DOING BUSINESS IN EUROPE

THOMSON

SWEET & MAXWELL

ROMANIA

Contributed by

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ROMANIA

PART 1

[¶ROM-000] Introduction

The purpose of this chapter is to provide a high level overview of the Romanian legal system under the aspects that are most likely to interest businesses/individuals aiming to do business in Romania, as well as their advisors who are not acquainted with Romanian law. The information herein is of general nature only and should not be deemed as legal or other professional advice. All parties contemplating doing business in Romania should seek further advice from Romanian qualified professionals.

[¶ROM-025] Geography

Romania is located in Central Eastern Europe north of the Balkan Peninsula. Neighbouring countries are Hungary, the Ukraine, the Republic of Moldova, Bulgaria and Serbia. On the south-east Romania borders the Black Sea. It is one of the largest countries in the region and covers an area of approximately 238,391 sq km.

Romania has a population of approximately 19.04 million, of which 90.6 per cent are Romanian, 6.6 per cent are Hungarian and 2.7 per cent are other minorities (e.g. Germans, Turks, Tartars, gypsies, etc.). The capital, Bucharest, is located in the south-east of the country and has a population of approximately 1.67 million.

[¶ROM-050] Currency

The national currency of Romania is the "leu" (plural "lei"), being coded RON and subdivided into 100 units called "ban" (plural "bani"). The national target date for the adoption of the euro is January 1, 2019.

[¶ROM-075] National holidays

The following celebration days are national holidays:

- New Year: January 1 (New Year's Day) and 2 (the day after New Year's Day);
- Unification Day: January 24;
- Easter (April or May): both Easter Sunday and Monday;
- Pentecost or Whit Monday (May or June): the 50th and the 51st day after Easter;
- Labour Day: May 1;
- Dormition of Saint Mary the Mother of God: August 15;
- Saint Andrew's Day: November 30;
- Great Union Day: December 1; and
- Christmas: December 25 and 26.

[¶ROM-100] Political System

Romania is a republic run according to democratic and free market principles. It is a member of the European Union as of 2007 and a member of NATO since 2004. For the past 15 years, leading Romanian political parties holding the majority in the various representative bodies of Romania (Presidency, Parliament, local communities) have been of moderate liberal and/or moderate social orientation.

SOURCES OF LAW

[¶ROM-125] Romanian Constitution

The Constitution is the supreme law of Romania. Freedom of opinion, free access to justice, protection of ownership, market economy, etc. are among the essential values acknowledged by the current Constitution.

International treaties

International treaties that have been duly ratified by the Parliament are part of Romanian law, provided that no international treaties or agreements may be at variance with the Constitution. Notwithstanding, international treaties concerning human rights prevail over national laws, unless the latter contain more favourable provisions.

European Union law

The European Union's constitutional treaties and mandatory enactments prevail over Romanian law, subject to the provisions of Romania's Accession Treaty.

Romanian statutes

Statutes consist of laws enacted by the Parliament and ordinances and emergency ordinances issued by the Government (both types of ordinances have the same force as a law upon their publication; subsequently however, Parliament must either endorse the ordinance by law or repeal it), as well as secondary legislation consisting of Government decisions, regulations, orders, instructions and other enactments issued by ministries and other public authorities.

Mandatory court rulings

Certain types of court rulings are to be observed by all subjects, irrespective whether they were a party to relevant court cases or not, and are to be mandatorily considered by courts when rendering subsequent decisions. Such mandatory rulings include (i) decisions issued by the Romanian Constitutional Court with regard to the constitutionality of laws, and (ii) rulings issued by the High Court of Cassation and Justice (Romania's supreme court) further to applications for consistent interpretation of law (whereby the High Court provides mandatory interpretations to various legal provisions).

Other sources of law

Traditionally, custom, general principles of law, customary court practice and scholarly writings have been considered as sources of Romanian law. However, a subject or court of law is not held to observe these sources, and application thereof is under practical terms only optional, unless a statute or other source of law assigns mandatory force thereto.

[¶ROM-150] Useful contacts/websites

The following websites may serve as starting point for further research.

