition quota. For the first two years (2017 and 2018), the annual static quantity of green certificates has been determined through GEO No. 24/2017.

12 For 2016, the quota approved by the Government was only 12.15% of the final gross power consumption on account that Romania was already close to reaching its 2020 target concerning the percentage of renewable power in the final gross power consumption.

5. 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. Subsequently, GEO No. 24/2017 extended the postponement from trading of two green certificates for each MWh of photovoltaic energy until 31 December 2024.

The gradual recovery of the postponed green certificates should have started on 1 April 2017 (for photovoltaic and hydro energy) and 1 January 2018 (for wind energy), with finalisation planned not later than 31 December 2020. However, as per the latest amendments introduced by GEO No. 24/2017, the recovery of the postponed certificates in the case of wind and hydro energy shall be made on monthly equal tranches starting with 1 January 2018 until 31 December 2025, while for photovoltaic energy, the recovery process of the postponed green certificates shall be made on monthly equal tranches starting with 1 January 2025 until 31 December 2030.

These 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.[13] 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.

Subsequently, no other similar reduction measures due to overcompensation have been introduced.

6. 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.

7. 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), the number of green certificates awarded to such producers is reduced in order to maintain the internal rate of return considered during the

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

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 measures are not applicable.

8. 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.

As per GEO No. 24/2017, as of 2018, the annual mandatory quota of green certificates acquisition is calculated based on the static quantity of green certificates and the final consumption of power for the respective year, without exceeding an average impact of EUR 11.1/MWh in the final consumer's invoice.

At the same time, GEO No. 24/2017 introduced specific rules for the calculation of the mandatory acquisition quota for the remaining of the year 2017 and further to such rules, ANRE estimated the quota applicable to the period April – December 2017 at 0.358 green certificates/MWh.

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

As of 2017, the amount to be paid by the power suppliers and producers failing to observe the annual mandatory quota of green certificates acquisition is EUR 70 for each green certificate that was not acquired. These amounts shall be collected by

the Environmental Fund Administration[14] 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 as follows:

- For first breach - a written warning;
- For the second breach registered in the last five consecutive years following the first breach - a legal fine computed as the maximum value of the green certificates annually established by ANRE and the number of non-acquired green certificates (up to a percentage of 90% of the mandatory acquisition quota);
- For the third breach registered in the last five consecutive years following the first breach (as indicated herein above), plus either a fine of up to 5% of the turnover registered in the previous year (for operators which are not accredited for the promotion system), or the suspension of the issuance of the green certificates up to the number of green certificates that were not acquired (for operators benefiting from the system).

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.

The invoiced value is calculated as the mandatory green certificates acquisition quota estimated by ANRE for that year multiplied with the invoiced quantity of electricity and with the price of green certificates (which is calculated as the weighted average price of the green certificates registered on the anonymous spot market in the previous month or such last available weighted average price). By 1 September each year, the invoiced value for the previous year is settled in equal tranches, depending on the mandatory green certificates acquisition quota established by ANRE for the previous year, the supplied electricity and the weighted average price of the green certificates used by the supplier to comply with its acquisition quota in the previous year, which price cannot exceed the weighted average price of the certificates registered on the anonymous spot market in the previous year.

However, as per GEO No. 57/2013, as amended by Law No. 23/2014, certain final consumers may be exempted from the obligation to pay the green certificates value for

14 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.

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.

11. Which rules apply to trading renewable power?

As a matter of principle, renewable power is traded following the general trading rules described above. However, in accordance with the provisions of GEO No. 24/2017, by 1 September 2017, ANRE should have issued specific regulations for the organisation and functioning of a new market, i.e. the centralised market for the power benefiting from the support system (an anonymous centralised market ensuring the competitive, transparent, public, non-discriminatory and centralised trading of renewable power associated with the green certificates corresponding to such power; on this market, the price of power should be established on a competitive manner, while the price of the associated green certificates would be the closing price of the last trading session which took place on the anonymous green certificates spot market); yet, up to date, no such regulation has been enacted.

Furthermore, in accordance with the same GEO No. 24/2017, 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; (ii) the power producers operating plants with installed capacities between 1 MW and 3 MW, which benefit from the support scheme and qualify as small and medium-sized enterprises, as well as (iii) public authorities which operate renewable electricity generation capacities that were partially or fully financed from structural funds and that do not qualify as "revenue generator projects" under the EU legislation.

Until the fulfilment 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 covering the gross final consumption of power in Romania.

12. Which rules apply to 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 (i.e. either the market of green certificates bilateral agreements or the

centralised market of green certificates). Consequently, as of 1 July 2013, the green certificates could no longer be traded through sale purchase agreements concluded by means of direct negotiations.

New trading rules have also been implemented by means of GEO No. 24/2017 and on 1 September 2017, a new ANRE regulation was enacted for the organisation and functioning of the green certificates market with a view to implement these new rules.

As such, in accordance with the current legal framework, 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.[15] Also, a green certificate may be subject to a single transaction between the producer, as seller, and the supplier, as buyer, save for the case when the producer did not generate the contracted number of certificates, in which case, it may purchase the missing number of certificates on the centralised markets.

The green certificates shall be traded only on the anonymous centralised green certificates market[16] (regulated by ANRE as of 1 September 2017) administered by OPCOM, on any of its segments (either the anonymous spot market or the anonymous centralised market of bilateral agreements).[17]

Exceptionally, the power producers operating power plants accredited for the green certificates support scheme, the aggregated capacity whereof does not exceed 1 MW per producer may conclude directly negotiated green certificate sale purchase agreements with the suppliers of final consumers (such transactions are also supervised by OPCOM).

Any green certificates sale-purchase agreements concluded prior to the entry into force of GEO No. 24/2017 shall generate legal effects up to the expiry date thereof, with no possibility of extending their duration or supplementing the number of traded green certificates (subject to a fine of up to 5% of the turnover registered in the previous year).

While initially, the trading value of the green certificates varied from EUR 27 (minimum legal value) and EUR 55 (maximum legal value) per green certificate, as of the entry

15 Exceptionally, all power suppliers may trade green certificates, in capacity as buyers, on the centralised market for the electricity which benefits from the support system; however, as mentioned above, such market has not yet been regulated by ANRE.

16 Such market entails a trading system which allows each participant to introduce firm offers regarding quantity and price without having its identity revealed to the other market participants and at the same time know the quantities and prices proposed by the other participants.

17 Theoretically, they may also be traded on the centralised market for the electricity which benefits from the support system; however, as already mentioned, such market is not yet regulated by ANRE.

into force of GEO No. 24/2017 and up to 31 March 2032, such legal trading value ranges from EUR 29.4 to EUR 35 (calculated at the average exchange rate set by the Romanian National Bank for the previous year). Furthermore, all the green certificates issued as of 1 April 2017, as well as those postponed from trading shall be valid and may be traded until 31 March 2032[18] and they gain value only in the moment when they are traded.

13. Are there any specific rules regarding renewable energy projects having an installed capacity exceeding a 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. These 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.

Meanwhile, however, new EU guidelines have been issued which raised the 125 MW threshold to 250 MW and, under Law No. 122/2015, the Renewable Energy Law was aligned with such EU guidelines.

14. 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

18 Prior to the entry into force of GEO No. 24/2017, the green certificates had a validity of 12 months as of their issuance.

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 Regulation for connecting users to the public interest power grids,[19] 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 the benefit of the grid operator. Until 31 December 2014, the maximum value of the guarantee was not to exceeded 20% of the connection tariff; following this date, the maximum value should be revised annually upon the proposals of the grid operators.

15. Are there any new State aid schemes from which new investments in renewable energy may benefit?

Earlier this year (April 2017), pursuant to the Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, in accordance with the Large Infrastructure Operational Program 2014-2020, the Romanian Government approved through Decision No. 216/2017,[20] a State aid scheme aimed at supporting investments for promotion of power from less exploited renewable energy sources, namely biomass biogas and geothermal energy.

The estimated number of beneficiaries is 40, while the aim of the scheme is to increase by 60 MW de installed capacity of power generation projects based on biomass, biogas and geothermal power.

The total budget allocated for the scheme amounts to RON equivalent of EUR 100,630,588 (out of which 85% represent non-refundable European funds and 15% represent public co-financing ensured by the Romanian State). The State aid granted for one eligible investment project cannot exceed EUR 15,000,000, while the intensity thereof is, in principle, limited to 45% of the eligible costs.[21] Such threshold is increased

19 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.

20 Published in the Official Gazette, Part I, No. 265 of 14 April 2017.

21 Such intensity may be increased by 15% in case of investments in assisted areas (i.e. areas designated through the national map for regional State aid for the period 2014-2020).

by 20% for small enterprises, and by 10% for medium enterprises. For the same beneficiary and the same eligible expenses, this State aid cannot be cumulated with any other investment State aid.

The state aid scheme shall apply by 31 December 2020.

As per the publicly available information, a call for projects has been initiated on 16 May 2017 and projects may be submitted during 17 July 2017 and 31 December 2018.

Also, currently, there is a draft law under debate within the Romanian Parliament aimed at implementing a support system for generation of power derived from biomass, biogas, as well as geothermal energy; based on such system, the envisaged producers would be entitled to a bonus/MW in addition to the power sale price to be calculated as the difference between a fix tariff set by ANRE and the average monthly price of power registered on the Day Ahead Market. However, it remains to be seen whether and under which form such law will be passed.

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,[22] and has been implemented in Romania starting with 2007 by Government Decision No. 219/2007.[23]

In order to implement the provisions of Government Decision No. 219/2007, Government Decision No. 1215/2009 for establishing the criteria and conditions required for implementing the support scheme for high efficiency cogeneration was enacted.[24]

After the high efficiency cogeneration support scheme has been authorised by the European Commission, ANRE has adopted, in 2010 and 2011, extensive secondary

22 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.

23 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.

24 Government Decision No. 1215/2009 was published in the Official Gazette, Part I, No. 748 of 3 November 2009, as subsequently amended and supplemented.

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.[25] Consequently, in October 2015, the Government Decision No. 219/2007 was amended.

The high efficiency cogeneration bonus scheme applied only to producers which had their projects accredited by ANRE for such scheme until 31 December 2016. Exceptionally, the scheme shall apply to producers which replace, on the same location, existing cogeneration capacities which benefited from the bonus, after 31 December 2016, but within the limits of the capacity accredited by ANRE until such date.

Note should be made that producers of power and heat from cogeneration which use renewable energy sources had 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.

Also, in case of cogeneration capacities exceeding 300MW, the application of the system was conditional upon the prior individual clearance from the European Commission.

2. Which 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 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,

25 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.

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 shall 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 analysed 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 4,000 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 and the Intra Day Market, during the previous year.

5. Are there any new State aid schemes from which new investments in high efficiency cogeneration may benefit?

Like the case of less exploited renewable sources, the Romanian Government approved through Decision No. 215/2017 a State aid scheme aimed at supporting investments in high efficiency cogeneration.[26] The estimated number of beneficiaries is 50, while

26 Published in the Official Gazette, Part I, No. 265 of 14 April 2017.

the aim of the scheme is to increase by 50 MWe de installed capacity of cogeneration projects. The projects should have as purpose the construction or upgrade of high efficiency cogeneration plants of no more than 8 MWe, based on natural gas and biomass or plants using residual gas derived from industrial process at the level of the enterprise. The total budget allocated for the scheme amounts to RON equivalent of EUR 81,101,376 (out of which 85% represent non-refundable European funds and 15% represent public co-financing ensured by the Romanian State). The State aid granted for one eligible investment project cannot exceed EUR 15,000,000, while the intensity thereof is, in principle, limited to 45% of the eligible costs.[27] Such threshold is increased by 20% for small enterprises, and by 10% for medium enterprises. For the same beneficiary and the same eligible expenses, this State aid cannot be cumulated with any other investment State aid.

The state aid scheme shall apply by 31 December 2020.

As per the publicly available information, a call for projects has been initiated on 16 May 2017 and projects may be submitted during 17 July 2017 and 31 December 2018.

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.[28]

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, Public Administration and European Funds. However, the production of heat in cogeneration

27 Such intensity may be increased by 15% in case of investments in assisted areas (i.e. areas designated through the national map for regional State aid for the period 2014-2020).

28 A legislative proposal to amend Law No. 325/2006 is currently under debate within the Parliament.

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 a public services procurement agreement.

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. Which licensing requirements are needed 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. This section of 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).[29]

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.

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

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 usually ensure more than 90% of the internal gas production, with the remaining 8.2% covered by up to five other local producers (like E.ON Energie Romania, Wiee Romania, GDF Suez Energy 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).[30] 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.

30 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.

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. 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).

Until 31 March 2017, 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 and the internal production should have been made available with priority to the suppliers of these type of consumers.

4. Which rules apply to 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 of 2014, the Energy Law has been successively amended in terms of rules applicable to the trade of natural gas on the wholesale market, the latest amendments being brought by Government Emergency No. 64/2016 (GEO No. 64/2016)[31] and further amendments are expected to be introduced by the law for the approval of such ordinance which is currently under debate within the Parliament.

31 Government Emergency No. 64/2016 was published in the Official Gazette, Part I, No. 801 of 11 October 2016.

As per the recently enacted amendments (by means of GEO No. 64/2016), specific trading rules for producers and suppliers have been implemented for (i) the period between 1 December 2016 and 31 December 2017; and (ii) the period between 1 January 2018 and 31 December 2021.

Wholesale trading rules applicable between 1 December 2016 and 31 December 2017

Each natural gas producer, to the extent it contracts the sale of gas, has the obligation to conclude sale agreements on the Romanian centralised markets, in a transparent and non-discriminatory manner, in order to sell from own production minimum 30% of the quantity of natural gas for which it concludes sale agreements during the envisaged period.[32] As for suppliers, each licensed supplier which is not also a producer, to the extent it contracts the trade of natural gas has the obligation to conclude agreements on the centralised markets of Romania, in a transparent and non-discriminatory manner for:

- The acquisition of minimum 20%[33] of the quantity of natural gas for which the supplier concludes, as purchaser, sale purchase agreements in the said period;
- The sale of minimum 30%[34] of the quantity of natural gas for which the supplier concludes, as seller, sale purchase agreements in the said period.

Such trading rules were not applicable to the quantities of natural gas meant for the regulated market until 31 March 2017.

Wholesale trading rules applicable between 1 January 2018 and 31 December 2021

For each calendar year of this period, both producers and suppliers (which are not also producers) should observe trading rules similar to those applicable for the period between 1 December 2016 and 31 December 2017. The minimum percentages to be traded each year as per the above rules, should be approved by Government Decision no later than 31 August of the previous year; however, up to date, no such decision has been enacted for the year 2018.

32 The percentage was set forth by Government Decision No. 778/2016, which was published in the Official Gazette, Part I, No. 879 of 2 November 2016.

33 The percentage was set forth by Government Decision No. 778/2016.

34 The percentage was set forth by Government Decision No. 778/2016.

Capital Market

LEGISLATIVE AND REGULATORY FRAMEWORK

1. What is the relevant legal framework? Are there any pending legislative amendment proposals?

The main legal enactments governing the matter are Law No. 297/2004 on capital markets and Law No. 24/2017 on financial instruments and market operations, which set forth the key principles for the organisation and functioning of the capital markets and its key players and participants.

Also, Government Emergency Ordinance No. 32/2012 (GEO No. 32/2012) regulates the organisation and functioning of the undertakings for collective investment in traded securities (UCITS) and of the investment management companies and Law No. 74/2015 regulates the activity of the alternative investment fund managers (AIFM).

The latest EU enactment of interest in the matter is EU Regulation No. 2017/1129 on the prospectus to be published when the securities are offered to the public or admitted to trading on a regulated market.[1]

The implementation of the abovementioned main legal enactments is ensured by ample secondary legislation, especially so-called "Regulations" focusing on a particular capital markets-related area or matter.

The most important Regulations are: (i) Regulation No. 15/2004 regarding the authorisation and functioning of investment management firms, collective investment undertaking and depositories, (ii) Regulation No. 13/2005 on the authorisation and functioning of the central depository, the clearing houses and central counterparties and Regulation No. 10/2017 regarding central depositories for the implementation of EU Regulation No. 909/2014, (iii) Regulation No. 1/2006 on issuers and operations with securities, (iv) Regulation No. 2/2006 on regulated markets and alternative trading systems, (v) Regulation No. 2/2017 on transfer or deregistration from trading

1 Notably, the EU Regulation 2017/1129 entered into force on 20 July 2017, but its provisions will mainly become applicable as of 21 July 2019.

of securities in case of closing of an alternative trading system, (vi) Regulation No. 32/2006 on investment services, (vii) Regulation No. 9/2014 on the authorisation and functioning of the asset management companies, of UCITS and of depositories of UCITS; (viii) Regulation No. 10/2015 on management of alternative investment funds, (ix) Norm 14/2017 on the application of the MAR Guide - Information on commodity markets or related spot markets for defining insider information on commodity derivative financial instruments and (x) Norm No. 5/2017 for the application of the MAR Guide - people to whom the market sounding is addressed and the MAR Guide are addressed - postponement of the publication of privileged information.

Besides the so-called "Regulations", there are other secondary norms (instructions, decisions, disposals of measures) governing particularised capital market matters. The local regulator also issued various endorsements aimed at clarifying and/or interpreting the application of a specific norm/legal provision.

All relevant Regulations issued at the EU level are of direct local applicability in Romania, and EU Directives must to be accordingly transposed.

As for pending proposals for amendment, a quite important draft regulation is currently in progress for the transposing of the Markets in Financial Instruments Directive 2014/65/EU. The new regulation is expected to be adopted as law as soon as possible, considering that the transposition term was July 2017.

2. Is the local legal framework fully harmonised with the EU legislation in capital markets field?

Even before its becoming a member to the European Union, Romania has strived to achieve the *acquis communautaire*, so as to ensure a smooth accession. In the capital markets field, the harmonisation process started as early as 2004 and the local legal framework is, in principle, well harmonised with the EU legislation (the main notable delay in transposing an EU Directive referring to the still pending MIFID II local enactment). We note that the customarily used implementation method was the "literal implementation" of the EU legislation ("as it is"), with quite limited local input.

Investment firms and investment management companies duly authorised in an EU Member State may provide financial services in Romania, directly or through local branches, their "original" authorisation/license being recognised by the local regulatory authority via a notification procedure. Also, listing on a local regulated market via EU passporting is also available to issuers already listed on a regulated market located in an EU Member State.

3. Which are the relevant capital markets institutions in Romania?

The main institutions on the Romanian capital market are:

- The regulatory authority – the Financial Supervisory Authority (FSA);[2]
- The market operator – Bursa de Valori Bucuresti S.A. (BVB),[3] which recently absorbed Sibiu Stock Exchange – Sibex - a smaller market operator;
- The central depository, ensuring depository activities for securities, clearing and settlement of securities transactions (Depozitarul Central S.A.);[4]
- Clearing houses, ensuring the clearing and settlement of transactions with derivatives (Casa de Compensare București S.A.[5] for derivatives traded on the platforms operated by BVB);
- Investors' Indemnification Fund,[6] ensuring investors' indemnification, up to a certain threshold in case of a default of an investment firm/asset management company to reimburse investors' money and/or financial instruments.

4. Which are the key players/participants to the local capital market?

The key players/participants to the local capital market are:

- Issuers of financial instruments, consisting mainly of local (and very few foreign) commercial companies and undertakings for collective investments (UCIs),[7] local authorities (municipalities, city halls, county councils as issuers of bonds) and the State (for T-bills);
- Intermediaries/investment firms which may be either specialised financial investment services companies or credit institutions duly authorised in this respect;
- Investment management companies, whose main business object is the administration of investment portfolios (either of UCIs or of individual investment portfolios).

2 Note that following a reorganisation process conducted at the level of the local financial authorities, as of 30 April 2013 FSA has taken over all prerogatives and obligations of the local capital markets regulator (i.e. the former National Securities Commission), the local insurance regulator (i.e. the former Insurance Supervisory Commission), as well as of the local pension regulator (i.e. the former Pension Supervisory Commission).

3 The official website of BVB is www.bvb.ro.

4 The official website of Depozitarul Central S.A. is www.depozitarulcentral.ro.

5 The official website of Casa de Compensare București S.A. is www.casadecompensare.ro.

6 The official website of the Investors' Indemnification Fund is www.fond—fci.ro.

7 We hereby refer to both UCITS (as regulated by MiFiD) and the so-called Non-UCITS (including alternative investment funds, as regulated under AIFMD). Note that the most active players on the local markets are currently the five SIFs and The Property Fund (Romanian: Fondul Proprietatea) – investment companies organised as Non-UCITS.

LISTING AND ACQUISITION/ TRADING OF SECURITIES

1. Which are the main local trading platforms?

Currently, Romania has one regulated market, namely the Bucharest Stock Exchange (BSE) operated by BVB, in place since 1995; currently, on BSE are traded securities (with approximately 1,066 listed companies), bonds (corporate and of local authorities), T-bills, UCITS units, derivatives.

BVB also operates a multilateral trading facility (MTF), the so-called "alternative trading systems" called "Aero".