- The Presidency: *http://www.presidency.ro*;
- The Parliament: *http://www.parlament.ro*;
- The Government: *http://www.gov.ro*;
- The National Bank of Romania: *http://www.bnr.ro*; and
- The courts web portal: *http://portal.just.ro/SitePages/acasa.aspx*.

PART 2

FINANCE

Banking System

[¶ROM-175] General

The Romanian banking system comprises the National Bank of Romania ("NBR") and roughly 40 credit institutions, the majority owned by foreign institutions.

[¶ROM-200] The National Bank of Romania

The NBR is an independent public banking institution supporting the economic policy of the Romanian State and being the only institution authorised to issue currency as legal payment means on the Romanian territory.

The NBR establishes and runs the monetary policy, regulates and prudentially supervises the credit institutions and promotes and monitors the function of the payment system in order to ensure financial stability.

[¶ROM-225] The banks

Banks may only be established as joint-stock companies, subject to the prior approval of the NBR, which will also grant the operation license. The minimum share capital upon the incorporation of a bank is of RON 37,000,000 (approximately €8,350,000).

Romanian banks and Romanian-based subsidiaries of foreign banks may perform, amongst other things, the following main activities:

- acceptance of deposits and other redeemable funds;
- crediting activity, as well as, amongst other things, factoring, discounting and forfeiting operations;
- issuance and management of payment instruments;
- financial leasing operations;
- monetary transferring services;
- issuance of warranties and undertaking of financial commitments;
- transactions on its own account or on its clients' account with negotiable instruments, hard currency, future contracts and financial options, interest rate and exchange rate instruments, securities and other tradable financial instruments, etc.;

- intermediation in securities investment and provision of related services, etc.

[¶ROM-250] Foreign credit institutions

Foreign credit institutions may undertake banking activities in Romania through subsidiaries established as Romanian banks, or through branches, having been authorised as such by the NBR. EU based credit institutions may perform banking activities or other financial activities in Romania up to the limit of the authorisation granted by the country of origin, through a branch or directly, without an authorisation from the NBR, based on a notification sent by the competent authority from the origin Member State to the NBR. Subsidiaries and branches of non EU based credit institutions established in Romania are subject to the NBR's authorisation. Representative offices are not subject to the NBR's authorisation, but only to NBR notification, as they are not permitted to perform any kind of banking operations, their activities being limited to informative, liaising and representation actions.

[¶ROM-275] Prudential requirements

Banks are bound by prudential requirements provided under NBR regulations. Such requirements may refer, to solvency, liquidity, maximum exposure, currency risks, asset quality, the creation and use of risk provisions and organisational and internal control rules.

[¶ROM-300] Prohibited transactions

Banks may not:

- engage in transactions with movable or immovable assets, save for few specific exceptions;
- acquire their own shares or pledge them for securing the bank's debts;
- condition lending activities or the provision of other services to clients by the sale or purchase of the bank's shares;
- grant loans secured with the bank's shares;
- grant loans secured with the bank's shares;
- receive deposits or other reimbursable funds, titles or other values from clients if the bank is insolvent.

[¶ROM-325] Bank deposits protection fund

The bank deposits protection fund (BDP) is a public legal entity which guarantees the repayment of deposits made with banks by individuals, legal or non-legal entities under certain conditions and within certain thresholds. The protection threshold is established on a yearly basis.

[¶ROM-350] Non-banking financial institutions (IFNs)

Other entities performing crediting activities alongside the banks are the non-banking financial institutions (IFNs). The crediting activity of the IFNs observes various limitations and conditionings set forth by the applicable legal provisions, being performed under the surveillance of the NBR.

IFNs may perform, amongst other things, the following activities:

- granting of loans including consumer loans, mortgage loans, microloans, loans for transactions' financing, factoring operations;
- leasing activities;
- issuance of securities and undertakings to secure and/or finance specific operations;
- granting of loans secured by pledges assets; and
- other types of financings deriving from loans.

Currency Regulations

[¶ROM-375] Currency operations

Currency operations consist of cashing, payments, compensations, transfers, credits as well as any other transactions expressed in currency and performed through bank transfer, hard cash, with payment instruments or through other payment methods agreed and accepted by credit institutions.

Currency operations may be freely performed in foreign currency or national currency (RON) between residents and non-residents.

[¶ROM-400] NBR notification and reporting

For statistical purposes, resident individuals and legal entities have various reporting obligations towards the NBR.

[¶ROM-425] Currency market

On the currency market authorised dealers perform currency exchange operations. In Romania, transactions on the currency market are regulated and overseen by the NBR. Residents and non-residents are freely entitled to purchase and sell convertible currencies and to acquire in exchange national currency (RON) on the currency market through the agency of currency market dealers. Non-residents may open convertible currency accounts with Romanian credit institutions and may repatriate financial assets held in Romania.

[¶ROM-450] Cash transfers

Individuals may bring in or take out of Romania foreign currency or RON in cash, and must declare to Romanian customs authorities the foreign currency amounts exceeding the equivalent of €10,000 per person per journey.

IMPORTS AND EXPORTS

[¶ROM-475] Background

Romania is a member of the General Agreement on Tariffs and Trade (GATT), of the World Trade Organisation, of the Central European Free Trade Agreement and of the General System of Customs Preferences. Relevant EU legislation (e.g. Community Customs Code and the Community Customs Regulation) is also observed.

Imports

[¶ROM-500] Import entries

Imported goods are deemed to be those which have entered the territory of the European Community and which are not in free circulation, as well as goods which have entered the territory of the European Community, are in free circulation and originate from countries which are not members of the European Union, but are part of the customs territory thereof. The Integrated Tariff of the European Communities (TARIC) is applied in Romania.

[¶ROM-525] Valuation

The procedure of the customs value calculation is set out both in the Community Customs Code and in the Agreement regarding the enforcement of art. VII of GATT. Customs duties are charged so that the duty paid depends on the customs value of the commodities declared by the importer, who must file a declaration for the customs value, accompanied by invoices and other supporting documents on the commodities' price and external expenses thereof, such as: (i) expenses related to the commodity transport, loading, unloading and handling, up to the import location and (ii) insurance costs.

[¶ROM-550] Value added tax and excises

Most imported goods are subject to VAT chargeable and payable upon registration of customs declaration. Certain types of imported goods are exempted from VAT payment.

Excise duty is owed to the State for certain domestic and imported goods. Examples of such goods are alcohol, tobacco products and mineral oils.

[¶ROM-575] Exports

Export procedure requires the application of commercial policy measures, customs exit formalities for the exported goods and the payment of export duties. Except for goods placed under the outward processing procedure or a transit procedure, all goods intended for export are subject to the export procedure.

Commodities admitted for exportation are Community goods, as well as commodities previously imported, except for commodities subject to prohibitive or restrictive measures imposed by the commercial strategy and policy, such as goods of a military nature, objects pertaining to the country's national heritage, etc.

An exporter of commodities permanently or temporarily taken out of the country must file a customs declaration of exportation.

Clearance will be granted if the commodities exit the country in the same condition they were in when the customs declaration of exportation was registered.

[¶ROM-600] Exemptions from customs duties

Regulation (EC) no.1186/2009 of 16 November 2009 established a Community system of exemptions from import and export duties due to special circumstances, when goods are released for free circulation or are exported from the customs territory of the

Community. These exemptions apply only if certain conditions are met and certain documents presented.

INVESTMENT

[¶ROM-625] General

At present, Romania's legal framework accommodates virtually all main types of investment, as well as a business culture that is in substance aligned to international practice. Whether private or public, targeted at private or State owned entities, direct or indirect, and irrespective of the concerned industry, investments benefit from an overall positive environment.

With a relatively stable economy currently undergoing a sensible growth, a rather large consumption market and a wealth of natural and human resources, Romania has in addition witnessed during the past years a palpable decrease of previously major drawbacks such as bureaucracy, corruption and legislative instability, and thereby started to emerge as an appealing area to foreign investors.

Moreover, Romania is a party to over 80 bilateral and multilateral investment protection treaties, which provide for various rights, guarantees and protection measures in favour of foreign investors, including alternative State-to-investor dispute resolution mechanisms such as international arbitration. Relevantly, Romania is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States establishing an international centre for the settlement of such disputes, headquartered in Washington (ICSID).