2. Which are the main requirements for admission to trading of securities?

As a general rule, any admission to trading on regulated markets requires a listing prospectus to be issued on the instruments being listed and the issuer thereof, which must be approved by the FSA before publication; in limitedly provided cases, a simplified prospectus or, as the case may be, an informative document (which does not require FSA's approval) is accepted.

There are certain minimum requirements referring to the issuer set forth by the Law No. 24/2017 for admission to trading of securities:

- To be incorporated and carry out operations in compliance with the law;
- To have a preliminary level of capitalisation of at least EUR 1,000,000 or, if capitalisation cannot be assessed, the value of the capital and the reserves (including the profit or the loss of the last financial year) to be of at least EUR 1,000,000;
- To have operated for at least three years before submitting the application for listing (special exemptions may be obtained from this requirement).

As regards the requirements referring to securities, these are as follows:

- To be freely negotiable and fully paid;
- To have sufficient spread to the public (in principle, a free float of 25% of the subscribed share capital is acceptable; special exemptions may be granted by FSA under certain conditions).

Nevertheless, each stock exchange has its own rules for admission to trading; we note that as regards BSE, there are specific free float requirements (i.e. stricter than the

minimum ones set forth under Law No. 24/2017) described in the BSE Code, which differ subject to each of the three specific tiers of the BSE market.

Securities' listing on Aero (MTF operated by BVB) also require specific capitalisation requirements for admission to trading. However, no prospectus is needed for listing on Aero.

3. Which are the modalities for acquiring listed securities? Are OTC transactions allowed?

The available acquisition modalities for listed securities are:

- On-market transactions, conducted via the system of the relevant trading platform (i.e. regulated market or MTF), through a financial intermediary/ investment firm which is a participant to such system, based on the delivery versus payment mechanism (DVP) - transaction's settlement being ensured via a system operated by a central depository having a contractual arrangement with the operator of the trading system; or
- Over the counter (OTC) transactions, conducted outside the system of the relevant trading platform.

OTC transactions for listed securities are currently allowed mainly for intra-group transactions (based on prior FSA approval) and for the purpose of performing turnaround transactions (OTC Turnaround). Essentially, OTC Turnaround entails that a financial intermediary acquires the intended stake via an on-market transaction ("correspondent transaction") and, on the same day, said stake (or a lower stake) is further transferred by the respective intermediary to the client (OTC transaction) at a price which may vary by no more than 2% from the price of the "correspondent transaction". To be noted, the "correspondent transaction" needs to be conducted (as on-market transaction) only on the BSE's system. OTC Turnaround can be implemented subject to several specific requirements that need to be cumulatively met.

4. Are there any particularities to the local on-market transactions? Is the use of "omnibus accounts system" allowed?

As a general rule, all transactions made through the stock exchange entail an automatic pre-validation procedure aimed at ensuring that the shares exist in the seller's account both on the trade date and on the settlement date. In such case, the using of either individual accounts or "omnibus accounts" is allowed.

Trading without pre-validation is currently allowed only through the "omnibus accounts" system and only in the following cases:

- Issuers whose shares are listed both on the Romanian capital markets and on an EU Member State capital market;
- Issuers of T-bills;
- Issuers whose shares are registered with a Romanian central depository and which make object of a cross-border public offering;
- Issuers whose shares are registered with both a Romanian central depository and a central depository located in a EU Member State with whom the Romanian central depository cooperates with for the purpose of ensuring the cross-border transfer and the settlement of the shares;
- Transactions with EUR settlement;
- In other cases specifically indicated by the FSA, upon the request of the local central depository or of the operator of the regulated market/MTF.[8]

5. Are security interests over listed shares allowed? How does it work?

Setting-up security interests over listed shares is possible. Such security interests become ostensible/perfected towards third parties and gain priority against competing security interests by registering the interest with the relevant central depository.

The owner is entitled to dispose of the shares charged with the security interest, however only after the central depository has been notified of such intention. After disposal the sold shares may be sold free of security interest, which will further charge the sale proceeds (money) or, as the case may be, the shares obtained in exchange (in the case of share swap).

The former owner of the shares must notify the creditor about such substitution; the creditor may request the supplementation of the substituted assets, in accordance with the provisions of the underlying security agreement.

The enforcement of the security interest is made by sale of the respective shares (by the creditor or the foreclosure officer – depending on whether the debtor agrees to the foreclosure or not) on the relevant market, through an intermediary. If the sale is not successful, the creditor may itself take possession of the respective shares.

8 Note that following such requests FSA has extended the "omnibus accounts system" and the mechanism without pre-validation to the issuers included in the BET index of BSE (top 10 most liquid issuers), as well as to the issuers listed on "Aero" (i.e. the MTF operated by BVB).

6. Is securities lending allowed? Subject to what conditions?

Securities lending is only permitted (i) for performing short sale transactions; or (ii) as a safeguard for settlement of securities transactions, physical settlement of derivatives or keeping the market maker position; or (iii) in any other situations – for ensuring completion of the transactions' settlement. The law expressly prohibits securities lending with the exclusive purpose of obtaining dividends or exercising the voting rights in the shareholders' meetings.

7. Is short selling allowed? Subject to what conditions?

Generally, short sales are allowed only if preceded by the seller's borrowing the respective securities; nevertheless, short sales are allowed in the absence of such requirement if the sale would be needed for keeping a market maker position, but only for the securities for which the use of "global accounts" and trading without pre-validation of the existence of the share into seller's account is also allowed.

SALE OFFERS (SO)

1. Are there any price, minimum share stake or timing requirements?

The share sale offers may be launched by the issuer or by shareholders.

SOs require the drafting of an offer prospectus to be approved by FSA within 10 business days from the application (in case of SOs for shares to be admitted to trading for the first time, FSA may extend the term to 20 days). Also, the SO needs to be conducted through an investment firm/financial intermediary.

As a rule, the price of a SO can be freely established, as no specific restrictions/ calculation rules are set forth in that respect. However, in case of an IPO, the share price should equal at least to share's face/nominal value.

Also, in principle, there are no specific restrictions/requirements on a minimum/ maximum number of shares that can be offered in a SO. However, in case of admission to trading of securities, the offering of a minimum share stake might be required so as to ensure the free float requirements of the market on which the admission is sought.

The duration of a SO (as of its launching) must be of maximum 12 months.

Applications for amendment of SO's terms may be submitted to FSA, case in which FSA may extend the SO term; investors which subscribed under SO before such amendments may further withdraw their subscriptions.

PURCHASE OFFERS (PO). TAKEOVER OFFERS

1. Who can launch a purchase offer? Are there any price, minimum share stake or timing requirements?

As a rule, the PO can be launched by any person, resident or non-resident entity, shareholder or unrelated to the respective issuer.

POs require the drafting of an offer document to be approved by FSA within 10 business days from the application. Also, the PO needs to be conducted through an investment firm/financial intermediary.

The PO price must be at least equal to the highest between (i) the weighted average shares trade price for the 12 months preceding the filing before FSA of the PO application and (ii) the highest price paid by the offeror and the persons it acts in concert with in the 12 months period preceding the filing with the FSA of the PO application. In case neither of the above applies, the price shall equal the net asset value of the shares computed by reference to the last financial statements of the issuer.

There are no specific requirements as regards the minimum share stake to be acquired under a PO.

The duration of a PO (as of its launching) must be between a minimum of 15 business days and a maximum of 50 business days. Applications for amendment of the terms of the PO may be submitted to FSA, in which case FSA may extend the PO term; investors which subscribed under the PO before such amendments may in such case withdraw their subscriptions.

2. What is a mandatory takeover offer? Are there any exceptions from the obligation to launch such offer? Are there any price, minimum share stake or timing requirements applicable in case of such offers?

Once a person has reached (directly or indirectly, either alone or jointly with the persons it acts in "in concert" with) more than 33% of the voting rights in the issuer

company, that person is bound to launch, within two months, a public offer addressed to all the other shareholders for all their shares in the company called "mandatory takeover offer" (MTO).

The obligation to launch a MTO is not applicable where the 33% threshold is exceeded following acquisitions made: (i) under a privatisation process; (ii) from the Ministry of Public Finance or any other authorised entities under a budgetary debts foreclosure procedure; (iii) between affiliates/members of the same group of companies; (iv) under voluntary takeover/purchase offers addressed to all shareholders, for all their shareholdings.

Also, where the 33% threshold was exceeded following "unintentional operations" (i.e. shares buy-back by the company followed by their cancellation; pursuant to exercising shareholders' preference right in subscribing new shares under share capital increase operations; merger/spin-off; inheritance), the shareholder may choose to either conduct the MTO, or to sell the shares in excess of the 33% limit within three months.

As a general rule, the price under an MTO must be at least equal to the highest price paid for the issuer's shares by the offeror or the persons it acts "in concert" with within the 12 months period preceding the filing before FSA of the MTO application, if the MTO documentation is filed with FSA within the legally prescribed 2-month term. Note, however, that special and distinct rules for establishing the offer's price will apply in specific circumstances (i.e. if the legally prescribed term for documentation filing is not complied with, if the offeror and the persons it acts in concert with did not acquired shares within the 12 months preceding period to the filing before FSA; if, despite the shares being acquired within the 12-month period mentioned above, FSA would still find that said acquisitions would be likely to influence the correct pricing).

For instance, if the offeror has made no acquisitions within the last 12 months before the filing date with the FSA of the MTO's documentation or if, despite such acquisitions having been made, FSA decides that the respective acquisitions were made in bad-faith.

The rest of the requirements applicable to a PO (as described herein above) shall apply accordingly for the case of an MTO.

3. Conditions and price for a voluntary takeover offering

A "voluntary takeover offering" (VTO) is a species of PO, where the offeror (existing shareholder or not) voluntarily targets the acquisition of more than 33% of the voting rights in an issuer.

Launching a VTO requires the takeover intention be communicated to the management of the target (as well as published in the media publication) by way of a notice/announcement approved by the FSA.

Also, the target company's board of directors (BoD) shall send FSA, the offeror and the regulated market a document setting out its opinion on the bid, the reasons on which it is based and the effects of implementation of the bid on the company's interests and employment, and on the offeror's strategic plans for the company and their likely repercussions on employment and the locations of the company's places of business. It may also convene the general meeting of the shareholders (GMS) in order to inform the shareholders on its position on the prospective takeover.

After having been informed of the takeover intention the management of the target is banned from taking new measures involving operations outside the ordinary course of business unless specifically approved by the extraordinary GMS (the misuse of a takeover intention notice solely for the purpose of ensuring a stand-still obligation to an issuer is sanctioned by law).

The price of the VTO should be at least equal to the highest among: (i) the highest price paid by the offeror/the persons it acts "in concert with for shares in the target company in the 12 month-period preceding the submission to FSA of the offer application, (ii) the average weighted trading share price pertaining to the past 12 months preceding the VTO and (iii) the price resulting from dividing the company's net assets' value (as per the latest financial statements) to the number of shares in issue.

The offeror and the persons it acts "in concert" with may not launch a new VTO for the same target for one year after the closing of one VTO.

4. Is counter-bidding allowed? If yes, subject to what conditions?

Counterbids may be launched within 10 business days as of the launching of any type of PO, provided that the counterbid targets at least the same quantity of securities/reaching the same equity quota and its price is at least 5% higher than the price of the initial bid.

A competing procedure is further conducted by the FSA in order to select the winning bid that will ultimately stand for due subscription; the selection involves an "auction type" procedure, where the competing bidders would submit bids for an increased offer price, with an "auction tick" of minimum 5% (i.e. by reference to the highest price offered in a previous auction round).

MINORITIES' EXIT/ DE-LISTING

1. How can minorities exit a listed company other than by regular on-market share sale?

Minority shareholders may be forced by the majority shareholder to exit the company (squeeze-out) or, as the case may be, they may force the majority shareholder to buy out their holdings (sell-out), once the majority shareholder has reached 95% of the shares having attached voting rights or has acquired 90% of the shares having attached voting rights targeted under a public purchase offering addressed to all the shareholders for all their shares. Both operations (squeeze-out/sell-out) are to be made against a "fair price" determined in a manner regulated by law.

Minorities have the right to withdraw from a listed company (i.e. to request the respective company to buy-back their stakes) in the following limited cases:

- Certain specific corporate events (i.e. company's merger or spin-off, change of the company's **main** business object, change of the company's headquarters abroad, change of the company's legal form); or
- GMS decision on the company's de-listing: or
- In specific cases prescribed by Regulation 2/2017 (for companies listed on ATS) – for instance in the case where (a) an (extraordinary) GMS resolution deciding that in the context of the ATS operators' merger, the shares shall be delisted from the ATS operated by the absorbing operator is passed; or (b) the ATS absorbing operator refuses the trading of the shares on the ATS is operates. In all above scenarios, the price to be paid to the withdrawing shareholder(s) is to be established by an independent expert.

2. How can a company be de-listed?

De-listing can be performed in one of the following modalities:

- Pursuant to conducting a squeeze-out/sell-out procedure (as described herein above); or
- Pursuant to an (extraordinary) GMS resolution on the withdrawal of the company from public trade; notably, such de-listing can be conducted subject to very restrictive conditions being met, which mainly require a that in the past 12 months preceding such GMS shares' liquidity on the market was extremely law and the on-market transactions regarded a very small stake of company's shares, further approved by FSA; or

- Pursuant to FSA's decision, if such deems that, due to exceptional circumstances an organised market for the securities subject to deregistration cannot be maintained, including in the case of a EGMS decision of withdrawal from trading; or
- Pursuant to the delisting procedure set forth by Regulation No. 2/2017 (for companies listed on ATS) – if (a) an (extraordinary) GMS resolution deciding that in the context of the ATS operators' merger, the shares shall be delisted from the ATS operated by the absorbing operator is passed; (b) the ATS absorbing operator refuses the trading of the shares on the ATS is operates; (c) the (extraordinary) GMS although convened in the legal required term, takes place without compliance with the statutory / legal quorum requirements or a decision is not passed due to unfulfilling of the legal or statutory requirements for passing a decision; or (d) the (extraordinary) GMS is not convened so as to take place within maximum 90 days as of the moment when the merger between the ATS operators becomes effective.

CORPORATE SPECIFICS

1. Are there any super-majority rules in the GMS?

In order to protect minority shareholders against abusive dilution by the majority shareholder, the legal framework imposes higher majority requirements (i.e. than those imposed by the Company Law) in case of share capital increases made via the following particular means (i.e. in such cases being applicable a presence/quorum of ¾ of the share capital and the favourable votes of the shareholders holding ¾ of the voting rights):

- Increasing the share capital by contribution in cash without granting the existing shareholder with the possibility to exert their preference right in acquiring the newly issued shares;
- Increasing the share capital by contribution in kind.

Notably, foreign issuers listed on a Romanian regulated market shall apply the voting majorities and corporate rules provided by their national law.

2. Are there any special rules for the appointment of the management in listed companies?

BoD members may be appointed under a special procedure, the so-called "cumulative voting method", case in which the company's BoD should consist of at least five members.

Subject to certain special requirements being met, the shareholders may request the election of BoD members by using this special method (which entails the allocation by a shareholder of its voting rights to the existing BoD candidates, the candidates with the higher number of allocated votes being thus elected). The cumulative voting method does not have to be implemented by foreign issuers listed on the local market, which must observe their national corporate governance rules.

3. Are there mechanisms for protecting the shareholders (and in particular the minorities)? What are the key minorities' rights in listed companies?

One of the main goals of the capital market regulations is the protection of shareholders' interests; to this end, two main principles are stated by the Law No. 24/2017, i.e. equal treatment of shareholders, and market transparency.

Protection of (minority) shareholders is ensured mainly through:

- Reporting/disclosure obligations imposed on issuers upon listing (via the listing/ offer prospectus) and also on periodical (quarterly/half-yearly/yearly) and ad-hoc bases (on events with potential significant impact on the market price);
- Issuer's obligation to reply to shareholders' inquiries (save for confidential/business sensitive data);
- Rules on GMS decision making;
- Shareholders' right to challenge the GMS resolutions for which they did not vote in favour;
- Possibility of shareholders opposing to some major corporate events to have their shares bought-back (as described herein above);
- Strict rules for company de-listing;
- Reporting of transactions with company shares made by company insiders;
- Sanctioning of insider trading and market manipulation.

Shareholders with a higher equity quota (above 5%, respectively 10%) have some additional rights, such as the right to request the convening of the GMS, to directly file in court for BoD's liability, to ask the financial auditor to prepare special reports on punctual company operations, or the right to determine the election of the BoD via the "cumulative voting method".

4. How can the minorities avoid dilution?

As a general rule, share capital increases can be implemented only by granting the

existing shareholders with a preference right in subscribing (via an intermediary/ investment firm) the newly issued shares; the GMS may decide to lift such preference right on exceptional basis only (i.e. by justifying the measure and in the presence of the shareholders representing at least 85% of the share capital and based on the votes of the shareholders holding at least majority of the total voting rights and in case of capital increase by debt-equity swap with a presence of at least ¾ of the share capital and the same proportion of voting rights).

The observance of such preference right requires the drafting by the company of a FSA approved prospectus/proportionate prospectus in accordance with Article 26a of Commission Regulation (EC) No. 809/2004.

The newly issued shares not entirely subscribed by the existing shareholder may be either offered for subscription to the public or cancelled.

5. What are the key percentages/ thresholds that investors should know about?

- 5%, 10%, 15%, 20%, 25%, 33%, 50%, or 75% - exceeding or falling below such threshold triggers the reporting obligation of the shareholder;
- 5% - shareholder may (i) request for the convening of the GMS (including having on its agenda the election of the BoD members by way of cumulative voting method); (ii) request the company's auditors for special reports and (iii) directly request in court the liability of the directors/BoD members (on owns name and on behalf of the company);
- 33% - exceeding such triggers the applicability of shareholders' observance of the mandatory takeover rules (i.e. launching a MTO);
- 50%+1 - in principle allowing, *inter alia*, control upon general decisions' making (if no higher threshold is provided in company's statutes);
- Over 95% - allows the exercise of the minority squeeze-out and sell-out rights.

Financial Institutions & Security Interests

OVERVIEW

1. What is the legal framework applicable to financial institutions and security interests in Romania?

The financial market was among the first subjected to new regulation immediately after 1989 within the process of replacing the centralised state economy with free market institutions. Between 2002 and 2010, both primary and secondary legislation regulating the financial sector have undergone major changes in order to implement the relevant European Union (EU) Directives and secondary enactments and to adjust the Romanian financial system to the EU requirements, post-accession (Romania's accession to the EU took place on 1 January 2007). Ever since, the legal framework applicable to financial institutions and security interests is permanently aligning to the EU requirements, duly implementing the changes of the EU legislation.

2. Which are the regulatory authorities in the areas of financial institutions and money market services?

The main regulatory authorities in the areas of finance institutions and money market services are the National Bank of Romania, the Payment Incidents Bureau, the Credit Information Bureau, the Central Credit Register.

The National Bank of Romania (the NBR) acts as central state bank, having mainly supervisory and control powers over financial entities within its jurisdiction, irrespective of whether they are credit institutions, non-banking financial institutions, payment services institutions or electronic money institutions. The NBR's powers do not extend to the capital market and its institutions (e.g. the financial investment services companies), which are placed under the supervision and control of the Financial Supervisory Authority (the FSA).[1]

1 As regards the supervision of other categories of financial institutions, for further details please refer to the "Capital Market" chapter.

The NBR has exclusive powers in authorising and supervising the credit institutions, the non-banking financial institutions, the payment institutions and the electronic money institutions, Romanian entities, which are set up and operate in Romania.

In this respect, the NBR issues mandatory regulations, applies sanctions and is entitled to controlling and reviewing the books of accounts and any other documents of the mentioned entities. To the extent that they are authorised and operating under the supervision of financial regulatory authorities in an EU or European Economic Area (EEA) country, foreign entities may directly operate on Romania's financial market, without being required to follow a local authorisation procedure and observe the capital requirements applicable to Romanian entities.

The Payment Incidents Bureau is created and operating within the National Bank of Romania as a centre for intermediation and management of information specific to payment incidents, in connection with paper instruments (e.g. cheques, bills of exchange and promissory notes). Information to the Bureau is conveyed by computerised system through the Interbank Communication Network, which links the head office of the NBR to the head offices of all credit institutions.

The Credit Information Bureau is established as a private structure, operating as an intermediation centre that manages credit risk information and card fraud information. The system collects from, and provides to financial and credit institutions, as well as to insurance companies for credit-type products information on the individuals, debtors of the participants which register payment arrears exceeding 30 days, on the frauds related to the participants (ascertained by definitive or irrevocable court decisions or uncontested enforceable administrative acts) and on the statements of individuals containing inconsistencies.