Investment protection is also ensured by the interplay of national and EU legislation coupled with the clear influence of the European Convention on Human Rights (Romania also being a party thereto), all of which provide in their turn various rights, guarantees and protection measures seeking to safeguard individuals and private undertakings from any arbitrary/abusive/unstable conduct of public authorities.

Capital markets

[¶ROM-650] Capital market structure

Capital market players are individuals or legal entities, as well as entities without legal personality, whose activities are subject to the authorisation and/or supervision of the Financial Supervisory Authority ("ASF"), as follows: the operators of the regulated markets, the operators of the alternative trading systems, the securities issuers, the Central Depository, the intermediaries, the traders, the investment consultants and rating agencies, the ICF undertakings for collective investments in transferable securities, the investment management companies, the depository companies.

[¶ROM-675] Listing of securities

In order to be listed on a regulated market, companies must be set up as joint stock companies with an established equity / anticipated market capitalisation of at least €1 million and must meet several other conditions.

In order to be listed on an alternative trading system, companies must have an anticipated market capitalisation of at least €250,000 and a 10 per cent free-float or a minimum of 30 shareholders.

[¶ROM-700] Public offering

The ASF must authorise any prospectus for a public sale offering and any offer document for a public purchase offering of securities, prior to the publication of the announcement of the public offering. There are five types of public offering, i.e. public sale offering, public purchase offering, public voluntary takeover offering, competitive public offering and public compulsory takeover offering.

[¶ROM-725] Financial investment services

Financial investment services may be rendered by financial investment companies authorised by the ASF or by the relevant authorities of the EU Member States/other states, as well as by credit institutions authorised by the NBR and the homologue credit institutions.

[¶ROM-750] Undertakings for collective investments in transferable securities

Undertakings for collective investments in transferable securities consist of open-end investment funds and investment companies.

Both an open-end investment fund and an investment company develop their activity based on the ASF's authorisation after the ASF has authorised the investment management company, the fund's regulations or, as the case may be, the constitutive document of the investment company, the choice for the depository company and the issuing prospectus. The fund and the investment company should be registered with the ASF's Register.

The open-end investment fund has no legal personality and is established by a civil contract. All the fund units issued by the open-ended investment fund should be of a single type, registered, dematerialised, should confer equal rights on the holders and should be fully paid at the time of subscription. The open-ended investment funds must not issue other financial instruments than fund units. The fund units are purchased by investors at the issue price and are redeemed upon request against a price reflecting the value computed by the depository as per ASF regulations.

An investment company is set up as a joint stock company, acting solely to perform collective investments and placing cash resources in financial instruments.

Investment management companies act mainly for the management of the undertakings for collective investments in transferable securities, performing services such as investments management, marketing and distribution services.

A company may not simultaneously be an investment management company and a depository. The investment management company and the depository should act independently and exclusively in the interest of the participation titleholders.

Depositories are credit institutions duly authorised by the NBR or the Romanian branch of a credit institution authorised in an EU Member State, approved by ASF.

[¶ROM-775] Privatisation

The privatisation process remains of interest for investors, with the completion of the privatisation process of several large companies in which the State still holds the majority stock yet to take place, and the management of the post-privatisation process for companies already transferred to private hands still ongoing.

The privatisation process is regulated in detail, including the transparency of the procedure, the sale price, the prior restructuring of the target in view of increasing its attractiveness, individuals and undertakings that may act as prospective purchasers and guarantees to investors as well as privatisation methods.

Privatisation methods are numerous and largely depend on the type of target as well as the public objectives in achieving the privatisation. Thus, privatisation may take place, for instance, by direct sale of shares (often combined with share capital contributions) or of assets, public listing, accelerated privatisation by open competitive bid, etc.

Privatised companies and investors having been awarded privatisation agreement are monitored by the relevant privatisation authorities and are subject to specific obligations provided by law and/or the relevant privatisation agreements. Post-privatisation monitoring has given rise to numerous disputes and international arbitrations further to investors' breach of the relevant obligations, the cancellation of privatisation agreements or compensation for damages incurred by the State. These are being pursued in a large number of cases.

TAXATION

[¶ROM-800] General

The Fiscal Code, which entered into force on January 1, 2004, governs the Romanian tax system and comprises detailed provisions on corporate profit tax, individual income tax, withholding tax, VAT, excise duties, social security contributions and local taxes.

Corporate Tax

[¶ROM-825] Rates

Resident entities are subject to a standard profit tax rate for Romanian companies of 16 per cent on their worldwide income. Taxpayers performing activities in the nature of bars, night-clubs, discotheques, casinos or sports betting and for which the profit tax owed is less than 5 per cent of the respective income are required to pay a tax equal to 5 per cent of the revenue made from such activities.

With several exceptions, companies having an annual turnover of up to €65,000 do not pay profit tax but are taxed at 3 per cent of their total income.

[¶ROM-850] Facilities for holdings

Income from dividends received by a Romanian legal entity that holds, for a continuous period of at least one year, 10 per cent of the share capital of another legal entity located in Romania or a state with which Romania has concluded a double taxation treaty, should be treated as non-taxable. Dividends received by a holding company from a

Romanian subsidiary are exempted, with no minimum shareholding or holding period requirements.

Capital gains derived from the sale or transfer of shares by a Romanian legal entity that holds, for a continuous period of at least one year, 10 per cent of the share capital of another legal entity located in Romania or a state with which Romania has concluded a double tax treaty, should be treated as non-taxable. The same treatment should apply to the proceeds obtained from the liquidation of a Romanian or foreign legal entity, located in a state with which Romania has concluded such a treaty.

[¶ROM-875] Calculation

The taxable profit is calculated as the difference between income obtained from any source and expenses incurred for the purpose of obtaining the income within a fiscal year, from which non-taxable income is deducted and to which non-deductible expenses are added.

[¶ROM-900] Net operating loss carry forwards

Annual loss, as established by the profit tax return, is to be recovered from the taxable profits obtained during the following five consecutive years, respectively seven consecutive years starting with the fiscal losses incurred during 2009. For foreign legal entities this rule applies only in relation to the revenue and expenses attributable to their permanent establishment in Romania.

[¶ROM-925] Transfer pricing

Romania generally follows the transfer pricing methods recommended by the OECD guidelines.

According to the Fiscal Code, when determining the amount of any tax or fee, the fiscal authorities may disregard a transaction that does not have an economic purpose or may re-qualify the form of a transaction to reflect the economic substance of the transaction. In a transaction between affiliated persons, the fiscal authorities may adjust the amount of income or expense of either person as necessary in order to reflect the market price for the goods or services provided in the transaction.

[¶ROM-950] Taxation of foreign legal entities

Foreign legal entities that carry out activities through permanent establishments in Romania owe tax on the income attributable to the respective permanent establishment, within the amounts established by law. The taxable profit is to be determined in accordance with the rules provided above for Romanian legal entities under the following conditions: (i) only income that is attributable to the permanent establishment is to be included in taxable income; and (ii) only expenses that are effected for the purpose of obtaining such income are to be included in deductible expenses.

Individual Income Tax

[¶ROM-975] Taxpayers

The Fiscal Code defines as taxpayer the resident natural persons and non-resident natural persons who obtain revenues from Romania.

[¶ROM-1000] Taxation period and rates

The taxation period is the fiscal year matching the calendar year. The income tax rate is 16 per cent but some deductions are available for different types of revenues.

Considering the source of income the individuals must contribute to the social security funds such as: pension funds, health funds and unemployed fund.

[¶ROM-1025] Taxation of non-residents

According to the Fiscal Code, non-residents that generate taxable income from Romania are required to pay tax.

In Romania, the following taxation quotas are applicable, depending on the income categories they relate to:

- 25 per cent for income from gambling;
- 50 per cent for income paid to an entity that is resident in a state with which Romania has not signed a legal instrument for exchanging fiscal information and the income is paid based on a transaction deemed as artificial under Romanian law; and
- 16 per cent for any other incomes obtained from Romania.

When the taxpayer is a resident of a country with which Romania has concluded a double taxation treaty, the provisions of such treaty shall prevail. To date, Romania has concluded over 80 double taxation treaties.