The Central Credit Register is a structure created and operating within the NBR specialised in collecting, storing and centralising information on the exposures of the declaring entities (in principle, institutions supervised by the NBR) towards their debtors whose aggregate level of indebtedness towards the reporting entity exceeds RON 20.000. The system collects, stores and centralises information on: (i) the exposure of every credit institution in the Romanian banking system to debtors that were granted loans and/or have commitments exceeding the reporting threshold and the identification details of such debtors, (ii) the details of such exposures (for instance, type of credit, maturity, debt service, etc.), (iii) the groups of entities representing a single debtor (for instance, name and members of the group, debtors having credits together with other members of the group, etc.), as well as (iv) information on card frauds committed by cardholders.

CREDIT INSTITUTIONS

1. What is the general procedure for the authorisation of credit institutions?

Under the Government Emergency Ordinance No. 99/2006 (Banking Law), both credit institutions and branches of foreign credit institutions headquartered in non-EU member states may be set up and operate in Romania only upon their authorisation by the NBR.

Authorisation of credit institutions by the NBR involves a two-step procedure:

- Preliminary authorisation, whereby the NBR approves the setting up of credit institutions. The application for a preliminary authorisation should be joined by a series of documents providing details on the share capital, the shareholders and managing bodies of the credit institution, etc., and also a business plan including inter alia a description of the targets, policies and strategies of the future credit institution, including information regarding the clients and the segment of market that the credit institution envisages, the products and services, price policies, capitalisation policies, the financing sources and asset structure, personnel policies, a description of the internal control system to be employed, as well as references to adjustment of the IT system. The NBR is bound to decide on the application for a preliminary authorisation within four months as of submission. The issue of the preliminary authorisation by the NBR is not a guarantee that the subsequent banking license shall be granted;

and

- The banking license, whereby the NBR authorises operation of credit institutions. After the NBR grants the preliminary authorisation, the shareholders proceed with incorporating the credit institution or registering the branch of a credit institution from a non-EU member state with the Trade Registry, as the case may be. After the credit institution/branch was duly incorporated and registered, a number of additional documents should be filed with the NBR, within two months from the issuance of the preliminary authorisation. The NBR shall issue the banking license within four months as of receipt of the application and complete joining documentation. The relevant credit institution is subsequently registered with the banking register hold by the NBR.

As regards the credit institutions headquartered, authorised and supervised in EU member states, they may operate in Romania either directly, by passporting their

services based on the freedom to provide services within the EU, or through branches, in both cases upon a notification to the NBR. No authorisation is necessary in this case.

2. Which are the most relevant corporate requirements applicable to credit institutions?

Under the Banking Law, credit institutions, as well as housing banks and mortgage banks may be incorporated only as joint stock companies.

The initial share capital of credit institutions must be of at least EUR 5,000,000.

3. Are there any specific rules regarding the business purpose of credit institutions?

Under the Banking Law, credit institutions may perform various financial activities, such as: taking deposits and performing lending operations (including consumer loans, mortgage loans, etc.), financial leasing, payment operations, issue and management of payment instruments, issue of guarantees and undertaking of commitments, transactions with money market instruments, intermediation on the interbank market, financial investment services and financial consulting, etc. Credit institutions may also perform, within the limits of their authorisation and subject to compatibility with the requirement of banking business, the following operations:

- Non-financial mandate or commission operations, especially on behalf of other entities within their group;
- Asset management operations in respect of the movable and/or immovable assets owned by the credit institution, but not for the purpose of performing financial operations;
- Services for their own clients which, although not related to the core business, are an extension of the banking operations;
- Except for those referred above, credit institutions may undertake transactions with movable assets and real estate property under the following circumstances: (i) when such transactions are necessary for the authorised operations of the credit institution, for the employees' training, or for organising resorts or housing for employees and their families; and (ii) when the transactions involve movable assets and real estate property acquired following foreclosure proceedings.

The following transactions are forbidden to credit institutions:

- Pledging of own shares against the credit institution's debts;

- Granting loans secured with shares, other equity securities or bonds issued by the credit institution itself or by other credit institution within the same group;
- Taking of deposits or other reimbursable funds, equity securities or other valuables when the credit institution is in insolvency.

4. Are credit institutions subject to specific rules on capital adequacy?

The provisions of the Banking Law are essentially compliant with the principles of the Basel III Accord in respect of capital adequacy requirements.

Thus, under these regulations, credit institutions must comply with minimum capital requirements, establishing inter alia rules on Tier I and Tier II capital of credit institutions. In addition, under these regulations, credit institutions must comply with capital requirements inter alia for risk covering, on individual and consolidated basis, and for monitoring and control of large exposures.

According to the NBR Regulation No. 6/2002, all categories of Romanian credit institutions are obliged to create and maintain with the NBR minimum mandatory reserves, in national and in foreign currencies, receiving interest at such rates as periodically determined by the NBR norms.

Currently, the minimum mandatory reserves rate for RON and foreign currency liabilities is 8%, in both cases for liabilities having a residual maturity limited to two years as of the expiry of the observation period or, if it exceeds two years, the liabilities have attached a reimbursement, transfer or an anticipated withdrawal clause.

In any other cases, for liabilities exceeding two years and having attached a reimbursement, transfer or an anticipated withdrawal clause, the minimum mandatory reserves rate is zero. The minimum mandatory reserves applicable to mortgage and housing banks are zero.

5. Do credit institutions have specific reporting obligations?

Pursuant to the Banking Law, the NBR subsequent enactments and the Regulation (EU) No. 575/2013, Romanian credit institutions are compelled to periodically file specific reports with the NBR, containing *inter alia* information in respect of:

- Tier I and Tier II capital levels and other capital adequacy compliance indices;
- Net assets;

- Individual and aggregate large exposures;
- Solvency indices, on individual and consolidated basis;
- Yearly financial statements and certain biannual financial data;
- Classification of the loan portfolio and related credit risk provisions;
- Banking fees for cashing in and payment operations, etc.

OTHER FINANCIAL INSTITUTIONS

1. Are there any other categories of regulated financial institutions active on the Romanian money market?

In addition to the credit institutions, the mortgage banks, non-banking financial institutions, payment institutions and electronic money institutions are also regulated and subject to the supervision of the NBR. Mortgage banks, assimilated to credit institutions under the Banking Law, are established as joint stock companies operating under the authorisation issued by the NBR. The main business of mortgage banks consists in (i) providing mortgage loans for real estate investments (dwellings, industrial/commercial constructions) and (ii) issuing mortgage bonds. Mortgage banks are not allowed to take deposits. Non-banking financial institutions are mainly regulated by Law No. 93/2009 (and the ancillary NBR norms). Payment institutions are regulated by Government Emergency Ordinance No. 113/2009 on payment services (GEO No. 113/2009) and NBR Regulation No. 21/2009. Electronic money institutions are regulated by Law No. 127/2011 on the activity of electronic money issuance and NBR Regulation No. 8/2011.

2. Do non-banking financial institutions need to comply with specific capital requirements?

Non-banking financial institutions are required to have a share capital amounting to the RON equivalent of EUR 200,000, except for those granting mortgage loans, to which a minimum EUR 3,000,000 threshold applies.

3. Are there any rules applicable to the business purpose of non-banking financial institutions?

According to Law No. 93/2009, non-banking financial institutions are allowed to carry out various lending activities, such as financial leasing and consumer credits. Non-banking financial institutions are entitled to grant mortgage loans as well.

In addition, non-banking financial institutions can also undertake financing and guarantee commitments, issue and manage credit cards, perform payment services and any connected or ancillary activities to credit operations, as well as mandate and consultancy activities. Nevertheless, they cannot receive money in deposit and cannot, as a rule, issue bonds, nor perform other activities unless in relation to their lending activities.

Non-banking financial institutions are allowed to carry out payment services operations as well, in accordance with the applicable legal framework.

4. Are non-banking financial institutions subject to an authorisation procedure?

According to Law No. 93/2009, non-banking financial institutions must apply for registration with the NBR within 30 days as of their incorporation. They can start lending activities only after being registered in the BNR registry for non-banking financial institutions. The NBR should issue the license within 30 days as of receipt of the application and relevant documentation.

5. Do non-banking financial institutions need to comply with prudential and reporting obligations?

According to Law No. 93/2009 and the ancillary NBR norms, non-banking financial institutions must comply with specific prudential and reporting requirements, *inter alia* concerning exposures, credit portfolio structure and corporate changes.

6. Do payment institutions need to comply with specific corporate requirements for incorporation?

Payment institutions can be incorporated only as Romanian legal entities and are subject to an authorisation procedure before starting their operations. The payment institutions from EU-member states may operate in Romania based on a notification sent to the NBR by the competent authority in their home member state.

Payment institutions are required to have a share capital which may vary in consideration of their business object: the RON equivalent of EUR 20,000 (for cash remittance operations only); EUR 50,000 (for electronic payment operations only) or respectively EUR 125,000 (for all the payment services provided by GEO No. 113/2009).

7. Are there any rules applicable to the business purpose of payment institutions?

According to GEO No. 113/2009, payment institutions are allowed to carry out various payment operations, to take cash deposits/withdrawals to/from payment accounts, to perform specific transfers, issuing and accepting to payment instruments, cash remittance or electronic payments. Payment institutions are permitted to grant credits, but only in connection with the payment services that it provides and subject to specific conditions or in compliance with the legislation applicable to non-banking financial institutions. They can also perform operational and other connected services, management of payment systems and other commercial activities, subject to the applicable laws.

8. Are payment institutions subject to an authorisation procedure?

According to GEO No. 113/2009, payment institutions are allowed to start payment operations only after obtaining the approval from the NBR, which should be issued within three months as of the submission of the complete relevant documentation. Such documentation includes *inter alia* information on the initial capital, business object, significant shareholders, managers of the payment operations, business and activity plans, etc. Within five days as of the initiation of the authorised operations, the payment institutions must submit to the NBR a notification in this respect, together with the internal regulations and a statement of the management in respect of the IT system.

9. Do payment institutions need to comply with prudential and reporting obligations?

According to GEO No. 113/2009 and the ancillary NBR Regulation No. 21/2009, payment institutions must comply with specific prudential and reporting requirements, *inter alia* concerning their agents, the Tier I and Tier II capital requirements, measures to protect the received funds.

Changes in the status of the payment institutions are subject to either authorisation or notification to the NBR, depending on the degree of risk entailed by such changes. The payment institutions are subject to specific regulatory requirements, aimed to protecting consumers and their funds deposited with the payment institutions.

SECURITY INTERESTS

1. Which is the legal framework for security interests in Romania? Which are the main categories of such security interests?

Under the New Civil Code, the legal regime of personal and real security interests has received a uniform regulation and certain new categories of security interests.

The main categories of security interest are as follows:

- **Movable hypothecs**, formerly known as security interests on moveable property, are regulated by the New Civil Code as of its entry into force on the 1 October 2011 (Title VI of Law No. 99/1999 on the legal regime of security interests was repealed). The New Civil Code provides a flexible and uniform framework, more efficient and adequate to the current economic environment, as well as additional security enforcement procedures, as an alternative to the "classical" procedures provided by the Civil Procedure Code;
- **Pledges** (Romanian: *gaj*) are now regulated by the New Civil Code as a security where the secured creditor takes possession over the pledged assets. Only tangible moveable assets or materialised commercial titles may be subject to pledge. In relation to tangible movable assets, the publicity of pledges is ensured either by the mere fact of possession over the pledged assets, or by registration with the Electronic Archive for Security Interests (Electronic Archive); however, the publicity of a pledge over an amount of money is ensured only by holding such amount. With respect to materialised commercial titles, publicity is ensured by their remittance or, as the case may be, by their endorsement. If no specific rules are provided under the New Civil Code on pledges, those applicable to moveable hypothecs shall apply;
- **Immoveable hypothecs** (mortgages) which continue to be preferred by professional lenders as security instruments, are frequently used in various types of commercial and retail transactions. Under the New Civil Code, immoveable mortgages may be created on existing property such as land and buildings, but also (differently from the previous regulation) on future immoveable assets. Following the creation of an immoveable hypothec, the security provider will continue to own and use the hypothecated asset. The immoveable hypothec will be preserved despite any ownership transfer, being enforceable against any subsequent acquirer;
- **Suretyship** (*fidejussio*) is a personal guarantee, based on which the secured creditor is granted the right to pursue the assets of the guarantor in case the debtor fails to perform the secured obligation. The suretyship is not subject to any registration procedure and does not give a priority ranking to the secured creditor;
- **Independent guarantees** are for the first time regulated under the New Civil Code, which sets out regulations regarding the letters of guarantee and the comfort letters.

BETTER BUSINESS IN ROMANIA

2. How are movable hypothecs created and perfected?

Moveable hypothecs are created by way of written agreement (either as a private agreement or as an authenticated deed) between the secured creditor and the security provider (either the debtor or a third party providing security to the benefit of the debtor). The perfection of the moveable hypothecs, which is relevant for establishing the priority ranking of the hypothec, is obtained as of the moment when (cumulatively): (i) the secured obligation is effective, (ii) the security provider gains rights on the secured asset, (iii) the moveable hypothec agreement is signed and (iv) the registration formalities of the moveable hypothec have been duly performed. The New Civil Code provides the categories of moveable assets which can be charged by moveable hypothec, and these include: intangible assets, universalities of moveable assets (including goodwill) - but only to the extent they are assigned to the operations of a company, products of the secured asset (e.g. proceeds from the sale or any moveable asset replacing the secured asset), future moveable assets, etc.

3. Are there any publicity requirements in connection with movable hypothecs?

The New Civil Code requires the registration of moveable hypothecs with the Electronic Archive for ensuring a priority order among creditors holding moveable hypothecs on the same assets, as well as publicity towards third parties. The Electronic Archive can be easily accessed through a tax-free Internet database, ensuring rapid verification of the records (available in Romanian only). The general rule is that the priority rank is given by the date of the registration of the moveable hypothec with the Electronic Archive. The creditor is bound to request the moveable hypothec be removed from the Electronic Archive within 10 days following the fulfilment of the secured obligation.

4. Are there any specific rules applicable to movable hypothec agreements?

The moveable hypothec agreement must provide a determinable value of the secured obligation, as a threshold limiting the amounts that may be recovered by the secured creditor in case of enforcement. The agreement must describe the secured assets in sufficient detail as to reasonably allow identification of the secured assets, general descriptions for category of assets being no longer permitted (for example, "all the debtor's present and future moveable assets" does not represent a sufficient

description anymore). The security provider is allowed to sell or otherwise dispose of the asset throughout the entire duration of the moveable hypothec agreement. As a general rule, a moveable hypothec agreement cannot prevent the security provider from disposing of the hypothecated asset. Also, the New Civil Code prohibits negative pledges clauses in moveable hypothec agreements.

5. Do movable hypothecs enjoy specific enforcement procedures?

The moveable hypothec agreements are deemed enforceable titles, which provide a procedural advantage in case of enforcement, as the secured creditor would not be required to file a claim on the merits of the case. Throughout the enforcement procedure, before the sale of the secured assets, the debtor or any other interested person is entitled by law to pay the outstanding debt and to thus put an end to the enforcement procedure.

The parties to a moveable hypothec agreement may agree on methods of sale to be used in case of enforcement. If the moveable hypothec agreement is silent in this regard, the creditor may capitalise on the hypothecated assets through reasonable commercial conditions. Under a certain procedure, the secured creditor may appropriate the hypothecated assets for the settlement of its claim.

6. Are there any specific rules for immovable hypothec agreements?

An immoveable hypothec is created by agreement of the parties and by registration thereof with the relevant land book (under the New Civil Code, the registration has become a validity condition, however, this provision is not fully effective yet). The immoveable hypothec agreement must be notarised as a condition for its validity. Under the sanction of nullity, the immoveable hypothec agreement must provide a proper description of the mortgaged property and details of the secured obligations. The security provider is allowed to sell or otherwise dispose of the hypothecated asset throughout the entire duration of the immoveable hypothec agreement and as a general principle, an immoveable hypothec agreement cannot prevent the security provider from disposing of the hypothecated asset.

The New Civil Code explicitly prohibits the negative pledges clauses in immoveable hypothec agreements.

7. Are there any publicity requirements in connection with immovable hypothecs?

The Cadastre Law No. 7/1996 sets out the legal framework for the registration of immovable hypothecs with the land books kept by the offices for cadastre and real estate publicity. The immoveable hypothec registration system is aimed at ensuring the validity thereof and also the priority rank among secured creditors and the publicity against third parties. Thus, by reviewing the registrations in a land book, a third party would be informed about the existence of any immoveable hypothecs encumbering the property. The land books can be relatively easy accessed. An internet database is not available yet for the verification of the real estate records.

8. Do immovable hypothecs enjoy specific enforcement procedures?

If the debtor failed to discharge the debt on the due date, the secured creditor is entitled to enforce the immoveable hypothec and satisfy its receivable against the debtor by selling the hypothecated real estate following the procedure under the Civil Procedure Code (which procedure in many cases proves to be lengthy and bureaucratic). A properly notarised immoveable hypothec agreement is an enforceable title on the basis of which the secured creditor can submit a formal request to the court, within a non-contentious procedure, in order to obtain approval to start the enforcement procedure.

9. Does the suretyship (*fidejussio*) have certain specific traits, compared to the other security interests?

One particularity of the suretyship is that, when pursued by the creditor, the guarantor may use the specific defences, as follows:

- The benefit of discussion (Romanian: *beneficiul de discuțiune*), whereby the guarantor asks the secured creditor to first exhaust its remedies against the debtor before pursuing the guarantor; and
- The benefit of division (Romanian: *beneficiul de diviziune*), available where there are multiple guarantors for the same debt; should one guarantor uphold the benefit of division, the creditor would be obliged to pursue each of the guarantors' pro-rata with their undertakings.

Either of these types of defence may be contractually waived by the guarantors.

10. Which are the main features of the letter of guarantee under Romanian law?

The letter of guarantee is a type of personal guarantee whereby the issuer irrevocably undertakes to pay an amount of money to a beneficiary, on its first demand and such obligation to pay is independent from the underlying obligation in relation to which the letter of guarantee was issued.

11. Do comfort letters have specific characteristics under Romanian law?

The comfort letter is regulated by the New Civil Code as an irrevocable undertaking of the issuer to perform or abstain from performing an action, for the purpose of supporting the debtor in the performance of its obligations towards its creditor (such creditor being the beneficiary of the letter of comfort). The issuer of a comfort letter may only be held liable for damages caused to the creditor, upon the latter providing evidence of the issuer's breach of the obligations undertaken by the comfort letter and only to the extent the principal debtor defaults towards the creditor. The issuer has a right of recourse against the principal debtor if it paid damages to the creditor.

Intellectual Property

1. What does the Romanian intellectual property law protect?

Intellectual property rights are protected in Romania by various legal enactments applying specifically to each category of IP rights: patents, utility models, trademarks and geographic indications, industrial designs, topographies of semiconductor products, copyrights. The Romanian legal framework on IP rights has been gradually harmonised with the corresponding European legislation and, generally, with the principles provided in international treaties and conventions.[1]

2. Which are the relevant authorities in the field of intellectual property?

The public authorities invested with competence in the protection of intellectual property rights are the State Office for Inventions and Trademarks (OSIM) (in relation to industrial property i.e. inventions, trademarks, geographic indications, industrial designs, topographies of semiconductor products) and the Romanian Office for Copyright (ORDA) (relevant for copyright protected works).

PATENTS

1. Who can apply for a patent?

The right to patent belongs to the inventor or to his/her rightful successor. For inventor-employees, the right to patent belongs to the employer whenever the relevant inventions are made by the employee under a labour agreement which expressly provides that inventions are within the employee's specific duties.

1 Romania is a party to the main international treaties and conventions on intellectual property, among which: the Paris Convention for the Protection of Industrial Property (1883), including its subsequent revisions; the Convention establishing the World Intellectual Property Organisation (1967); the Marrakech Agreement establishing the World Trade Organisation (1994); the Madrid Arrangement (1967) and the Protocol related to the Madrid Arrangement (1989); the Trademarks Treaty (Geneva, 1994); the Nice Arrangement on trademarks classification (1957); the Treaty on Trademarks Law (Singapore, 2006); the Patent Cooperation Treaty (Washington, 1970); European Patent Convention (Munich, 1973); the Strasbourg Agreement concerning the International Patent Classification (1971); the Locarno Agreement on the classification of industrial designs (1968); the Hague Arrangement on the international deposit for industrial designs (1925); the Berne Convention on the protection of literary and artistic works (1886).

For inventions made with the use of the employer's experience, information or resources, the right to obtain the patent is vested in the employee, but the employer has the possibility to claim the rights over those inventions in return of a fair compensation paid to the inventor-employee.

In order to obtain protection at national level, applications for patent are submitted to OSIM. The invention shall be disclosed in the description, drawings and claims in a manner which is clear and complete as well as scientifically and technically correct.

The applicant may invoke priority rights. The information comprised in the patent application will be kept confidential until the application is published by OSIM. The patent applications are published immediately after the expiry of a 18-month term from the date of the regular national filing or from the claimed date of priority. Published patent applications benefit from provisional protection until the patent is issued. Any person may submit to OSIM a cancellation application against the decision granting the patent within six months from the publication of such decision.