[¶ROM-1050] Income exempted from taxation

Various types of income are exempted from taxation, including the following:

- dividends paid by a Romanian legal entity to a legal entity within a Member State of the European Community are exempted from tax if the latter owns a minimum of 10 per cent of the participation titles in the Romanian legal entity for an uninterrupted period of more than two years ending on the date of payment; and
- income resulted from interests or royalties obtained in Romania by legal persons residing in one of the Member States shall be exempted from tax, if the companies are associated with a 25 per cent direct holding for a continuous period of two years.

[¶ROM-1075] Taxation of the representative offices

The Representative Offices of non-resident companies are required to pay a yearly flat tax of €4,000 payable in RON.

[¶ROM-1100] VAT

The Romanian Value Add Tax system is harmonised with European Union VAT Directive.

The standard rate of VAT is 24 per cent and is applied to all supplies of goods and services, including imports, which do not qualify for an exemption or for a reduced rate of VAT.

The reduced rate of VAT is 9 per cent and is applied to admission fees at museums, historical monuments, zoos, fairs and exhibitions, supply of school manuals, books, newspapers and periodicals, supply of orthopaedic products, medicine for human and veterinarian use, accommodation in hotels or in areas with a similar function and breadstuffs.

Another reduced VAT rate, which applies to delivery of dwellings meeting certain conditions, is of 5 per cent and may also be applied to the land on which the abovementioned dwellings are located.

The operations exempted from VAT, with deduction rights, are operations of the export of goods and services, international transport, as well as operations concerning the international traffic of goods.

The regime of VAT exemption without VAT deduction right applies to a range of activities including banking, financial, insurance, medical, veterinary and social assistance, educational organisation, if performed by licensed entities. The special VAT exemption regime for small enterprises may be applied for taxpayers with an annual turnover of up to €65,000 (i.e. RON 220,000). Special VAT regimes have also been established for tourism agencies, second hand goods, art, collectables and antiques, investment gold, as well as for persons that perform electronic services to exempted individuals.

[¶ROM-1125] Excise Duties

Excise duties represent special consumption duties owed to the State budget for certain domestic and imported products. According to the Fiscal Code there are two categories of products to which the excise applies, namely products for which the excise regulations are harmonised with the EU legislation (i.e. alcohol, cigarettes, mineral oils, as well as electricity) and other excisable products (i.e. coffee). The persons liable for the payment of excise duties are the importer registered consignee/ dispatcher or the warehouse keeper.

Local Taxes and Levies

The local taxes and levies are owed to the local budgets (i.e. of the local (city) councils and the county councils) and include:

- tax on buildings;
- tax on land;
- tax on transportation vehicles;
- tax for publicity and advertising means;
- tax on shows/performances;
- hotels tax.

BUSINESS INCENTIVES

[¶ROM-1175] General

At present, any business incentives involving state aid measures are subject to EU legislation. On a broad definition, state aid represents an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities. Hence, as a matter of principle, only general measures open to all undertakings are not covered by this prohibition and do not constitute state aid (examples normally include general taxation measures or employment legislation).

Where a measure that may be deemed as state aid is being considered, whether on an individual basis or under an aid scheme addressing several undertakings, the relevant Member State is, as a matter of principle, to notify the same to the European Commission. No notifiable aid must be put into effect before the Commission authorises the said aid. In certain cases where expressly provided by EU legislation the notification is not required, however the aid measure in such cases must be awarded strictly under the conditions set out by the relevant EU provisions.

Government Emergency Ordinance no.77/2014 regarding the national procedures for state aid ("GEO 77/2014") sets out the main legal framework for the implementation of EU state aid rules at national level, setting out:

- the role of the Competition Council in this respect;
- the national representation procedure in front of the European Commission;
- the monitoring of the granted state aid;
- the reimbursement, recovery and suspension of the illegal or abusive state aid; and
- the obligations of state aid recipients.

[¶ROM-1200] State aid scheme

In November 2014, the European Commission issued Guidelines on regional state aid for 2014-2020. In this context, Romania has adopted/updated several regional aid schemes which are exempted from EC notification requirements, such as, amongst other things:

- Government Decision no.807/2014 on state aid schemes stimulating investments with major impact in the economy; the scheme provides for the co-financing of assets acquisition to be awarded up to a maximum annual budget of €100 million (with an overall budget of €600 million), to an expected number of 150 undertakings making new investments of at least €10 million;
- Government Decision no.332/2014 on a state aid scheme supporting investments that promote regional development by creating employment, whereby the State provides grants for salary costs incurred for 2 consecutive years with at least 10 new employments (out of which these are at least 3 for less favoured employees) directly created by new investment within 3 years as of the completion thereof; the number of grants shall be subject to a total annual budget of €100 million and an expected overall budget of €600 million;

- Order no.117/2014 of the Ministry of European Funds on a state aid scheme for the consolidation and modernisation of the production sector via new investments performed by large undertakings; the scheme consists of non-reimbursable co-financing of up to €5 million (up to a total of €9 million for the entire scheme) for new investments in real estate, equipment, transportation and IP made by large undertakings;
- Order no.2980/2013 of the Ministry of Regional Development and Public Administration on aid for investments in industrial parks, which provides for exemptions from various taxes and levies (such as tax on land and buildings appurtenant to the industrial park, taxes for the changing of the land destination, taxes for issuance of building permits and other authorisations, etc.) for such investments.

PART 3

BUSINESS FORMS

[¶ROM-1225] General

Business may be conducted in Romania either through a Romanian branch of a foreign company or through an entity established pursuant to Romanian law.

[¶ROM-1250] Types of business entities

Business activities in Romania may be carried out either by individuals or by legal entities.

The main categories of business entities set forth by the regulations in force are companies, regies autonomes (*regii autonome*), economic interest groups and European economic interest groups, authorised persons, individual enterprises and family enterprises.

Companies

[¶ROM-1275] Types of companies

Nationality

Companies incorporated in Romania have Romanian nationality, irrespective of the nationality of their shareholders. Similarly, companies seated abroad and their secondary offices in Romania will be regarded as having foreign nationality.

Legal form

When incorporating a company in Romania, its shareholders may choose between five types of companies, namely:

- unlimited guarantee collective company (*societate în nume colectiv*);
- limited partnership (*societate în comandită simplă*);
- limited stock partnership (*societate în comadită pe acțiuni*);

- joint stock company (*societate pe acțiuni*);
- limited liability company (*societate cu răspundere limitată*).

The most frequent forms of business in Romania are joint stock companies and limited liability companies.

[¶ROM-1300] Foreign Companies

General

Foreign companies may carry out activities in Romania by setting up subsidiaries or by opening secondary offices such as branches, agencies or representative offices.

Subsidiaries

Foreign companies may set up Romanian subsidiaries (i.e. Romanian companies) in one of the forms provided by the law. The Romanian subsidiaries of foreign companies are deemed to be Romanian legal persons and enjoy the same status as Romanian companies.

Branches

Branches are corporate entities with no legal personality of their own, set up by Romanian or foreign companies.

Representative offices

Foreign companies and economic entities may open representative offices in Romania, subject to authorisation by the Ministry of Economy. Representative offices are not authorised to perform independent business operations and may only undertake, on behalf of their parent companies, transactions that are consistent with the latters' object of activity.

[¶ROM-1325] Regies autonomes

The *Regies autonomes* (public utility companies) are organised and designed to operate in strategic sectors of the national economy, such as the defence industry, energy, mining, natural gas exploitation, post and railway transportation, etc.

Most *regies autonomes* have already been, or are about to be reorganised as companies. Joint stock companies resulting from the restructuring of the *regies autonomes*, which perform activities of national public interest, may be called national companies, and are subject to privatisation.

[¶ROM-1350] Economic Interest Groups

An Economic Interest Group is an association with legal status and a business purpose, between two or more entities or individuals, incorporated for a determined duration, with the aim of promoting and developing the economic activity of its members. The rules of registration and functioning thereof are similar to those applicable to companies.

The number of members of the Economic Interest Group cannot exceed 20. (The Economic Interest Group must not seek to obtain profit for itself. If, profit is generated by the group's activity, such profit must be fully apportioned between the members of the group, as dividends, in the quotas provided by the constitutional documents. In the absence of such a clause, the profit shall be equally distributed.