2. Which are the conditions of patentability?

Patentability conditions are harmonised with international regulations. An invention (for a product or a procedure in any technological field) is patentable in Romania if it is new worldwide, involves an inventive step (i.e. it does not follow evidently for a trained individual from the knowledge incorporated in the existing technical development stage) and is susceptible of industrial application.

3. For how long is protection granted?

The patent enjoying protection on the territory of Romania is valid for 20 years from the date the regular national application is filed, and is subject to yearly fees for maintenance.

UTILITY MODELS

4. Which are the protection requisites?

The protection of utility models is mainly regulated in Romania by Law No. 350/2007, concerned with such technical inventions that cannot be protected by patent according to the Patent Law as they do not involve inventive activity. Utility models refer to any

technical inventions provided that they are new (they are not already included in the current development stage of the technique), that they exceed the level of mere professional skill, and that they are applicable in the industrial field.

5. Who can apply for protection of a utility model?

The right to the utility model belongs to the inventor or his/her rightful successor. Utility models acquire protection in Romania by registration with the OSIM. The law permits international registration of utility models. International applications may be filed with foreign receiving offices and may indicate Romania as a designated country. Failure to open the national phase renders the application ineffective in Romania. The requests for international registration may also be filed with the OSIM, as receiving office. Applicants at the OSIM may re-qualify their request from patent to utility model and, conversely, from utility model to patent, without thereby causing the examination procedure to be automatically closed. Re-qualifications are only admitted once and are not available for international requests where the national phase has already commenced. The right to the utility model may be transferred, wholly or partially, by assignment or by exclusive/non-exclusive licensing. Utility models can be encumbered and pursued in enforcement procedures.

6. For how long is protection granted?

The duration of the protection of the utility model is of 6 years, available for extension for two 2-year each, successive periods, and may not, extensions included, exceed the maximum of 10 years.

TRADEMARKS

1. Which are the protection requisites?

According to the Trademark Law No. 84/1998, exclusive rights to use a trademark in Romania are granted by registration with the OSIM, either directly or by way of an international (WIPO) application based on the Madrid System.

In order to be registered, a trademark must not be identical or confusingly similar to a previous trademark belonging to a different owner and registered for identical or similar products or services. Whenever the previous trademarks are notorious (either in Romania or in the European Union), the risk of confusion is analysed even if the new

trademark is for products or services that are not identical or similar, if registration risks to cause damage to the notorious trademark. The applicant may invoke priority rights.

2. Does Romanian law recognise exhaustion of a trademark?

The concept of Community exhaustion of trademarks is statutorily recognised under the Trademark Law. According to this concept, the first sale of a trademark-protected product within the European Economic Space by the owner, or with the owner's consent, exhausts the trademark rights over these given products not only domestically, but also within the whole European Economic Space. The direct consequence is that resellers within this region cannot be prevented from undertaking parallel imports, unless a legitimate interest related to the alteration of the respective products could be raised.

3. For how long is protection granted?

National trademarks are protected for 10 years counting from the date the application for registration has been filed. It may be further extended for additional periods of 10 years without any overall limitation

4. Are European Union Trademarks protected in Romania?

According to the rules applicable following Romania's accession to the European Union, European Union trademarks shall automatically enjoy protection on the Romanian territory. This mechanism operates ipso jure, without the need for the holder to fulfil any formalities or procedures at the OSIM. A potential conflict with a domestic trademark shall be solved based on the priority rules.

The holder of a national trademark previously registered in good faith is allowed to oppose the use of the European Union trademark only on Romanian territory. Oppositions may be raised to the competent Romanian courts in compliance with Regulation No. 2017/1001 on the European Union trademark.

However, since the automatic extension of protection is not reciprocal (i.e. national trademarks do not automatically benefit from protection in the Member States) holders of national trademarks cannot substantiate, at the European Union level, a motion to annul or to obtain withdrawal of rights for lack of use against the owner of a subsequently registered European Union trademark.

INDUSTRIAL DESIGNS

1. Which are the protection requisites?

Based on the provisions of the Industrial Design Law No. 129/1992, the new external appearance of a product in two or three dimensions having a practical function may be registered as industrial design. Novelty and distinctive character are the registration conditions for an industrial design. A form is novel if it is practically unknown in the territory of Romania, and has not been disclosed for the same category of goods in Romania or abroad.

An industrial design is deemed to be distinctive (have an individual character) if the overall impression it has on the experienced user differs from the impression made by any industrial design made publicly available before the date of filing the application for registration, or before the priority date if priority was claimed.

The industrial design the appearance of which is determined by a technical function cannot be registered.

Several industrial designs may be submitted for registration in the same application, in a multiple deposit comprising industrial designs intended to be incorporated in articles of the same category of goods as per the Locarno Agreement classification.

Industrial designs subject to a multiple deposit should meet the condition of unity of design, unity of production or unity of use, or should belong to the same set or composition of items.

2. For how long is protection granted?

The industrial design is valid for 10 years from constituting the national deposit and may be renewed for three successive 5-year periods upon payment of the legal fees.

3. Are Community Designs protected in Romania?

According to the rules applicable following accession, EU designs automatically enjoy protection on the Romanian territory. This mechanism operates ipso jure, without the need for the holder to fulfil any formalities or procedures with OSIM.

A potential conflict with a domestic design shall be solved based on the priority rules,

the holder/applicant of an earlier local design registered/applied for in good faith being entitled to oppose the use of a Community design on Romanian territory.

TOPOGRAPHIES OF SEMICONDUCTOR PRODUCTS

1. Which are the protection requisites?

Only original topographies are protected. By topography of a semiconductor product it is understood a series of interconnected images, no matter how they are fixed or encrypted, representing the three-dimensional configuration of the layers of which a semiconductor product consists and where each image reproduces the design or a part of a design of a surface of the semiconductor product, at any stage of its production.

The topographies of semiconductor products are protected in Romania through the registration with OSIM.

2. For how long is protection granted?

The exclusive rights granted to the owner by a registered topography expire 10 years after the first commercial exploitation anywhere in the world or 10 years after the registration was filed with the competent authority, whichever occurs first.

COPYRIGHT

1. Which works can be protected under copyright rules?

The Copyright Law No. 8/1996 provides protection to all literary, artistic or scientific works, as well as to other intellectual creation works, provided that they are original, take a concrete form of expression, and are susceptible of being made known to the public.

The protection granted under the Copyright Law applies to the following:

- Works authored by Romanian citizens, even prior to being made known to the public;
- Works authored by natural or legal persons domiciled or headquartered in Romania, even prior to being made known to the public;
- Architectural works located on the Romanian territory;

- Artists' interpretations or performances taking place on the Romanian territory;
- Artists' interpretations or performances which are fixed in sound recordings protected by the Copyright Law;
- Artists' interpretations or performances which are not fixed in sound recordings, but are transmitted by television or radio broadcastings protected under the Copyright Law;
- Sound or video recordings produced by natural or legal persons residing in Romania;
- Sound or video recordings fixed on any material for the first time in Romania;
- Radio/television programs broadcast by entities headquartered in Romania;
- Radio/television programs transmitted by entities headquartered in Romania.

Such works benefit from protection under the Copyright Law without registration or any other formality being required. Non-residents, individuals or legal entities, benefit from copyright protection as per the terms of the international treaties Romania is a party to or, absent such treaties, under the same terms as Romanian residents, on a reciprocity basis. Authors of such work have the moral right to retract it, indemnifying, if the case, the holders of the right to use the work should they incur damage by retraction.

A concept that was introduced by the Copyright Law and that applies to all types of intellectual creations in the literary, artistic or scientific field is the concept of "orphan work". Orphan work refers to intellectual creative work in relation to which the rightholder has not been identified or located, although a diligent search has been carried out and the entity conducting the search maintained records of such diligent searches. The orphan work status does not apply to anonymous works or to works created under a pseudonym. Orphan works that have been considered as such in another Member State shall be considered as having the same status on the territory of Romania.

The publicly accessible libraries, educational establishments, museums, archives, film or audio heritage institutions and public-service broadcasting organisations are entitled, under the law, to use the orphan works, provided that such use is exclusively intended for the purpose of achieving aims related to their public-interest mission.

2. For how long is protection granted?

The Romanian copyrights last for the lifetime of the author plus other subsequent 70 years after their death, being transmitted to lawful successors, irrespective of the date when the work was brought to public knowledge. The same applies to software works.

The person who, after the expiry of the copyright protection period, lawfully brings

to public knowledge, for the first time, a previously unknown work, benefits from protection similar to that offered to authors for a period of 25 years from the date the work was first made public.

As a general rule, protection for artists' interpretations or performances is valid 50 years from the date of such interpretation or performance. However, if such were fixed on a material during this period of time (except for phonograms), and were legally published or communicated to the public, the 50-year protection period starts from the date of such publication or communication, whichever occurs first. The same applies to the rights of video recordings producers.

In case of performances fixed on a phonogram, the protection period is of 70 years as of the date of the publication or communication thereof, whichever occurs first. The same applies to the rights of phonogram producers.

3. Which are the main terms of a copyright licensing agreement?

Copyrights are classified in moral rights and economic or patrimonial rights. While moral rights (e.g. the right to decide whether and how the work is going to be published; the right to decide the name under which the work shall be published, etc.) may not be transferred by the author, economic rights may be assigned to third parties by way of copyright licensing. The author or, as the case may be, the holder of the economic copyright, may license the patrimonial copyrights, in whole or in part, as well as restrict the use of the work by the licensees to certain territories and/or to certain time limits.

The licensing agreement must identify the patrimonial rights that are transferred thereby and must provide, for each right, the permitted methods of use, the term and scope of the licensing, as well as the payments due to the holder of the copyright. If any of these provisions is missing, the interested party may request the termination of the agreement. The licensing agreement concerning all the future works of the author, whether or not such works are named, is null and void.

If the licensor is also the author of the work and the licensee uses the work in a manner that may be found insufficient and conflicting with the licensor's legitimate interests, the author has the possibility to claim invalidity of the copyright license agreement after two years from the entry into force of the license. The term is of three months in case the work was to be published in a daily publication and of one year if the work was supposed to be published in periodicals. The author may not waive in advance such right to seek termination.

4. Who owns copyrights over works for hire?

In the case of agreements for creation of future works, in the absence of a clause to the contrary, the economic rights belong to the author. The person contracting the creation of a future work is entitled to terminate the agreement if the work fails to comply with the agreed conditions. In case of termination, the author keeps the amount which he/she has already received. In the absence of a contractual clause to the contrary, for the works created by employees while fulfilling their professional duties under an individual labour agreement, the patrimonial rights belong to the author. In this case, the author may authorise third parties to use the work only with the employer's consent and subject to compensation for the employer's contribution to covering the costs of creation. The employer may utilise the work in its business without authorisation from the author-employee.

Conversely, contractual clauses may provide that, for works created for the fulfilment of professional duties stipulated in the individual labour agreement, the patrimonial rights do not belong to the author of the work. If such clauses do not set forth the duration of the assignment of patrimonial rights, the term shall be of three years as of the work delivery date. Upon expiry, the patrimonial rights are transferred to the author and, absent a clause to the contrary, the employer is entitled to request the author to pay a reasonable quota from the income obtained from utilisation, in order to compensate costs borne by the employer for the creation.

In the case of copyright on computer programs, unless otherwise agreed, the patrimonial rights in such programs created by one or more employees in the course of their duties or following the instructions from their employer shall belong to the latter.

The economic rights on photographic work performed under an individual labour agreement, or further to an order, are presumed to belong, for a period of three years, to the employer or the person that placed the order, if not otherwise provided in the agreement.

The photograph of a person, when it is made further to an order, may be published, reproduced by the photographed person or its successors, without the consent of the author, if not otherwise agreed.

5. Is licensing permitted through collective management bodies?

The holders of copyrights and related rights may exercise their legal rights individually or, based on a mandate, through collective management bodies.

Collective management is mandatory for certain rights (i.e. the right to compensatory remuneration for the private copy; the right to a fair remuneration for public loan in certain cases; the right of resale-droit de suite; the right of broadcasting for musical works; the right of public release of musical works, except for the public screening of cinematographic works; the right to fair remuneration acknowledged to performing artists and producers of phonograms for public communication and broadcasting of trade phonograms or the reproduction thereof; the right to cable retransmission; the right to a fair compensatory remuneration for orphan works), for which the collective management bodies also represent holders of rights that did not grant them a mandate, and is optional for other rights (i.e. the right to reproduce musical works on phonograms or videograms; the right to publicly communicate works, except for musical works and artistic performances in the audio-video sector; the right of loan, except for certain cases provided by law; the right to radio broadcast the works and artistic performances in the audio-visual sector; the right to fair remuneration resulting from the assignment of lease rights; the right to fair remuneration acknowledged to performing artists and producers of phonograms for public communication and radio broadcasting of phonograms published for commercial purposes or the reproduction thereof).

6. How can imports of goods suspected of infringing intellectual property rights be banned?

The customs authorities are enabled to fight against the import of goods suspected of infringing intellectual property rights, including by retaining goods and verifying their authenticity. The customs authorities collaborate closely with holders of intellectual property rights in order to facilitate a quick authenticity check on suspect products imported in Romania.

Goods that are found to violate intellectual property rights are in most cases destroyed, or - if the holder of the breached intellectual property right agrees - offered free of charge for humanitarian purposes.

In practice, the customs authorities are active in retaining goods that are suspect of infringing intellectual property rights, being especially focused on excisable goods (e.g. cigarettes). However, destroying the goods proven to be counterfeited is a lengthy and cumbersome process.

Pharmaceuticals

LEGISLATION AND AGENCIES

1. Which are the main regulations relating to medicinal products?

In line with European regulations and practice, the regime of medicinal products in Romania is highly regulated.

Law No. 95/2006 on the healthcare system reform - Title XVIII (Health Law) is the main regulation in this field while detailed substantive provisions are included in secondary legislation issued by the Government or competent public authorities. The main secondary enactments on medicinal products include Minister of Health Order No. 368/2017 on pricing, Government Decision No. 161/2016 approving the services packages and Framework contract regulating the conditions for granting medical assistance within the social health insurance system for 2016-2017, and Government Decision No. 720/2008 on the list of INNs corresponding to reimbursed medicinal products.

Essentially, the Romanian legislation in the pharmaceutical area observes the European regulations, to which it has been properly harmonised during the last ten years. There are however specific requirements set forth by the Romanian regulatory authorities in certain domains, such as reimbursement and pricing of prescription-based medicinal products, clawback tax applied to the marketing authorisation holders or the health technology assessment (HTA). Notably, these special regulations may be subject to unpredictable changes, depending on variations in economic policies and budgetary constraints.

2. Which are the primary government agencies responsible for the enforcement of medicinal products related regulations?

The Ministry of Health is the public authority that establishes and monitors the implementation of general policies, strategies and regulations in the healthcare system,

including the pharmaceutical area. Among other important attributions, the Ministry of Health approves the prices of the prescription-based medicinal products, coordinates the national health programs concerning the treatment of major diseases with specific products and approves the relevant HTA criteria and methodology.

The National Health Insurance House (CNAS) is the public institution that issues the secondary legislation within the social health insurance system, monitors allocations made from the National Fund for Social Health Insurance, and oversees the release and payment of the reimbursed medicinal products. CNAS also has attributions in establishing the consumption data on reimbursed medicinal products, which are quarterly notified to the marketing authorisation holders in view of determining the amount of clawback tax they owe.

The National Agency for Medicines and Medical Devices (Agency), subordinated to the Ministry of Health, is the specialised public institution empowered to issue certain regulations concerning authorisation, marketing, manufacturing, import and distribution of the medicinal products, to oversee the activities of the wholesale distributors and to monitor compliance with the pharmacovigilance related requirements. The Agency also authorises and regulates the performance of the clinical trials and endorses the advertising materials used for the promotion of medicinal products.

In 2014, the Agency has been empowered to implement the HTA mechanism used for having the medicinal products included in or excluded from the list of medicines reimbursed in the social health insurance system (DCI List), as well as a means of proposing to the Ministry of Health the draft of such list (to be further approved by Government decision).

AUTHORISATION

1. How can a medicinal product be placed on the local market?

According to the Health Law, medicinal products may only be marketed in Romania based on a valid marketing authorisation issued by the Agency. Applicants not headquartered in Romania or in another EU member state may not receive marketing authorisations for the Romanian market.

The Agency issues authorisations for medicines to be marketed in Romania only (the national procedure) or in several EU Member States, including Romania,

simultaneously (the decentralised procedure). Likewise, a valid authorisation for marketing medicines in one or more EU Member States may be recognised for Romania by the Agency (the mutual recognition procedure). Finally, the marketing authorisation may be issued directly by the European Medicines Agency in accordance with Regulation (EC) No. 726/2004 (the centralised procedure).

The marketing authorisation procedure in Romania is generally in line with the one set forth under the European regulations. The marketing authorisation application form to be filed with the Agency is similar to the application form required by the European Medicines Agency in the centralised procedure, while the procedures carried out before the Agency entirely transpose the requirements laid down under Directive 2001/83/EC.

The initial validity period of the marketing authorisation issued by the Agency is of five years. The authorisation may not be denied, suspended or withdrawn for reasons other than the ones set forth in the Health Law. As regards the exclusivity data period set forth under Directive 2001/83/EC, Romania decided to grant a 10-year period of protection.

PRICING

1. Are there any price restrictions to be observed?

The Ministry of Health establishes and approves, by order of the Minister, the maximum prices for prescription-based medicines to be marketed in Romania. The pricing of non-prescription medicines (OTCs) is not subject to specific endorsement and needs to be notified only to the Ministry of Health.

The legal regime of prescription medicines pricing is set forth in Minister of Health Order No. 368/2017, as further amended and completed (Pricing Order). According to it, the order for approval of the manufacturer price proposed by the marketing authorisation holder or its local representative is to be issued by the Ministry of Health within 90 days since the complete application was lodged.

In order to obtain approval, the proposed manufacturer price must be lower or equal at the most to the lowest price of the same product available in twelve countries provided for comparison in the Pricing Order. Another special rule, aimed at reducing the allowed manufacturer price threshold in case of reimbursed medicines, states that the maximum manufacturer reference price for generic medicines or biosimilar ones cannot exceed 65% (80% in case of biosimilars) of the manufacturer price of the

correspondent innovative product.

The prices of the innovative medicines which lose their patent from 1 April 2017 must be proposed by their marketing authorisation holders at a level that may not exceed the generic/biosimilar reference price established at the time of the first generic/biosimilar market entry. As for the

innovative medicines that have lost their patent before 1 April 2017 and for which generic/biosimilar medicinal products are available at that date, the manufacturer price proposed may not exceed 65%/80% of the approved price of relevant medicine valid at the moment of approval of the first/biosimilar generic medicine price, updated with the inflation rate.

The maximum wholesale and retail (pharmacy) distribution prices of medicines are computed in accordance with a specific formula that takes into account the approved manufacturer price and the maximum wholesale and pharmacy margins, which are also regulated by the Pricing Order.

Once determined, the manufacturer prices as well as the wholesale and pharmacy prices for medicines subject to reimbursement are included in the National Catalogue of Medicine Prices (CANAMED), which is quarterly approved by order of the Minister of Health, and may not be exceeded.

There is also a National Public Catalogue of Prices, which provides the maximal prices of all medicines authorised in Romania and is approved annually by the Ministry of Health. The level of the prices within said catalogue is set by a more relaxed method, however there are no detailed rules on the actual applicability of such prices (they may not be used for medicinal products sold to be reimbursed from public funds).

REIMBURSEMENT

1. How can a medicinal product be reimbursed?

Medicinal products may be reimbursed only if included in the reimbursed DCI (INN) List, which is approved by Government decision (initially, Government Decision No. 720/2008). The DCI List provides for the international non-proprietary name (DCI) of the medicines which are subject to reimbursement by the State in the social health insurance system or within national health programs.

In order to be included in the DCI List, new medicinal products must first be evaluated

and endorsed by the Agency in accordance with the HTA criteria and methodology set forth under the Minister of Health Order No. 861/2014, as further amended and supplemented. The HTA rules also apply to the INNs already included in the DCI List, for which an extension of the therapeutic indications is sought.

Depending on the score obtained further to the HTA process, the INNs may be unconditionally included on the DCI List, or included based upon a conditional decision, or denied inclusion. A decision for conditional inclusion may be taken should the marketing authorisation holders and the health authorities (i.e. Ministry of Health and CNAS) conclude cost-volume or cost-volume-outcome agreements concerning the medicines in question. The medicines conditionally included on the DCI List and thus reimbursed are subject to a special clawback tax burden, higher than the one applied to medicines already on the list.

2. Are there any special coverage and pricing rules applicable to reimbursed products?

The products included on the DCI List are reimbursed by the State in accordance with specific rules highly regulated by secondary legislations. Essentially, medicinal products are reimbursed to a specific reference price, which is lower or, as an exception, equal to the approved price set out in CANAMED.

The DCI List includes three main sub-lists (A, B and C), with sub-list C including three sections (C1, C2 and C3). The percentage of reimbursement is of 90% for medicines on Sub-list A, 50% for medicines on Sub-list B and 100% for medicines on Sub-list C (sections C1 and C3), and applies to the reference price. Medicines within Section C2 of Sub-list C are covered at the value of the reimbursement price. CNAS and its county branches reimburse the value of the medicines on the DCI List (save for medicines within Sub-list C, section C2) in accordance with the rules set forth in the bi-annual framework contract regarding the conditions for granting medical assistance in the social health insurance system (approved by Government decision) and in the secondary legislation issued by CNAS and/or the Ministry of Health.

With regard to determining the reference price used in the social health insurance system for medicines included on Sub-lists A and B, the secondary legislation issued by CNAS provides for a formula based on a breakdown of the DCIs into therapeutic clusters as per the relevant ATC codes and the defined daily dosage. The reimbursement reference price will be determined at the value of the medicinal product with the lowest price in the relevant cluster. Determining the reference price of medicines included on Sub-list C, sections C1 and C3 takes into account the ATC classification per each DCI, assimilated pharmaceutical form, and strength.

The reference price will be computed as per said elements, by applying a specific percentage to the lowest price per therapeutic unit.

For the medicines within section C2 of Sub-list C, which are used in the national health programs, the secondary legislation issued by the Ministry of Health provides that the reimbursement price is determined by a applying a specific percentage (120%) to the lowest retail price per therapeutic unit, per each DCI, assimilated pharmaceutical form and strength.

DISTRIBUTION

1. Is any special authorisation required for medicine wholesalers?

According to the Health Law and secondary legislation issued by the Ministry of Health, a wholesale distributor involved in any activities of sale, purchase, warehousing, handling, transportation, delivery or export of medicinal products must hold a wholesale distribution authorisation. Authorised manufacturers of medicines are deemed authorised as wholesale distributors of the manufactured products.

The wholesale distribution authorisation is issued by the Agency within maximum 90 days as of the date when the applicant files a complete and valid documentation, subject to a favorable result of the inspection carried out by the Agency's representatives to the warehouses and headquarters of the applicant. The authorisation is valid for an undetermined period and may be revoked by the Agency should the holder fail to comply with the conditions for authorisation or operation requirements. The wholesale distributors must also obtain from the Agency and maintain a good distribution practice certificate.

The applicant should not necessarily be the owner of the warehouse but may not use such an authorised warehouse other than based on a contract concluded with the authorised owner of the warehouse. The secondary legislation permits certain activities such as handling, transportation or delivery to also be contracted.

In line with European regulations and practice, Romanian legislation imposes on wholesale distributors a public service obligation to properly and continuously supply the Romanian market with adequate quantities of medicines in order for the needs of patients to be covered.

ADVERTISING

1. Which are the forms of advertising and promotion set forth under the local regulations?

Advertising of medicinal products must be performed with strict observance of the rules laid down in the Health Law and the Minister of Health Order No. 194/2015 on the Rules for assessment and approval of advertising of medicinal products (the Rules). Under the law, advertising includes any form of information through direct contact (door-to-door system) and any form of promotion aimed at stimulating prescription, distribution, sale or consumption of medicines.

The Health Law expressly identifies the following forms of advertisement:

- Advertisement of medicines addressed to the wide public;
- Advertisement of medicines addressed to persons qualified to prescribe or distribute them;
- Visits of medical sales representatives to persons qualified to prescribe medicines;
- Supply of medicine samples;
- Stimulation of prescription or distribution of medicines, by offering, promising or granting pecuniary advantages, unless such have a symbolic value;
- Sponsorship of promotional meetings attended by persons qualified to prescribe or distribute medicines;
- Sponsorship of scientific congresses attended by persons qualified to prescribe or distribute medicines, especially by way of paying for travelling and accommodation costs.

2. Are there any restrictions and prohibitions imposed to advertising activities?

Advertisement addressed to the wide public is allowed only for medicines that may be used without a prescription from the physician and is forbidden for prescription-only medicines, medicines reimbursed in the health insurance system, and medicines containing psychotropic or narcotic substances.

Advertisement addressed to persons qualified to prescribe or distribute medicines must provide at least the essential information compatible with the summary of product characteristics and its classification for release. The law expressly forbids the advertiser from offering or promising any gifts or any other advantages, pecuniary or in kind, while carrying out advertising activities to persons qualified to prescribe or

release medicines, except where such advantages are inexpensive and relevant for medical or pharmaceutical practice.

Hospitality within promotion events is allowed should it be strictly limited to its main scope and be not extended to persons other than healthcare professionals.

The competent authority to oversee the advertising of medicines is the Agency, which endorses the advertising materials and applies sanctions for failure to observe the relevant legal requirements. The Rules apply not only to pharmaceutical companies, their subsidiaries and representation offices, but also to any other partners (agents, agencies, representatives of marketing authorisation holders) contracted in connection with the performance of any form of advertisement for medicines. Pharmaceutical companies are held liable to observe the obligations set forth in the Guide even if they assigned the promotion or advertising activities to specialised third parties.

3. Is there any special disclosure requirement in respect of the interactions with healthcare providers?

On February 2014, the Health Law has been supplemented to regulate special disclosure obligations related to certain interactions between pharmaceutical companies and healthcare providers. Thus, medicine manufacturers, marketing authorisations holders or local representatives thereof as well as wholesale or retail distributors have to annually declare to the Agency all sponsorship activities and any other expenses borne for physicians, nurses, professional organisations, patient organisations or other organisations within healthcare field; the same obligation is also incumbent upon the beneficiaries of said sponsorships and expenses.

Once disclosed, the information is posted on the websites of the Agency, sponsors and beneficiaries.

TAXATION

1. Is there any special tax burden related to medicinal products?

In order to control medicine consumption and to ensure financing for increased consumption, the Romanian Government imposed a special tax on marketing authorisation holders or their local representatives in connection with medicines subject to reimbursement from public funds. The so-called “clawback tax” has been

first introduced in October 2009 and was subject to several legislative changes due to enforceability and transparency flaws. The clawback tax is still being challenged by the entire pharmaceutical industry demanding a more transparent and sustainable taxation mechanism.

The current tax, which applies with certain variations starting with October 2011, is computed by applying a specific percentage, quarterly determined by CNAS depending on the value of consumption of reimbursed medicines, to the value of the quarterly consumption of reimbursed medicines that belong to each marketing authorisation holder. A higher level of the clawback tax, whose computation formula uses certain elements set forth in the price-volume or price-volume-outcome agreements, applies in respect of the medicines conditionally included in the DCI List.

Based upon the consumption data unilaterally issued and notified by CNAS, the taxpayers must determine the amount of tax owed, declare it to the competent fiscal bodies and pay it by the 25th of the second month following the end of the relevant quarter. The tax is collected by the fiscal bodies under the rules set forth in the Fiscal Procedure Code.

Environment

1. Are the Romanian environmental laws aligned with the European Directives?

Starting with 2004-2005, before the country's accession to the European Union, Romanian authorities have made serious efforts in order to transpose the principles of the EU Directives in the field and, at the time of this analysis, the most important EU Directives have already been implemented in Romania.

2. Which are the authorities entrusted with the application of environmental laws?

The Ministry of Environment is the authority in charge with the environmental protection strategy and with the general coordination of the authorities entrusted with the application of environmental laws.

At the same time, the national strategy in the fields of water management, fishing, forests, management of floods, as well as the coordination of the local water management bodies is entrusted to the Ministry of Waters and Forests.

The main authorities involved in the application of environment protection laws domain are:

- The local environmental protection agencies;
- The local water management bodies;
- The National Environmental Guard.

The Ministry of Environment and the National Environmental Protection Agency also have competencies in applying the environmental regulations.

However, their implication is limited to projects that may have significant impact at national level, or which may impact on the environment of other states.

3. Which are the environmental permits required for implementing environmental impacting projects?

Implementing projects that may generate impact on the environment requires a two—tier authorisation. On the one hand, such projects may only be developed subject to obtaining an environmental agreement (Romanian: *acord de mediu*), which sets out the conditions to be fulfilled to ensure that the implementation (construction) of the project complies with the statutory environmental requirements. The environmental agreement is one of the documents substantiating the application for a building permit.

On the other hand, the operation phase may not be commissioned until the operator obtains an environmental authorisation (Romanian: *autorizație de mediu*), which is separate from the environmental agreement.

3.1. What is an environmental agreement?

An environmental agreement is issued further to conducting a complex procedure coordinated by the environmental protection agencies at different levels or, in certain cases, by the Ministry of Environment itself.

As a first step of this legal procedure, the environmental authorities conduct a first assessment aimed at establishing the magnitude of the environmental impact possibly generated by the project. For projects deemed to generate minor impact, the law prescribes a simplified permitting procedure, the project developers being allowed to begin construction works without an environmental impact assessment. For projects generating an important impact on the environment, developers are invited to prepare an environmental impact assessment. To this end, after having consulted the interested members of the public, the competent authority prepares a checklist with the items to be covered in the report. The report is submitted by the environmental authority to a public debate. Based on the findings in the environmental impact assessment report and, if the case, on the comments received from the public, the environmental authority takes its decision on issuing the environmental agreement. The decision is published in the media, so as to allow interested parties to challenge it. The environmental agreements are valid for the whole period of project development. The public potentially affected by the project and the NGOs specialising in environmental protection play an important role in the procedure, as they have the right to participate in the process by submitting their points of view in relation to the project and by participating to the public debates organised by the environmental authorities.

For projects that may generate impact on the environment of neighbouring countries, the Ministry of Environment conducts consultations with the relevant authorities in

the possibly affected state. Decisions on issuing the environmental agreement for such cases must take into account the comments and suggestions possibly received from the potentially affected state.

3.2. What is an environmental authorisation?

While the environmental agreement is the document regulating the implementation of environment impacting projects, activities with possible impact on the environment may only be carried out subject to an environmental authorisation. The authorisation sets forth the specific technical conditions to be complied with when carrying on a specific activity possibly generating an impact on the environment.

The environmental authorisation may provide for a set of measures to be implemented in order to reduce the impact on the environment, establishing also the time schedule for implementing the respective measures. Failure to abide by its terms may trigger the suspension or annulment of the environmental authorisation.

3.3. In which cases are integrated environmental agreements and integrated authorisations required?

For installations subject to the Industrial Emissions Directive, integrated environmental agreements and integrated environmental authorisations are required.

The integrated environmental agreement is the document setting out the conditions to be fulfilled to ensure that development (construction) of the project complies with the statutory environmental requirements.

Applying for a building permit is only possible after having obtained the integrated environmental agreement.

The integrated environmental authorisation sets forth the specific technical conditions to be complied with when operating an installation subject to the IPPC regulations. While establishing measures to reduce the impact is allowed in environmental authorisations, the integrated environmental authorisation is issued only if the installation in question complies with the best available techniques.

In the context of the accession to the EU, Romania faced the challenge of bringing the old installations to meet the best available techniques. Since implementing such techniques could not be achieved in a short period of time, Romania has negotiated transition periods for ensuring progressive compliance of certain installations.

4. How can an investor assess the environmental obligations related to a certain activity?

Whenever the operator of an activity generating significant impact on the environment is subject to change of control, sale of assets, merger, spin-off, concession or other operations entailing a change of the operator, such operations must be notified to the environmental protection agency, in order for the latter to inform the parties involved on the specific environmental obligations they must undertake.

Having received the list of environmental obligations, the parties involved in any of the operations above will negotiate the allocation of such obligations among them. The exact manner the parties involved understood to split the responsibility for fulfilment of the relevant environmental obligations must be notified to the environmental protection agency.

5. What permits are required for securing the right to use water resources?

While most waters are included in the state's public domain and administered by a special governmental agency (Administrația Națională "Apele Române"), the Government has the exclusive right to establish the rules governing the use of waters, irrespective of whether water sources are included in the public domain or not.

Unless the relevant water installations exceed a certain capacity, the use of underground and surface waters is free for small activities specific to households, such as human and animal consumption. The right to use waters for other activities is only granted through administrative acts regulating the terms and conditions of use, namely:

- The water management permit (Romanian: *aviz de gospodărire a apelor*); and/or
- The water management authorisation (Romanian: *autorizație de gospodărire a apelor*).

The water management permit is a pre-requisite document to beginning construction works for new investment projects built on/near water sources, or related to the use of waters. Applying for the building permit is possible only after having obtained the water management permit.

The water management authorisation is required before the commissioning and exploitation of new projects erected on/near water sources, or which are related to the use of water. The water management authorisation regulates in detail the terms and conditions under which the use of water is allowed.

Exceptionally, for certain projects or activities, the law exempts the project developers/ operators from their obligations to obtain the water management permit or the water management authorisation. In this situation, a mere notification to the relevant branch of Administrația Națională "Apele Române" is sufficient.

6. Does Romania have a scheme for limitation of CO2 emissions?

In 2001, Romania was among the first states to ratify the Kyoto Protocol regarding the framework Convention of the United Nations with respect to the climate changes. In 2006, Romania transposed the Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community. As of 1 January 2007, any operator of equipments listed in Annex I to the Directive 2003/87/EC must hold a greenhouse gas emission authorisation and an adequate number of greenhouse gas emission certificates allowing a certain level of greenhouse gas emissions. At the same time, starting with the 1 January 2007, Romania has implemented a greenhouse gas emission trading scheme.

7. Are there express noise level thresholds to be observed?

The Romanian standards in the field of noise pollution stipulate that any constructions which may generate environmental noise must be located in such a way so as the impact over inhabited areas does not exceed certain thresholds.

Currently, the continuous noise level measured in certain technical conditions must not exceed 55 db and level 50 for the noise curve during the day. During the night, the noise level values must be lower with 10 db. Also, the continuous noise level measured inside dwellings (with windows closed) must not exceed 35 db and level 30 for the noise curve during the day. The continuous noise level must not exceed 30 db at night, while the noise curve must not exceed level 25. These thresholds must be considered when developing new projects; at the same time, for projects generating environmental impact, they must be considered when preparing the environmental impact assessment report required for obtaining the environmental agreement.

In the field of noise impact, Romania has implemented Directive 2002/49/EC relating to the assessment and management of environmental noise, thus implementing a system aimed at preventing the negative effects caused by environmental noise. Public authorities must prepare noise maps for the noisy areas identified in the law (i.e. big cities, airports, roads, railways and harbours) and propose action plans that would help prevent and reduce the impact of environmental noise.

8. How does Romania plan the management of protected areas?

Romanian legal framework was aligned to the EU requirements primarily through the implementation of Directive No. 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Directive 2009/147/EC on the conservation of wild birds and Council Directive 2006/105/EC of 20 November 2006 adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of environment following accession of Bulgaria and Romania to the EU.

In Romania, there are several types of protected areas, depending on their importance:

- Protected areas of national interest;
- Protected areas of international interest;
- Protected areas of Community interest (Natura 2000);
- Protected areas of local interest.

Depending on the importance of various protection areas, their management may be entrusted to special structures organised for this purpose or to custodians, which may be individuals or legal entities.

The management of the Danube Delta Wildlife Reservation is entrusted to the Danube Delta Wildlife Reservation Administration, an entity created especially for the purpose and placed under the direct control of the Ministry of Environment.

For each protected area, management plans and regulations are prepared in order to detail the rules and restrictions applicable within the area. Such management plans and regulations are approved by the Ministry of Environment. The possible influence of any environmental impacting projects on the protected areas is subject to assessment within the environmental impact assessment procedure conducted for the purpose of obtaining the relevant environmental agreement.

9. Does Romania have special rules on environmental liability?

The liability for damages caused to the environment is governed by the principle "polluter pays" and Romania has implemented the Directive No. 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damages. Operators must promptly inform the local environmental protection agency on any damage caused to the environment, as well as on any imminent threat of such damage. In any such situation, the operator must take all necessary reparatory and/or

precautionary measures.

If the operator does not comply with these obligations, or if the operator is not identified, the relevant environmental protection agency is entitled to take all reparatory or precautionary measures itself, on the account of the operator who has to bear the related costs. In order to recover the costs, the environmental protection agency may proceed to seizing the goods of the operator. If damage to the environment or a threat of such damage is caused by two or more operators, they will be jointly liable.

Product Liability & Consumer Contracts

REGULATORY

1. Which are the main laws governing product liability?

The Consumer Code is the main legal enactment regulating product liability and consumer rights; it deals *inter alia* with consumers' access to goods and services, consumers' rights, producers' obligations, as well as the general rules applicable to non-governmental organisations and product security.

In addition, more detailed rules regarding the terms and circumstances when product liability is engaged are regulated by Law No. 449/2003 on selling products and ancillary warranties, Law No. 240/2004 on producers' liability for damages resulting from defective products, Government Ordinance No. 21/1992 on consumers' protection and Law No. 193/2000 on unfair clauses in contracts concluded between professionals and consumers. General norms governing tort and contractual liability as provided by the New Civil Code supplement special legislation on product liability.

2. Which are the main Governmental and NGO Watchdog Bodies?

The Government's policy in the field of consumer protection is mainly coordinated by the National Authority for Consumer Protection (ANPC). The ANPC is responsible for the constant harmonisation of the Romanian legislation with the EC laws, as well as for supervising compliance with specific legislation applicable to the sale of consumer goods.

Non-governmental organisations in the field of consumer protection have several prerogatives such as the right to participate to consultative councils (organised based on territorial criteria and in charge of enforcing the consumer protection policy and coordinating the activity of public institutions and non-governmental organisations in

the field of consumer policy) and to run consumer information and consulting centres subsidised with public funds.

Naturally, ultimately the courts of law ensure the observance of the product liability laws.

SCOPE OF PRODUCT LIABILITY RULES

1. Who is protected?

The main subject of the protection granted by product liability laws is the "consumer" which is a person legally deemed as having limited knowledge as regards the risks generated by the use of products.

The concept of "consumer" refers to not only the purchaser of a product directly from the producer, but also to any subsequent acquirer (i.e. the end-user), to the extent the concerned product was normally designed for private consumption. Should any of these persons incur damages resulting from a defective product, they may file a claim against the seller.

2. Who bears legal responsibility?

Product liability applies only to professionals and not to private individuals.

As a general rule, the liability for defective products is borne by the seller, as the primary contact against whom the consumer may claim product liability, and by the producer, as ultimate bearer of responsibility. Under the law, whenever product liability is triggered based on a warranty obligation towards the consumer, the "seller" of the product shall be held liable first. The seller is defined as the person who, during its professional activity, sells products based on agreements concluded with consumers. If the seller's liability is triggered due to a lack of conformity in the product resulting from an action or omission of the producer, or of another economic operator from the same contractual chain, the seller is entitled to redress against the entity responsible for such lack of conformity. The term "producer" covers the manufacturer of the finished product, of the raw material, or of various components of the product; any person representing itself as producer by way of applying its name, trademark, or other distinctive element on the product; the importer of a product in Romania, who shall be liable on the same terms as the manufacturer, etc.

The Consumer Code broadens the definition of the term "producer", additionally including certain categories of entities such as: the economic operator that reconditioned the product; the distributor which, within the context of its business, alters the features of the product; the representative registered in Romania of an economic operator headquartered outside Romania; the importer of products aiming a subsequent sale, lease, leasing or any other distribution form.

3. Which types of products fall under the scope of product liability legislation?

Only movable goods fall under the scope of the product liability laws, including raw materials (either transformed or unchanged), including moveable goods incorporated into another good, be it moveable or immoveable.

Legal scholars generally acknowledge that the category of "product" also includes medicines or even the parts of the human body (e.g. organs for transplants) or products of the human body (e.g. blood, male or female reproductive cells). Although not unanimously accepted, opinions have been expressed that also intangible assets (e.g. software) qualify as "products", because they may harm the corporal integrity or health of the consumers, they may generate pecuniary damages, or even cause death.

RULES AND PROCEDURES OF PRODUCT LIABILITY CLAIMS

1. Which are the defects that trigger product liability?

Any lack of conformity existing at the time of delivery may constitute basis for product liability. The concept of "defect" covers any deficiency in the product, be it a manufacturing defect or a design defect.

Product liability may also be triggered whenever the product fails to provide the security that the consumer is entitled to expect based on the foreseeable and reasonable purpose of utilisation of the product. However, this source of product liability may only be discussed in the context of tort liability for a damage caused to the consumer.

The notion of the defect is not automatically implied where products are dangerous by their nature (e.g. weapons) should the consumer be properly informed on the dangers associated with such products.

2. Is there any term within which a defect may be claimed?

One needs to distinguish between where (i) the defect is claimed under the warranty obligation of the seller, and where (ii) the defect is claimed under the tort liability for damages caused by defective products.

As regards defects claimed under the warranty obligation the seller bears liability if the lack of conformity becomes apparent within 2 years from delivery of the goods. The consumer shall inform the seller on the occurrence within 2 months from the date the lack of conformity was discovered. Unless proven otherwise, any defect which becomes apparent within 6 months as of the delivery of the goods shall be deemed as having existed at the time of delivery, unless this assumption is incompatible with the nature of the goods or the nature of the defect.

Under tort liability, where the defect caused damages to the consumer, the prejudiced consumer can bring action in court for product liability. Such court actions are subject to a 3-year term of statutory limitation, starting on the date the claimant knew or should have cumulatively known of (i) the existence of the damage, (ii) the existence of the defect and (iii) the identity of the producer. The law however provides that, in any case, any claim on product liability must be lodged with the court within 10 years as of the date the producer released the product onto the market. Both the right to initiate legal proceedings, as well as the substantive right to indemnification cease upon the expiry of this 10-year term.

3. What defences are there available to the seller / producer against liability for a defective product?

Law No. 240/2004 provides for a number of causes of limitation of the producer's liability, or exemption from liability related to defective products, among which: (i) where the product was not released on the market by the producer; (ii) where the defect that caused the damage did not exist at the moment the product was released on the market, or the defect appeared subsequently due to causes for which the producer bears no responsibility; (iii) where the defect results from complying with certain mandatory regulatory provisions; (iv) where the level of scientific and technical knowledge existing at the moment when the product was released on the market prevented the producer from discovering the defect; (v) where the defect was caused by the consumer's own actions.

Generally, the seller / producer will not be able to limit its liability towards the consumer if the damage occurs both because of a product's defect and a third party's

action or inaction.[1] However, the seller / producer may seek an indemnity from the third party who contributed to the damage (within the same proceeding initiated by the claimant or by separate lawsuit against the third party).

4. What remedies are there available if a lack of conformity / defect occurred?

Distinction needs to be made between where the defect is claimed under the warranty obligation of the seller, and where the defect is claimed under the tort liability for damages caused by defective products.

If defects are claimed under the warranty obligation, the seller shall be liable to the consumer for any lack of conformity which exists at the time when the goods were delivered. The consumer is entitled to have the goods brought into conformity free of charge by repair or replacement, or to have an appropriate discount in the price, or to have the contract partially rescinded (i.e. with regard to those goods). The price discount or the rescission of the contract may be applied only (i) if the defective good has not been repaired or replaced; (ii) if the seller has not provided complete remedy within a reasonable time; (iii) if, in remedying the defect, the seller caused significant inconvenience to the consumer. The consumer is not entitled to have the contract rescinded in case of minor lack of conformity.

By contrast, for defects claimed under tort liability the prejudiced party may seek indemnification. Under Law No. 240/2004, the following damages caused by a defect/ lack of conformity must be covered: (i) damages deriving from the death or bodily/ health injury, irrespective of whether the person was or not a contracting party (moral damages included); and (ii) damages deriving from the degradation or destruction of an asset, other than the defective product, provided that this asset is of a type ordinarily intended for private utilisation or consumption, and the value of the damage is not less than the equivalent in RON of EUR 500.

5. In brief, what is the procedure for product liability claims?

Product liability claims are settled by the relevant courts of law under the rules of the Civil Procedure Code. Civil lawsuits are subject to a three-tier jurisdiction. This means that first court decisions may be challenged with higher courts under first-appeal procedure (on factual and legal grounds), while the decisions passed by appellate

1 The law provides for a specific exemption of liability in case of producer of components if he proves that the defect was caused by the design of the product into which the component was integrated or by the wrong instructions given by the manufacturer of the product into which the component was integrated.

courts may subsequently be challenged under second-appeal procedure (limited to technical and procedural grounds).

Under the law, the parties may also use the out of court settlement procedures when dealing with product liability claims. Essentially, the parties may any time prior to or during the litigation conclude a settlement with respect to any product liability claims.

Romania has recently transposed the EU directive on alternative dispute resolution (ADR) between consumers and traders. This legislation allows the out-of-court settlement of the consumer related disputes, by deferring it to independent and impartial extrajudicial resolution bodies (ADR Entities). It is to be noted that the ADR may be used only if both consumer and trader agree in advance on such manner of dispute settlement. The solution issued by the ADR Entity will become binding upon the parties if they accept it, or if the parties do not challenge it within a specific deadline.

The general competence on settlement of disputes between consumers and traders (including disputes on product liability) was granted to the Department for Alternative Dispute Resolution (an independent body within ANPC specially created for this purpose in October 2016).

The ADR systems has a few clear advantages: it is easier to access, less expenssive (it does not involve any special fees for ADR Entity), and faster (generally 90 days, and only exceptionally the procedure may exceed this term). Still, due to the relative novelty of this dispute settlement system in Romania, the consumers and the producers / sellers are still hesitant in using it.

CONTRACTS CONCLUDED BETWEEN CONSUMERS AND PROFESSIONAL VENDORS

1. What clauses are deemed unfair and sanctioned as such?

Consumer protection legislation focuses on establishing rules designed to ensure that contractual clauses are drafted in an accurate and clear manner allowing the consumer to understand their content. Ambiguous clauses will be construed in favour of the consumer.

Contractual clauses which are not subject to negotiation may be considered unfair if they lead to a significant misbalance between the parties' rights and obligations.

The law provides a non-exhaustive list of clauses deemed unfair, among which:

- Clauses providing for the unilateral right of the seller to amend the contract;
- Clauses whereby the consumer is not entitled to obtain remedies in case the seller does not fulfil its contractual obligations;
- Clauses whereby the indemnifications the consumer has to pay in case of non-compliance with the contractual clauses are disproportionately bigger than the effective damage incurred by the seller; or
- Clauses providing for the right of the seller to unilaterally terminate the contract without a similar right being granted to the consumer.

Unfair clauses are deemed as null and void under the law. The standard of protection against unfair contractual clauses has been recently raised, as the applicable legal framework currently regulates a form of "*contamination effect*" of contracts containing unfair clauses. Essentially, in cases where unfair clauses are found in standard contracts, ANPC and specialised NGO's have been granted the right to ask in court for the systematic elimination of such unfair clauses from the entire portfolio of ongoing standard contracts of similar kind.

2. What other rules govern specific types of contracts?

Besides the general consumers' protection legislation applicable to all the contracts concluded between sellers and consumers, there are special legal enactments setting rules applicable to specific types of contracts, of which we mention the following:

- Distance contracts;
- Off-premises contracts;
- Credit contracts;
- Real estate intermediation contracts.

2.1. Distance and Off-Premises Contracts

The Romanian legal framework addressing the regime of business-to-consumer contracts has been amended in 2014 with a view to aligning the domestic legal framework with the provisions of the EU directives on consumer rights. This new business-to-consumer contracts legislation establishes harmonised rules on information to be provided to the consumers generally and, particularly, when distance contracts and off-premises contracts are concluded.

Also, this new legislation lays down unified rules addressing the consumers' right of withdrawal from distance and off-premises contracts. More precisely, consumers have

14 days to withdraw from the contract without penalty and without providing any justification. The only charge that may be imposed on the consumer for the exercise of such right of withdrawal is:

- The direct cost of returning the goods, except when:
  - The trader has agreed to bear them; or
  - The trader has failed to provide to consumer a notice of the right of withdrawal; or
  - The goods delivered to the consumer's home based on an off-premises contract, by their nature, cannot normally be returned by post mail.
- An amount necessary to cover any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods (if the case), unless the trader has failed to provide to consumer a notice of the right of withdrawal.

As a rule, if the consumer has exercised his right of withdrawal, the trader must reimburse all payments received from the consumer, including, if applicable, the costs of delivery not later than 14 days from the day on which he is informed of the consumer's decision to withdraw from the contract. As an exception, if the consumer has expressly opted for a type of delivery other than the standard delivery offered by the trader, the additional costs for such special delivery are not to be reimbursed.

2.2. Credit Contracts

Given the value and inherent sensitive nature of credit contracts, special legislation has been enacted as to ensure a minimum standard of protection for consumers entering into credit contracts, by way of imposing express obligations on providers of financial services. Specific norms set forth the information that needs to be provided to customers in the pre—contractual phase, upon marketing and advertising credit products, as well as the rules to be observed upon concluding credit contracts.

Financial services providers must inform consumers, in an accurate and exhaustive manner, on all the costs and risks related to the credit contract. Also, the interest, commissions, fees or other banking expenses need to be mentioned directly in the credit agreement rather than merely indicated by reference to other documents such as general terms of the provider, list of tariffs, etc. Amendments brought to the legal framework in view of implementing Directive 2008/48/EC and Directive 2014/17/EU on consumer credit contracts further provide a broad array of protective measures for consumers (such as an obligation to provide specific information binding upon the financial services providers during the pre-contractual period, prohibition from imposing new, or the increase of the existing commissions, fees, taxes or banking costs, other than those provided by the law, during the performance of the credit agreement;

a prohibition from imposing certain contractual clauses detrimental to the consumers, etc.). Consumers have two procedural means for challenging clauses included in credit contracts which infringe aforesaid statutory standards: either (i) file a complaint with the ANPC followed, where unfair clauses are found, by requesting the court to apply administrative sanctions and amend/annul the unfair clauses; or (ii) directly challenge the defective contractual clauses in court.

2.3. Real Estate Intermediation Contracts

Consumer protection legislation sets particular focus on real estate intermediation contracts (including intermediation for sale-purchase and rent). Such contracts need to include, besides the regular clauses, a minimum set of compulsory clauses such as the maximum commission owed to the real estate agency, the exclusivity clause (if the case), as well as a clear determination of the cases where the customer owes the agency a commission. Statutory obligations have been imposed on real estate agents in the pre-contractual phase, such as the obligation to inform the interested customer on any legal or practical deficiencies or inconveniences related to the asset of which the agent is aware.

Insolvency

LEGISLATION

1. What are the main regulations regarding insolvency and liquidation?

Different insolvency legal frameworks are in place for companies, financial institution and public administrative bodies. Law No. 85/2006 regarding insolvency procedures regulates the insolvency and liquidation of companies and other legal entities that perform commercial activities, Government Emergency Ordinance No. 10/2004 applies for the bankruptcy of financial institution while Government Emergency Ordinance No. 46/2013 governs the insolvency of public administrative units.

In April 2014, the Romanian Parliament approved the law regarding the prevention of insolvency and insolvency procedure (2014 Insolvency Law).

The 2014 Insolvency Law regulates the ad-hoc and concordat procedures, the insolvency procedure for legal entities, the cross-border insolvency and the insolvency of groups of companies as well as the bankruptcy procedure for financial institution and insurance companies.

For ongoing procedures at the time the 2014 Insolvency Law was passed, Law No. 85/2006 will continue to be applied. In the matter of voluntary liquidation, the Companies Law No. 31/1990 provides the legal framework for the liquidation of companies that are not insolvent. In companies under voluntary liquidation that are found insolvent the liquidator must apply for the opening of insolvency procedures.

Although a law regulating the insolvency of individuals has been adopted in Romania, its entering into has been postponed several times and he law is still not applicable.

2. Is there any pre-insolvency legal framework in Romania?

Starting with 2009, legal rules regarding the concordat and ad-hoc mandates apply

in Romania as a pre-insolvency legal framework. Nevertheless, the pre-insolvency measures are not mandatory. Companies undergoing negotiations for a concordat or operating under an ad-hoc mandate that become insolvent must apply for insolvency within five days after the failure of the negotiations.

The 2014 Insolvency Law follows the same principles as Law No. 85/2006, differing mainly in that under the 2014 Insolvency Law the concordat project must be approved by 75% of the creditors table instead of ⅔ as per Law No. 85/2006.

Nevertheless, the concordat and ad-hoc procedures are not popular, the practice is limited and success rate remains unknown.

3. What is the definition of insolvency in Romania?

Law No. 85/2014 defines insolvency as the situation in which the company's available funds are not covering its due debts, as follows:

- Insolvency is obvious where the debtor is not able to pay a debt within 90 days from the due date;
- Insolvency is imminent whenever the debtor proves unable to pay a debt from the funds available on the due date.

The law also sets forth a limit for the creditors' claims able to result in the debtor's insolvency at RON 40.000 (approximately EUR 8,500 or USD 10,000).

4. Are there any grounds on which a debtor may qualify directly for liquidation?

The 2014 Insolvency Law provides that the debtor applying for its own insolvency may choose the simplified procedure, proceeding directly to liquidation.

When the application is made by a creditor, the debtor may qualify directly for liquidation in the following situations:

- Where the debtor does not own any assets;
- Where the debtor's documents including the accounting documents cannot be found;
- Where the debtor's administrator cannot be contacted;
- Where the debtor's official address does not exist or is not the same with the address declared with the Trade Registry.

5. Which are the main phases of the general insolvency procedure?

The 2014 Insolvency Law provides that there are three main phases that can occur during the insolvency procedure:

- The observation period, lasting from the date the procedure is opened, up to the date a reorganisation plan is approved or the liquidation procedure begins;
- The reorganisation period, beginning after the approval of the reorganisation plan and lasting until the plan is fully implemented or a liquidation procedure begins;
- The liquidation procedure, which lasts until the complete foreclosure of the company.

PARTIES IN INSOLVENCY/LIQUIDATION

1. Who can be appointed as judicial administrator or liquidator?

The 2014 Insolvency Law provides that the judicial administrator and the liquidator can be individuals or specialised companies, members of the Romanian National Union of Insolvency Practitioners (UNPIR) authorised according with Government Emergency Ordinance No. 86/2006.

The syndic judge appoints the judicial administrator or liquidator as nominated by the applicant, or, lacking nomination, by randomly appointing a practitioner from the UNPIR list.

The 2014 Insolvency Law includes special rules for the insolvency of groups of companies, namely:

- All insolvency cases will be settled by one court for all companies in the group;
- The competent court will be the court having jurisdiction over the mother company or the company among the group with the biggest annual turnover;
- For each company a separate insolvency case file will be opened, to be transferred to the syndic judge designated for the first insolvency that was opened;
- The same insolvency practitioner will be appointed for all insolvency cases of the group.

The syndic judge, upon the request of any interested party, supervises observance of all these rules.

2. What are the main responsibilities of the judicial administrator or liquidator?

The judicial administrator's main responsibilities are (i) to supervise, or take over the debtor's administration as the syndic judge decides; (ii) to prepare the required reports, i.e. the report on the causes and conditions of the insolvency, the activity reports and any other reports requested by the syndic judge; (iii) to collect the receivables and to sell assets as permitted by the law. The judicial administrator must analyse all creditors' claims in the beginning of the procedure and create the creditors' table.

As per the 2014 Insolvency Law supervision means that the debtor may perform the following operation only subject to judicial administrator's prior approval:

- All payments, both from the bank account or cash;
- Contract signing or amendments;
- Legal documents related to litigations cases, approval of all measures related to receivables collection, amicable or under legal enforcement procedures;
- Operations resulting in decrease in the estate value, new valuation or cassation of fixed assets;
- Transactions proposed by the debtor;
- Financial reports and activity reports;
- Restructuring measures or changes in the collective bargaining agreement;
- Mandates for the general creditors assembly or creditors committee where the debtor is part of the procedure and for all the shareholders meetings where the debtor is shareholder.

The liquidator takes over in full the debtor's administration and control of the assets.

3. What are the attributions and powers of the syndic judge?

The syndic judge decides the opening of the insolvency procedure. At the same time, the syndic judge appoints the judicial administrator or the liquidator and confirms their fees.

During the procedure, the syndic judge monitors the judicial administrator's/liquidator's activity by way of their activity reports. It is also for the syndic judge to decide on all the challenges the debtor or its creditors promote during the procedure in connection to the judicial administrator's/liquidator's activity reports, transaction annulments, the administrators' liability, the confirmation or rejection of the reorganisation plan.

THE DEBTOR'S REORGANISATION

1. Who is entitled to propose a reorganisation plan?

The following categories are entitled to submit a reorganisation plan:

- The debtor, after approval by its General Assembly of Shareholders;
- The judicial administrator;
- One or several creditors representing at least 20% of the claims registered in the creditors' table.

The general term for submitting the reorganisation plan is of 30 days after the final creditors' table has been published.

2. Which are the main mandatory provisions of a reorganisation plan and the conditions for its admissibility?

The reorganisation plan must present the grounds of the proposed reorganisation, both operationally and financially-wise, as well as the financing sources from which the reorganisation will be supported and all the measures to be taken to accomplish the plan. The duration of the proposed reorganisation plan cannot exceed three years and may only be extended by one year at the request of the judicial administrator submitted within the first 18 months of execution. An important element of the plan is the proposed schedule of payment to the creditors, indicating the financing sources, the treatment of claims and a comparative analysis between the percentages of the amount of claims that would be covered by liquidation versus the coverage proposed within the reorganisation plan.

In addition, the 2014 Insolvency Law requests that a reorganisation plan must provide for the payment schedule for the debts arisen after the insolvency procedure was opened but before the approval of the plan. Particularly, if the reorganisation plan fails, the claims registered on the final creditors table will be restored, respectively all debts are reset to the values stated by the final creditors table out of which the amounts paid under the reorganisation plan will be deducted.

So far, the fiscal authorities typically did not approve reorganisation plans providing for rescheduling, reductions or cancellations of debts owed to the state budgets because such accommodations would be considered state help for the debtor. Despite the fact that the 2014 Insolvency Law provides that any such measures regarding budgetary debts proposed in the reorganisation plan do not constitute state aid for the debtor if

the creditor collects under a reorganisation plan more than it would collect through bankruptcy, the general practice of the fiscal authorities is to reject the reorganisation plans that provide for either a claim reduction or rescheduling.

3. Who is approving the reorganisation plan?

According to the law, the reorganisation plan is approved by the General Assembly of the Creditors with the simple majority of the categories of creditors. Under the law, a few categories of creditors are recognised for the purposes of voting such plan:

- Secured creditors: creditors whose claims against the debtor are secured by assets the debtor's property;
- Salary receivables: the debtor's employees' claims for unpaid salaries;
- Fiscal claims: claims against the debtor representing taxes;
- Unsecured creditors: creditors whose claims against the debtor are not secured.

Providing that the debtor declares it upon the opening of the procedure, it is possible to have an additional category: the indispensable creditors, which are those creditors that supply goods and/or services that are mandatory for the debtor to operate normally and cannot be replaced under the same financial conditions. The list is subject to confirmation by the judicial administrator and may be challenged by any creditor.

Only one reorganisation plan may be approved. The decision of the General Assembly of Creditors approving/rejecting the reorganisation plan is submitted to the syndic judge for analysis and confirmation by the judicial administrator. In addition, besides the simple majority of the creditors' category, creditors representing at least 30% of the total value of debts on the final creditors table must approve the plan.

4. Is it possible to amend the confirmed reorganisation plan during the procedure?

The reorganisation plan may be amended at any point in time throughout the procedure, provided that the General Assembly of the Creditors approves and the syndic judge confirms the amendments.

5. Who is responsible for compliance with the reorganisation plan?

Once a reorganisation plan is confirmed, the debtor will administrate its activities

under the supervision of the judicial administrator. The special administrator, who is the debtor's shareholders' representative in the insolvency procedure, will submit a quarterly report to the Creditors' Committee detailing on the way the reorganisation plan is implemented. After the Creditors' Committee takes its decision, a copy of the report must also be filed with the court.

LIQUIDATION

1. What are the first steps of the liquidation procedure?

Prior to liquidation, the liquidator will take over the debtor's assets and archive. All ongoing contracts are cancelled, including the labour contracts. Once the debtor's assets are inventoried and evaluated, the liquidator will proceed under the supervision of the judge to sell all the assets identified. The liquidating debtor's assets may be sold by auction or by direct negotiation with a prospective buyer.

2. How are the funds obtained from liquidation distributed?

The funds obtained from liquidation will cover first the procedure expenses, including the liquidator's fee, followed by the salary claims, the fiscal claims and the creditors' claims in accordance with their rank. If funds are obtained from selling assets securing the claims of one creditor, all such funds, after covering the costs of the procedure, will be distributed to the respective creditor to the satisfaction of its claim. The remaining amount, if any, will follow the regular distribution pattern. Among creditors with the same rank of priority, funds will be distributed on a pro-rata basis, according with the weight of each claim in the creditors table.

PROCEDURE CLOSING AND ADMINISTRATOR LIABILITY

1. Under what conditions may the debtor's administrator be held liable for the insolvency?

The debtor's administrator's liability can be activated if the administrator used the debtor's assets for his own benefit, or performed commercial transactions of his own while ostensibly working for the debtor, or continued the debtor's activity that led to insolvency, or used ruinous means to procure funds in order to delay the insolvency, or is liable for double-bookkeeping or fraudulent transactions. Under the 2014 Insolvency

Law, the debtor is presumed in default if it fails to provide the judicial administrator/liquidator with the required accounting documentation while the causality between such fault and liability is also presumed. The presumption is however relative, as it can be overturned by making the documents required by law available. Besides being directly liable to cover the debtor's debts, the person found liable is banned from being nominated as administrator of any company for the following 10 years after the court decision is final.

2. Who can apply for the administrator's liability?

The judicial administrator/liquidator can claim the administrator's liability from the beginning of the procedure, following the presentation of the report regarding the causes and conditions of the debtor's insolvency, failing which the president of the Creditors' Committee, based on the decision of the General Assembly of Creditors, as well as a creditor owing more than 50% of the amount of debts on the creditors table may file such claim during the procedure.

3. When can the insolvency procedure be closed and to what effect?

If all claims are paid, the insolvency procedure can be closed at any time. The effect is that the debtor is reinstated in the business environment as a fully operational and functional entity.

4. When can the liquidation procedure be closed and to what effect?

At any moment throughout the procedure, if the debtor has no funds or assets and the creditors do not agree to cover the procedural costs, the syndic judge may decide to close the liquidation procedure and delete the debtor from the Trade Registry records. The syndic judge also decides to close the procedure once all claims are paid through distribution, to the same effect of having the debtor deleted from Trade Registry records. The remaining goods, if any, are transferred to the debtor's shareholders if they apply for such transfer; lacking the shareholders' application, the sale of assets continues and the resulted funds are collected in an account at the disposal of the debtor's shareholders.

Criminal Law

1. Can a legal entity be held liable under the current Criminal Code?

The Criminal Code (Articles 135 to 151) maintains the option for a direct liability of the legal entity, which may be held liable for the actions of any of the its bodies or representatives acting for the fulfilment of its business objects, in the interest and/or on behalf of the legal entity.

The Criminal Code also maintains the requirement that collective entities must have legal personality at the time of the crime in order to be held liable under criminal law. At the same time, the High Court of Cassation and Justice, Criminal Law Division, decided that the individual enterprise is not a legal entity and, therefore, cannot be held liable under Article 135 Criminal Code (Decision No. 1/2016).

The legislator did not include the State and the public authorities in the category of persons that can be held liable under criminal law. However, compared to the former Criminal Code, the new regulation provides that public institutions are no longer generally exempt from criminal liability, narrowing the scope of exemption from criminal liability of these subjects only in relation to actions committed in the exercise of an activity in/related to the public domain, which cannot be equally carried out by private law entities.

The criminal liability of the legal entity may be cumulated with the criminal liability of the individual who actually perpetrated the crime. However, these two types of liability are not wholly interdependent.

The only main punishment that can be applied to the legal entity, namely the criminal fine, shall be applied based on the day-fines system. The amount corresponding to one day-fine, varying between RON 100 and RON 5.000, shall be multiplied by the number of days subject to the fine (between 30 and 600 days) – the general limits of punishment will range between RON 3.000 and RON 3.000.000.

The law establishes the punishment for the legal person progressively, depending on the gravity of the punishment provided by the law for individuals. Thus, the special

limits of the days subject to the fine range between:

- 60 and 180 days, where only the penalty consisting of the fine is provided by law for the offense committed;
- 120 and 240 days, where the law provides for a term of imprisonment of maximum 5 years, as such or as alternative to the fine;
- 180 and 300 days, where the law provides for a term of imprisonment of maximum 10 years;
- 240 and 420 days, where the law provides for a term of imprisonment of maximum 20 years; and
- 360 and 510 days, where the law provides for a term of imprisonment exceeding 20 years or life imprisonment.

It should be mentioned that when the offense committed by legal entity was intended to create a monetary benefit, the special limits of the day-fines provided by law for the committed offense may be increased by one-third, without exceeding the general maximum of 600 day-fines. When determining the fine, the value of the monetary benefit obtained or sought shall be considered.

A new complementary punishment has been introduced for the legal entity: judicial supervision (Article 144 of the Criminal Code), where the legal entity's operations that caused the crime are to be carried out under the supervision of a judicial proxy for 1 to 3 years.

The other complementary punishments applicable to the legal entity, also stipulated in the old regulation, are: dissolution, suspension of the activity or of one of the activities of the legal entity for a period of 3 months to 3 years, closing of secondary offices for a period of 3 months to 3 years, prohibition to participate in public procurement procedures for a period of 1 to 3 years, publication of the conviction decision.

2. What main crimes against property by breach of trust are relevant to the business environment?

Title II (Crimes against property) of the Criminal Code – Special Part, Chapter III (Crimes against property by breach of trust) criminalises a series of conducts in view of protecting those financial relations in society that involve an element of mutual trust between participants.

This category includes newly criminalised acts, such as breach of trust by fraud against the creditors (Article 239), insurance fraud (Article 245), public tender rigging (Article 246) and the financial exploitation of vulnerable persons (Article 247), as well as a

series of crimes which were also provided in the previous regulation, such as breach of trust (Article 238), fraudulent management (Article 242), appropriation of found property (Article 243), fraud (Article 244), simple bankruptcy (Article 240) and fraudulent bankruptcy (Article 241).

Breach of trust by fraud against the creditors (Article 239) can be perpetrated: (i) either by the debtor transferring, concealing, damaging or destroying, in full or in part, his valuables or assets, or protesting fictitious documents or debts in order to defraud its creditors; or (ii) by the debtor acquiring assets or services in full knowledge of being unable to pay for them and thus causing the creditor to incur loss.

Very similarly, fraudulent bankruptcy (Article 241), for the first time criminalised in the Criminal Code, is the deed of the person committing fraud against creditors by: (i) falsifying, stealing or destroying the debtor's records or concealing its assets; (ii) claiming inexistent debts or recording undue amounts in the debtor's financial registers or statements; or (iii) where the debtor is insolvent, transferring assets.

The main difference between breach of trust by fraud and fraudulent bankruptcy lies in the identity of the perpetrator: in the case of breach of trust, the perpetrator can be any debtor of an individual or a legal entity, while in the case of fraudulent bankruptcy the debtor must be a legal entity, while the perpetrator is, in most cases, a person holding a certain position in that legal entity, such as a director, manager, official receiver, or shareholder.

As regards the crime of fraud (Article 244), the current Criminal Code eliminated previous provisions on the specific methods whereby the crime could be perpetrated (contractual fraud and check fraud) as well as those on the very serious consequences of the crime. All these particularised cases are now included in the typical offense. Punishment limits have been substantially decreased compared to the previous rules (currently, the maximum term of imprisonment is five years). The Criminal Code also introduced the possibility of parties' reconciliation, which eliminates criminal liability.

The crime of insurance fraud (Article 245) – newly introduced in view of punishing conducts that became ever more frequent in the recent years - covers any method by which a person tries to commit fraud against the insurer for the purpose of gaining unfair benefits.

Similarly, the Criminal Code criminalises public tender rigging (Article 246) in view of fighting increasingly frequent practices such as eliminating a participant from a public tender by fraudulent means, or agreements between the participants intended to distort the final award price.

Some of the crimes against property by breach of trust are punished more severely if they produce very serious consequences. Thus, according to Article 2561 of the Criminal Code, the special limits of punishment shall be increased by half in case of the offenses provided by Articles 239, 242, 244, 245, 247 of the Criminal Code.

Additional relevant offenses are set forth by special laws, such as Law No. 656/2002 on the prevention and sanctioning of money laundering, as well as for the introduction of measures to prevent and combat the financing of terrorism (Chapter IV, Articles 29-31), Law No. 241/2005 on the prevention and combating of tax evasion (Chapter II, Articles 3-9) or Law No. 31/1990 on commercial companies (Title VIII, Articles 271-281).

3. Which are the main new provisions on corruption?

As regards corruption, the Criminal Code - Special Part (Title V - Crimes of corruption and occupational crimes, Chapter I – Crimes of corruption) focuses on correlating the provisions on corruption existing under the previous Criminal Code (bribe taking, bribing, influence peddling) with those of Law No. 78/2000 for preventing, ascertaining and punishing acts of corruption (Anti-corruption Law No. 78/2000).

The provisions of the New Criminal Code on the crime of bribe taking (Article 289) are meant to cover all the cases where a person, directly or indirectly, for oneself or for another person, claims or receives money or other undue benefits, or accepts the promise of such benefits, in relation to the fulfilment, non-fulfilment, expediting or protracting the fulfilment of any act concerning his professional duties, or in relation to the fulfilment of any act which is contrary to such duties.

The crime of bribing (Article 290) refers to promising, offering or giving money or other benefits under the conditions described by the provisions on bribe taking. Receiving undue benefits has been included in the bribe-taking crime, while the offering of benefits to a person after the performance of the service, in return for such service, has been criminalised as bribing.

The crime of influence peddling (Article 291) consists in claiming, receiving or accepting promises of money or other benefits, directly or indirectly, for oneself or for another person, committed by a person having influence, or pretending to have influence on an official and who promises to determine such official to perform, not to perform or defer the performance of an act concerning his professional duties or to perform an act which is contrary to such duties.

The New Criminal Code regulates for the first time the buying of influence (Article

292), which is the correlative crime of influence peddling. Such buying of influence is no longer punished only in the special cases provided by Anticorruption Law No. 78/2000 (the former Article 61, currently repealed). This covers a legislative gap which has often been highlighted by the doctrine.

For all the corruption offenses referred to in Articles 289-292 of the Criminal Code, a reduction of the limits of punishment by one third applies (as per Article 308) whenever the deeds are committed by persons assimilated to civil servants, namely persons fulfilling, permanently or temporarily, with or without pay, a task of any kind on behalf of an individual who performs a service of public interest for which such individual was vested by the public authorities or who is subject to the public authorities' control or supervision as regards the fulfilment of such public service or within any legal entity.

At the same time, Law No. 78/2000 stipulates that acts of bribery or influence peddling committed by a person exercising a public dignity function, by a judge or a prosecutor, by a criminal investigative body or a person who has attributions for establishing or sanctioning contraventions, by one of persons referred to in Article 293 of the Criminal Code shall be sanctioned with the punishment provided in Article 289 or Article 291 of the Criminal Code, the limits of which are increased by one third.

Anti-corruption Law No. 78/2000 incriminates a set of crimes that are also considered acts of corruption, such as: setting a smaller value for the assets owned by public authorities or institutions or undertakings in which the State or an authority of the local public administration is a shareholder, granting illegal subsidies, using subsidies for other purposes than the purpose for which they were granted and acts of corruption perpetrated by the persons in charge with the supervision of undertakings.

Other offenses assimilated to those of corruption are those such as: (i) the deed of a person who, having the task of overseeing, controlling, reorganising or liquidating a private economic operator, carries out any task, intermediates or facilitates the conduct of commercial or financially operations, or participates with capital in such an economic operator, if the deed has the nature of directly or indirectly making an undue advantage; (ii) performing financial transactions as acts of commerce, incompatible with the duties of a person, or the conclusion of financial transactions, using the information obtained by virtue of his or her duties, if the purpose is to obtain for himself or another money, goods or other undue benefits; or (iii) the use, in any way, directly or indirectly, of information not intended to be advertised, or of allowing unauthorised persons access to such information if the purpose is to obtain for himself or for another money, goods or other undue advantage.

The deed of the person who performs a managerial role in a party, in a trade union

or owners' association or legal person without patrimonial purpose (such as a foundation), to use his influence or authority for the purpose of obtaining for himself or for another money, goods or other undue benefits is also an offense under Law No. 78/2000.

Special heed is paid to the crimes of corruption against the financial interests of the European Union seeking to undeservedly obtain funds from the EU general budget. Thus, the New Criminal Code provides that offering false or inaccurate information in view of unfairly obtaining funds from the EU budget and illegally changing the purpose of such funds constitute crimes of corruption.

For most of the aforementioned crimes, the New Criminal Code decreased the punishment limits compared to the previous law.

4. Which occupational crimes are provided by the New Criminal Code and which authors are held liable under criminal law?

Title V (Crimes of corruption and occupational crimes) of the New Criminal Code – Special Part, Chapter II (Occupational crimes) codifies crimes to ensure protection of workplace social relations, involving an appropriate conduct from the persons exercising their duties.

Occupational crimes include embezzlement (Article 295), abusive conduct (Article 296), abuse of authority (Article 297), negligence in the performance of duties (Article 298), abuse of authority for sexual purposes (Article 299), usurpation of authority (Article 300), use of authority to favour others (Article 301), violation of correspondence (Article 302), disclosure of state secrets (Article 303), disclosure of restricted or non-public information (Article 304), negligent preservation of information (Article 305), illegal fund-raising (Article 306) and misappropriation of funds (Article 307).

Occupational crimes involve, in some cases, the existence of a qualified perpetrator, such as an official defined as a person who permanently or temporarily, with or without pay: (i) exercises duties and responsibilities established in accordance with the law, for the purpose of fulfilling legislative, executive or judicial powers; (ii) holds any public office whatsoever; and (iii) exercises, individually or jointly with other persons, in a regie autonome or in another undertaking or legal entity which is wholly or in majority owned by the State, duties concerning the fulfilment of that entity's business object.

Under criminal law, an official is also the person performing a service of public interest

for which he was vested by the public authorities or who is subject to the public authorities' control or supervision as regards the fulfilment of such public service.

The provisions referring to officials' crimes of embezzlement (Article 295), abuse of authority (Article 297), negligence in the performance of duties (Article 298), abuse of authority for sexual purposes (Article 299), usurpation of authority (Article 300) and disclosure of restricted or non-public information (Article 304) apply as well, by extension, to deeds performed by, or in relation to the persons fulfilling, permanently or temporarily, with or without pay, a task of any kind for an individual who performs a service of public interest for which such individual was vested by the public authorities or who is subject to the public authorities' control or supervision as regards the fulfilment of such public service or within any legal entity. However, in such case, the special limits of the punishment are to be decreased by one third. For the occupational crimes of embezzlement (Article 295), abuse of authority (Article 297), negligence in the performance of duties (Article 298), usurpation of authority (Article 300), disclosure of state secrets (Article 303), disclosure of restricted or non-public information (Article 304), illegal fund-raising (Article 306) and misappropriation of funds (Article 307) with very serious consequences, criminal liability is aggravated and the special limits of the punishment are increased by half.

In the case of the offenses of abuse of authority or usurpation of authority, Law No. 78/2000 provides that if the civil servant has obtained an undue advantage for himself or another, the special limits of the punishment shall be increased by one third.

5. How are the safety and integrity of computer systems and data protected under the New Criminal Code?

Title VII (Crimes against public safety) of the New Criminal Code – Special Part, Chapter VI (Crimes against the safety and integrity of computer systems and data) provides for a set of crimes incriminated in order to protect social values related to the safety and integrity of computer systems and data.

Criminal law defines computer systems as any device or set of devices that are interconnected or in a functional relation, one or more of which ensure automatic data processing by means of a computer program; computer data means any representation of facts, information or concepts in a form which can be processed by a computer system.

The following deeds are deemed crimes against the safety and integrity of computer systems: illegal access to a computer system (Article 360), illegal data interception (Article 361), data integrity violation (Article 362), computer system disruption

(Article 363), unauthorised data transfer (Article 364) and illegal operations with computer devices or programs (Article 365).

6. How is one's business premises protected under the new regulation?

The crime of violation of one's business premises, newly introduced by the Criminal Code, consists in the unauthorised entry in any of the offices where an individual or a legal entity works, or the refusal to leave such offices at the request of the person concerned (Article 225).

While the previous legislation only protected the individual's private home, the new regulation criminalises the violation of one's business premises as a distinct crime, in accordance to the jurisprudence of the European Court of Human Rights, as a legal entity's offices or an individual's professional practice office are deemed equally protected under Article 8 ECHR on the right to respect for one's private and family life (Judgment rendered on 16 December 1992 in the case of Niemietz v. Germany).

The new legal provisions protect both companies' premises and the premises of any private-law persons, the offices of public authorities, institutions and State bodies.

7. For which crimes can criminal liability be eliminated due to absence / withdrawal of the preliminary complaint, or to the parties' reconciliation?

For low-danger crimes, or in the cases where the commencement of the criminal action is left at the discretion of the injured party, in view of protecting such injured party's right to privacy, the commencement of a criminal action is conditional upon a preliminary criminal complaint being filed by the injured party (Article 295 of the Criminal Procedure Code). Absence or withdrawal of preliminary complaint eliminates criminal liability.

A preliminary complaint is mandatory for the following criminal acts: violation of business premises (Article 225), breach of trust (Article 238), breach of trust by fraud against the creditors (Article 239), simple bankruptcy (Article 240), fraudulent bankruptcy (Article 241), fraudulent management (Article 242) and violation of mail (Article 302).

The term for filing a preliminary criminal complaint was increased from two to three months from the date when the injured party knew of the perpetration of the act.

Therefore, criminal liability cannot be attributed if the prior criminal complaint fails to comply with the 3-month period prescribed by law or with other formal conditions provided by the law, or if the injured party withdraws his criminal complaint until a final judgement has been given – only in relation to offenses for which the formal criminal action is conditional on the introduction of a prior criminal complaint (Article 158 of the Criminal Code). Another cause for the elimination of criminal liability is the parties' reconciliation (Article 159 of the Criminal Code), which may occur only for such crimes where the criminal action is commenced ex officio, and only where this possibility is expressly provided by the law. The parties' reconciliation is allowed in the cases of fraud (Article 244), insurance fraud (Article 245) and appropriation of found property (Article 243).

8. What does "very serious consequences" mean, and which are the crimes with very serious consequences entailing an aggravation of criminal liability?

According to the current regulation, "very serious consequences" means damage to property exceeding RON 2.000.000 caused by a crime, compared to the previous legislation, where the threshold was damages in excess of RON 200.000 or very serious disturbances of the activity of a public authority, institution, legal entity of public interest, or of any other legal entity or individual.

Where certain crimes set forth by the New Criminal Law or by special laws caused very serious consequences, the punishment is harsher. For instance, the special limits of the punishments are increased by half in case of very serious consequences produced by occupational crimes such as embezzlement (Article 295), abuse of authority (Article 297), negligence in the performance of duties (Article 298), usurpation of authority (Article 300), disclosure of state secrets (Article 303), disclosure of restricted or non-public information (Article 304), illegal fund-raising (Article 306) or misappropriation of funds (Article 307), as well as by certain crimes provided by special laws (Law No. 78/2000 on preventing, ascertaining and punishing acts of corruption, Law No. 191/2003 on water transport crimes, Law No. 535/2004 on preventing and suppressing terrorism and Law No. 204/2006 on optional pensions).

9. Which are the cases in which a person is not held liable for a criminal act?

There are cases where the lawmaker allows for the violation of lesser legal values in order to protect a legal value considered of the highest importance; such as the case where an asset may be destroyed in view of saving someone's life. These are the

cases where the law deems a certain act, which otherwise meets all the conditions of constituting a crime, to be legally justified, which eliminates the criminal character of the act.

The new regulation essentially maintains the same cases of legal justification provided in the former legislation as well, such as self-defence (Article 19) and the state of necessity (Article 20), while also introducing two new cases of legal justification: the exercise of a right or fulfilment of an obligation (Article 21) and the consent of the injured party (Article 22). The exercise of a right acknowledged by the law constitutes a legal justification, hence it decriminalises acts perpetrated while making use of a public or private interest that is acknowledged or allowed by the law (such as while practicing a profession in accordance with the law, or while participating in sports competitions or in exercising immunities provided by law). The fulfilment of an obligation required by the law is a legal justification decriminalising is the act perpetrated while performing an action required by the law for the purpose of fulfilling a legal duty (such as actions taken by the police or other coercive forces of the state with a view to maintaining public order or executing a warrant of arrest). Consent of the injured party decriminalises the unlawful action where the victim consented to the act that injured his property or interests.

The new regulation also maintains the causes of impunity (Articles 24 to 31), where certain factual circumstances or mental states eliminate the author's blameworthiness, such as the mental or physical incapacity of the perpetrator at the time he perpetrated the act (irresponsibility, intoxication and minor age of the author) or the occurrence of an unforeseeable, uncontrollable and unavoidable event (physical constraint, moral constraint, non-imputable excess and fortuitous case). Besides these, there are also a few special causes of impunity provided by law. For example, in the case of bribery offense, the briber who has been constrained by any means by the bribed person will not be punished. Similarly, the briber will not be punished when he denounces the deed before the criminal investigative body has been informed of it by other means (this case of impunity is also applicable to the buyer of influence).

10. Which are the rules and conditions of applicability of the New Criminal Code?

According to Article 5 of the Criminal Code, which entered into force on 1 February 2014, where one or more criminal laws are adopted between the date when the crime was perpetrated and the date a final judgment is rendered as regards that crime, the more favourable criminal law shall apply.

The more favourable criminal law is to be determined in light of the considerations

made by the Constitutional Court of Romania in its Decision No. 265 of 6 May 2014, according to which "the provisions of Article 5 of the Criminal Code are constitutional to the extent they do not allow the combination of provisions from successive laws in establishing and applying the more favourable criminal law, and no authority can disregard the constitutional meaning thus established".

As such, the more favourable criminal law to the offender is to be determined by reference to both the conditions for incrimination and the conditions in which a person can be held liable and punished under criminal law. Once determined, the more favourable law will be applied to the case in its entirety and to all its circumstances.

For most crimes, the Criminal Code provides for shorter durations of the punishment measures than the former regulation did, therefore, in most cases, the new criminal law will be regarded as the more favourable one, including with regard to prescription, and, as such, will be the applicable law.

11. Which are the new rules for establishing and applying the main types of punishment measures in the case of concurrent crimes?

The Criminal Code introduced new rules for the establishment and application of the punishment for concurrent crimes. These rules apply to both "real" concurrency situations (where the same person perpetrated two or more crimes, by distinct actions or omissions, before a final ruling was passed to convict the perpetrator for any of the crimes in question, including where one of the crimes was intended to facilitate or conceal another crime) and "formal" concurrency (where an action or omission perpetrated by the same person constitutes more than one crime, due to the circumstances in which it was perpetrated or to its consequences). The rules refer to the establishing and application of the main punishments provided under Romanian criminal law, which are imprisonment for life, imprisonment for a duration ranging from 15 days to 30 years, and the criminal fine.

Generally, the Criminal Code introduces harsher main punishments for concurrent crimes, as concurrency is viewed as an aggravating circumstance. Upon establishing the punishment for each of the concurrent crimes, the court will apply the punishment as follows: (i) where imprisonment for life and one or more shorter imprisonment durations or criminal fines have been established, the life sentence shall apply; (ii) where all the punishments established consist in various durations of imprisonment, the court shall mandatorily apply the harshest of them plus one third of the duration of all the other durations compounded; (iii) where all the punishments established consist of criminal fines, the court shall apply the harshest of them, plus one third of all the other fines combined; and (iv) where an imprisonment sentence and a criminal fine have been established, both shall apply.

From the point of view of the penalty regime of concurrent crimes, the old criminal law is more favourable, since it provided the court with the possibility to increase the penalty to the special maximum prescribed by the law and, if considered insufficient, it could add an increase. By comparison, the current Criminal Code provides for the most severe punishment to be imposed, with the mandatory addition of one third of the other cumulated punishments.

If all concurrent crimes were perpetrated before the current Criminal Code came into force, the law deemed more favourable as regards the establishment and application of the main sentence shall appropriately apply. In other words, an appreciation, *in concreto*, of the more favourable criminal law must be made, in the light of the criterion of the overall appreciation of the more favourable criminal law, as stated by the Constitutional Court of Romania by Decision No. 265/2014.

Where at least one of the concurrent crimes was perpetrated after the entry into force of the current Criminal Code, and even where the punishment for the other concurrent crimes was established under the former, more favourable law, the concurrency of crimes shall be punished in accordance with the current Criminal Code. In this case, first, the more favourable criminal law is established for each individual offense, after which the rules of the concurrence of several offences in one action stipulated by the current Criminal Code are applied.

Tax

GENERAL ASPECTS

1. What is the legislation applicable on tax matters? Is the Romanian tax legislation fully harmonised with the EU law?

Romanian tax matters are mainly covered by the Law No. 227/2015 regarding the Tax Code, as further amended and supplemented, and by the Government Decision No. 1/2016 approving the Norms for the application of the Tax Code, as further amended and supplemented.

On indirect taxes, Romanian law is generally in line with European law: Title VII of the Tax Code on VAT is generally aligned with Directive 2006/112/EC, and Title VIII of the Tax Code refers to harmonised excise duties following Directive 92/12/EEC. After Romania's accession to the European Union, customs duties are governed by the Regulations of the European Commission (European Regulation No. 952/2013, as further supplemented by other Regulations and the European Regulation No. 2447/2015 laying down the Norms of application of the European Regulation No. 952/2013).

Law No. 207/2015 regarding the Tax Procedure Code is the main enactment governing tax procedural aspects.

2. Which are the main taxes payable by companies doing business in Romania?

The main taxes payable by the companies doing business in Romania are:

- Corporate income tax;
- Micro-enterprise tax;
- Income tax;
- Social, health and unemployment security contributions;
- Withholding tax;

- Value added tax;
- Excise duties;
- Customs duties;
- Local taxes.

The list is not exhaustive; it is only an indication of the most important taxes. Except for the customs duties, all the taxes mentioned above are covered by the Tax Code.

Extra taxation of companies in the energy sector was introduced by three legal enactments, namely Government Ordinance No. 5/2013, Government Ordinance No. 6/2013 and Government Ordinance No. 7/2013 and is applicable starting with 1 February 2013 All three taxes introduced are payable monthly on the 25th and are considered deductible expenses for the corporate income tax purposes.

3. Who is subject to micro-enterprise tax in Romania?

Newly established companies and legal entities with recorded annual turnover of up to EUR 500,000 are subject to micro-enterprise tax on their income. However, companies developing activities in certain industry sectors including banking, assurance, gambling and exploitation of oil and natural gas are not eligible for this tax regime. The applicable tax rate is 1% on income derived for micro-companies employing at least one individual and 3% for entities with no employees.

4. Who is subject to corporate income tax in Romania?

The following taxpayers are subject to corporate income tax:

- Romanian resident companies;
- Foreign companies performing business activities in Romania through permanent establishments;
- Foreign companies which incur revenues in connection with real estate transactions or from share transactions in Romanian companies;
- Legal persons set up in accordance with European legislation, having a registered office in Romania.
- Foreign companies which have the effective place of management located in Romania.

A company is to be considered resident in Romania if its head office is registered in Romania or if its effective place of management is located in Romania.

5. Is there a holding company regime available in Romania?

The Romanian taxpayer-favourable participation exemption regime, enforced starting 2014 for Romanian companies that hold shares in other domestic entities or in legal entities located in countries with which Romania has a double tax treaty, is a viable option for local and regional businesses to create tax-efficient corporate structures. This holding tax regime, coupled with the wide double tax treaty network available (close to 90) and low administrative costs, aims to granting access for Romania among the European jurisdictions with a long tradition in this area, such as The Netherlands, Luxembourg, Cyprus and Switzerland. Similar to other jurisdictions, the participation exemption regime in Romania allows tax exemption for dividend income, capital gains and liquidation proceeds derived from subsidiaries, under certain conditions (minimum 10% participation in the subsidiary's share capital for an uninterrupted period exceeding one year at the moment when income is derived). This creates a favorable structure allowing companies to achieve a tax efficient exit from businesses. Moreover, the provisions of the holding regime also apply in respect of subsidiaries incorporated in Romania, creating a solid incentive for local businesses to develop their own corporate holding structure.

6. What is a permanent establishment?

A permanent establishment is a taxable presence for corporate income tax purposes of a non-resident in Romania. While registration of a branch in Romania typically implies a permanent establishment, one can also be created in the absence of a registration with the Trade Registry. A permanent establishment is generally defined as the place of business through which the activity of a non-resident is conducted, fully or partially, directly or through a dependent agent. From the moment of creating the permanent establishment, Romanian authorities have the right to tax the profits of the foreign enterprise derived from the activity performed in that permanent establishment.

The Romanian legislation explicitly states conditions which trigger a permanent establishment:

- Fixed base permanent establishment – created through a place of business with a certain degree of permanency through which business is conducted in Romania (with some exceptions);
- Agency permanent establishment – created through agents with a dependent status which operate in Romania on behalf of the foreign company.

The registration, filing and payment requirements are similar to those for a Romanian company.

7. What does opening a branch in Romania entail in terms of taxation?

Branches have to be registered with the Romanian tax authorities. The registration, filing and payment requirements are similar to those for a Romanian company.

A branch is considered to have the same legal personality as the parent company and, therefore, does not constitute a separate legal entity (no owned share capital, separate name, etc.). The branch's object of activity cannot be more extensive than that of the parent company.

Funds distribution to the head office country are not regarded as dividend distribution, therefore, no withholding tax liability should arise. As with limited liability companies, however, profits are transferred at year-end, once the head office approves the branch's financial statements.

8. What are the applicable transfer pricing provisions?

Related-party transactions should observe the arm's length principle. If transfer prices are not set accordingly, the Romanian tax authorities have the right to adjust the taxpayer's revenues or expenses, in order to better reflect the fair market value. The scope of the investigations regarding compliance with transfer pricing legislation includes both transactions with Romanian affiliated companies, as well as transactions with non-resident related parties. In setting the transfer prices for transactions between affiliated companies the companies involved may use the following:

- Comparable uncontrolled prices method;
- Cost plus method;
- Resale price method;
- Transactional net margin method;
- Profit split method.

As expressly stipulated within the domestic legislation, in applying transfer pricing rules the Romanian tax authorities also consider the OECD Transfer Pricing Guidelines.

9. What are the transfer pricing documentation requirements in Romania?

Taxpayers engaged in related-party transactions have the obligation to prepare their transfer pricing documentation.

The content of the transfer pricing documentation was approved by the Order No. 442/2016 of the President of the National Agency for Tax Administration. The Order is supplemented by the Transfer Pricing Guidelines issued by the OECD Transfer Pricing Guidelines and the Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (EUTDP).

10. Who must register as a VAT taxpayer?

VAT registration is mandatory for persons established in Romania carrying out taxable operations exceeding EUR 65,000 (or RON 220.000). Below this threshold, the VAT registration is optional (and it is generally requested in order to deduct the input VAT on acquisitions). The VAT registration process takes in practice, under a normal course of action, approximately 10-15 days from the date of the application. Nevertheless, the procedure is quite opaque and the tax authorities tend to have a restrictive view on granting the VAT codes; they are entitled to require additional information, documents or supplementary interviews in order to judge upon the entity's plans and capacity to perform economic activities in Romania. Seeking professional advice before incorporating the company is highly recommended where the intention is to register the company as a VAT taxpayer.

Separately, non-resident taxable persons performing intra-Community operations of goods in Romania are required to register for VAT purposes, irrespective of the value of operation.

11. What is a fixed establishment?

A company becomes established for VAT purposes in Romania either by having its place of business or by creating a VAT fixed establishment in Romania.

The notion of fixed establishment for VAT purposes is different from that of permanent establishment in terms of corporate income tax. The definition of the permanent establishment for corporate income tax is not relevant for determining the existence of a fixed establishment from a VAT perspective.

A VAT fixed establishment is a structure characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to make the supply of goods or services in which it intervenes. For example, a branch with no human resources may not create a fixed establishment from a VAT standpoint.

12. How are capital gains computed and taxed in Romania?

Capital gains derived by Romanian resident companies are included in ordinary profit and therefore taxed at 16%. Capital losses related to sale of shares are, in general, tax deductible. Mergers, spin-offs, transfers of assets and exchanges of shares between two Romanian companies should not trigger capital gains tax as they are generally neutral from a fiscal perspective. In the case of a relocation of the registered office of an EU based Company from Romania to another EU Member State, if certain conditions are met no tax will be imposed on the difference between the market and fiscal value of the transferred assets and liabilities. Moreover, no tax will be levied on such movements at the shareholder level. Capital gains from the sale/transfer of shares held in a Romanian or foreign legal entity located in a country that has concluded a tax treaty with Romania are exempt from tax on condition that at least 10% of its participation is held for a minimum period of one year.

13. What is the fiscal period for reporting purposes in Romania?

For corporate income tax computation, as a general rule, the fiscal year is considered to be the calendar year. The accounting year is also usually the calendar year, but entities are allowed to adopt an accounting year other than the calendar year. Taxpayers who have opted for an accounting year different from the calendar year are allowed to choose as fiscal year the same period as for their financial exercise.

For VAT purposes, the standard fiscal period is the month. Quarterly VAT returns may be submitted by the taxable persons with an annual turnover of less than EUR 100,000. When a taxable person performs at least one intra-Community acquisition of goods, VAT returns must be submitted monthly. Half-yearly or annual reporting is also allowed, under special conditions.

14. Which is the level of late payment interest and penalties for tax liabilities?

Late payment of tax liabilities is subject to interest at a rate of 0.02% per day of delay, with an additional late payment penalty of 0.01% per day of delay.

Separately, a penalty for failure to declare is currently in force, of 0.08% per day, starting from the day following the due date until the date of payment. This penalty applies to the main tax obligations declared incorrectly or not declared by the taxpayer and established by a tax inspection authority decision. The penalty can be decreased

by 75% upon taxpayer's request, if the main tax obligations established by decision are met by payment or compensation or they are echeloned at payment, according to the law. The penalty is increased to 100% of the main tax obligations in cases of tax evasion detected by the legal authorities according to the law.

15. What is the tax statute of limitation in Romania?

The statute of limitation period for tax matters in Romania is of five years, calculated from 1 July of the year following the year when the tax obligation arises (meaning that, in fact, the statute of limitation is up to six years). However, the statute of limitation can be extended to 10 years in the case of fraud, starting from the date when the criminal offence occurred. The statute of limitation is suspended during fiscal inspections. On the other hand, the storage period for accounting ledgers and documents is of 10 years from the end of the financial year during which they were drawn up. Payrolls must be kept for 50 years. If business is interrupted, accounting documents must be archived or submitted to the state archives.

16. How is the salary income defined?

Salary is defined as income in cash and/or in kind received by individuals based on employment agreements and is taxed at a flat rate of 16%. Certain types of income are assimilated to salaries, including remuneration paid according to non-competition clauses and other taxable benefits such as: meal tickets, gift tickets, nursery tickets, holiday tickets, amounts representing compensatory payments, private use of company cars and telephones. Administrator compensation, fees received by members of the General Meeting of Shareholders, the Management Council, the Board of Directors and the Supervision Council are also treated as salaries. The compliance obligations with respect to salary income are: for employees (and directors remunerated based on mandate agreements) of Romanian companies, branches and representative offices of foreign companies, their employers are liable to calculate, withhold and transfer salary taxes on a monthly basis; for foreign individuals performing activities in Romania based on foreign employment agreements, the individuals are liable to submit a monthly income statement and pay monthly income tax.

17. What is the tax regime applicable to personal income derived from independent activities?

The income derived from independent activities is taxed at 16% tax rate (mandatory social charges are deductible) and covers, among others: income from freelance

activities (authorisation needed), including income from liberal professions and income from intellectual property rights.

Such income is also subject to social security contributions of 10.5% (i.e. maximum taxable base is capped at five times the national average gross salary – RON 3.131/ month for 2017), as well as to individual health insurance contributions of 5.5% (i.e. maximum taxable base is capped at five times the national average gross salary – RON 3.131/month for 2017).

18. How is the income from freelancer activities assessed?

Income from freelance activities is assessed on the basis of entries in the single entry bookkeeping ledgers that providers of independent activities are obliged to keep. The net income generated by freelance activities is calculated as gross income minus deductible expenses. Fines, late-payment penalties, donations, private scholarship, protocol expenses are considered non-deductible expenses in excess of the upper limits set by law. Individuals earning income from independent activities are obligated to make quarterly advance tax payments for the tax due during the fiscal year.

19. How is the income from intellectual property assessed?

Payers of royalties must calculate, withhold and pay 10% advance tax.

The income from intellectual property must be included by the receivers in their annual declaration. The declaration is the basis on which the tax authority sets the amount of the final tax at 16% tax rate.

The taxable basis for the income earned from intellectual property rights can be calculated as gross income minus a lump sum equal to 40% of the gross income less any mandatory social charges paid (withheld by the income payer). There is also the possibility to opt (starting with the moment the contract is signed) for a final 16% withholding tax on the gross income.

20. How is the rental income assessed?

Gross annual income represents the income earned by the owner during the year as stipulated in the rental agreement registered with the Romanian tax authorities. Net taxable income is determined by deducting a 40% expense allowance from the gross income and is taxed at a flat rate of 16%. There is an exception for individuals obtaining

income from renting out rooms located in their own homes for tourism purposes. Homeowners who derive income from renting out up to five rooms for tourism purposes owe income tax established based on an annual income allowance and the payment of the tax is made in two annual instalments (by 25 July and 25 November respectively), the tax being final.

For these individuals, there is the option to determine the income tax in the real system. In this case, the tax paid during the year will represent anticipated payments for the annual income tax. Individuals obtaining income from renting out more than five rooms for tourism purposes determine the net annual income in the real system based on data in the single-entry bookkeeping and make anticipated payments in two instalments. These individuals subsequently submit a statement regarding the realised income based on which tax regularisation is made.

Income earned by taxpayers from five or more rental contracts and income from renting out more than five rooms for tourism purposes is considered income from independent activities and taxed accordingly.

Moreover, starting 1 January 2014 revenues obtained by individuals from rental activities are subject to mandatory social contributions (i.e. health contributions).

21. How is the gambling income assessed?

The income from gambling has been redefined and currently encompasses all the amounts cashed out from participation to gambling activities (i.e. the previous definition made reference to actual gains derived by gamblers).

In terms of tax rate, progressive rates are applicable on the following brackets:

- 1% on total amounts cashed by each participant from one gambling operator not exceeding RON 66.750;
- 16% for amounts ranging between RON 66.750 and RON 445.000;
- 25% for amounts exceeding RON 445.000.

Generally, the obligation to compute, withhold and pay the tax lays with the gambling operator, which also must submit an annual informative declaration on the total amounts withheld by the end of February of the following year.

However, for income obtained from certain gambling activities (e.g. online gambling) the players have the obligations to declare their annual cashed out amounts by 25 May of the following year.

TAX CURIOSITIES

1. Is it possible to request the tax authorities' opinion on the tax implications of envisaged operations?

Companies may request a tax binding ruling be issued by the National Agency for Fiscal Administration, subject to a fee of EUR 5,000 for large taxpayers, respectively EUR 3,000 for other taxpayers. The taxpayer may propose the content of the tax binding ruling in the request submitted.

Should the requesting company not agree with the binding ruling, it may notify the issuing authority within 30 days; in this case, the tax binding ruling does not have legal effect.

Should the terms and conditions of the tax binding ruling be observed by the taxpayers, their provisions become applicable and mandatory against tax authorities.

Companies may also request a so-called "non-binding ruling". Even if it is not binding against the tax authorities, it is generally taken into consideration in practice. The advantage is that the procedure to obtain such an opinion is smoother and that the opinion could be applicable also for the past period, if the same legislative provisions were in place.

2. Can Advance Pricing Agreements be obtained by the Romanian entities?

Taxpayers engaged in related-party transactions may request the National Agency for Tax Administration to issue an Advance Pricing Agreement (APA). Under the Fiscal Procedural Code, an APA must be issued within 12 months for unilateral APAs and within 18 months for bilateral and multilateral APAs.

Generally, the APA is issued for a period of up to five years. In exceptional cases, it may be issued for a longer period for long-term agreements.

As long as there are no material changes regarding the critical assumptions, the APAs are applicable and binding on the tax authorities. In this respect, APA beneficiaries have the obligation to submit annual reports attesting to full compliance with the set terms and conditions.

Should the requesting party not agree with the APA's provisions, it may notify the

issuing authority within 30 days; in this case, the tax ruling does not have legal effects.

3. Are there any tax consolidation options available in Romania for corporate income tax purposes?

There is no tax consolidation or group taxation in Romania. Members of a group of related entities must file separate tax returns. Profits obtained by members of a group cannot be offset against losses incurred by other group members.

However, personal establishments triggered by the same foreign company in Romania may cumulate their fiscal results under certain conditions.

4. What provisions should be observed in respect of fiscal losses?

Fiscal losses incurred by Romanian companies may be carried forward for a period of seven years based on a first-in first-out method. The loss incurred by permanent establishments of Romanian companies, located in non-EU / EFTA Member States with which Romania does not have a Double Tax Treaty in place, may only deducted for tax purposes from the revenues derived by that permanent establishment abroad.

As regards foreign legal persons, the fiscal losses attributable to their permanent establishment in Romania may only be carried forward for a period of five years.

5. Is the VAT group available in Romania?

The VAT group concept available in Romania is different from the European concept according to which the transactions between the members of the group are out of the VAT scope. The Romanian VAT group simply allows consolidating the VAT positions between the members of the group by submitting a joined VAT return.

Certain conditions must be fulfilled to register a VAT group of companies in Romania.

The group may be formed by two to five taxable persons 50% owned directly or indirectly by the same persons. Order No. 3006/2016 of the National Agency for Fiscal Administration establishes the implementation and administration procedures for such VAT group and approves specific forms in this respect.

6. Is there any special VAT treatment applicable in case of business transfers?

A business transfer can be performed without the application of VAT, as it is not considered a VAT taxable supply of goods under Romanian law (in line with the European VAT Directive). To qualify as a business transfer, a transaction must meet certain conditions provided by law, such as: (i) the transfer is an universal transfer of assets and/or services which are not being treated individually but as a total unit by the transferor, irrespective whether the transfer of assets is total or partial, (ii) the recipient of the assets intends to continue the economic activity that has been transferred, and not to immediately liquidate such activity or sell the stocks and assets. The fulfilment of the conditions should be interpreted in a flexible manner, on a case by case basis, while taking into account European jurisprudence (e.g. cases C-497/01 Zita Modes, C-440/10 Schriever, C-651/11 X). As per the VAT law, certain documentations must be prepared for business transfer. Also, where the transferee is not VAT registered and does not intend to VAT register further to the take-over of the business, it shall perform certain VAT adjustments. Therefore, considering also that higher amounts are usually involved, attention should be paid in case of business transfer to complying to all the legal conditions in force.

7. Is the late payment interest rate applicable also for late refunds to the taxpayers?

Taxpayers are entitled to receive interest from the state budget for late refunds; the interest is of 0.02% per day of delay. The procedure is provided by Order No. 1.899/2004 of the Minister of Finance. As an important reference, the European Court of Justice decided in the case C-565/11 (Mariana Irimie) that the interest granted on repayment of a tax which was levied in breach of European Union law cannot be limited to that accruing from the day following the date of the claim for repayment of that tax.

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