[¶ROM-1375] European Economic Interest Groups

Romania also recognises the European Economic Interest Groups. A European Economic Interest Group is set up by means of articles of incorporation concluded in notarised form and registered with the relevant trade registry.

European Economic Interest Groups may establish branches in Romania, as well as subsidiaries, representative offices and other units with no legal personality.

[¶ROM-1400] Individuals and family partnerships

Individuals, individual enterprises and family enterprises may be authorised to perform economic activities in any sector, profession or occupation, except for those activities that are subject to special legislation or are prohibited by law. The relevant authorisation shall be issued by the relevant trade registry upon request.

Nonetheless, such entities do not have a distinct legal personality from their founder(s) and are therefore usually used for small scale commercial activities.

COMPANY LAW

Company Formation

[¶ROM-1425] Shareholders

Shareholders of a Romanian company may be individuals and/or legal entities, regardless of their nationality.

Joint stock companies must have at least two shareholders, whilst limited liability companies may be established by one to fifty shareholders. An individual or legal entity may be a sole shareholder of only one limited liability company, and a limited liability company may not have as a sole shareholder another limited liability company with a sole shareholder.

[¶ROM-1450] Registered capital

Registered capital may be subscribed by the shareholders by contributions in cash, in kind and/or, in the case of joint stock companies, in receivables as well. The minimum share capital of joint stock companies is of RON 90,000 (roughly €20,000), whilst the minimum share capital for limited liability companies is of RON 200 (roughly €50).

[¶ROM-1475] Corporate documents

The company's articles of incorporation must be concluded in writing and signed by all shareholders, either personally or by proxy. The articles of incorporation are to be concluded in notarised form in a small number of cases, such as when a land is contributed in kind to the company's share capital.

The articles of incorporation contain all the identification data of the company and of its shareholders and regulate the company's corporate status and governance.

[¶ROM-1500] Registration

Joint stock companies may be set up simultaneously or by public subscription. Limited liability companies may be established only simultaneously.

In any case, the establishment of companies by public subscription is rather rare, as shareholders prefer to use the simultaneous procedure and, where applicable, consider go public only at a later stage.

Joint stock companies

[¶ROM-1525] General meeting of shareholders

General meetings of shareholders may be ordinary or extraordinary, the powers of each of them being expressly regulated by law.

Extraordinary general meetings have more restrictive quorum and voting conditions than ordinary shareholders meetings.

[¶ROM-1550] Executive management

Companies may choose between two management systems: the unitary system and the dualist management system.

Where the unitary system of management is chosen, joint stock companies are managed by one or several directors, always an uneven number, organised as a board of directors.

The board of directors may delegate its powers to one or more executive managers, appointing one of them as the general manager.

Under the dualist system the company is managed by a directorate and a supervision council. The directorate is formed by one or several members and exercises the company's management. The directorate's activity is surveyed by the supervision council.

The overall surveillance of the company's administration and verification of the balance sheet and of the profit and loss account, proper keeping of accounting books and the manner in which the valuation of assets has been carried out is made by qualified auditors, and/or, in some cases, by censors.

[¶ROM-1575] Shares and share transfer

Companies can issue registered or bearer shares. The shares are considered to be registered shares, if not otherwise provided under the company's corporate documents. Registered shares may be issued in material or dematerialised form.

The minimum nominal value of one share is of RON 0.1. Ownership rights over registered shares are transferred by means of a statement in the shareholder register of the issuer company, signed by the assignor and by the assignee, and, or, in the case of bearer shares, by physically handing them over. Shares may be subject to encumbrances, which are registered with the shareholders register and with the Electronic Archive of Movable Securities, for opposability purposes.

Limited liability companies

[¶ROM-1600] General meeting of shareholders

In the case of limited liability companies there is no legal distinction between ordinary and extraordinary meetings of shareholders. In order to pass decisions, the law requires a double majority: first, regarding the number of shareholders and, secondly, regarding the number of shares.

[¶ROM-1625] Shares transfer

Shares may be freely transferred among shareholders. Transfers to third parties are possible only if approved by a number of shareholders representing at least three quarters of the share capital and only provided that the company's creditors or other interested parties do not file oppositions to the transfer, in which case the transfer operates within 30 days of the publication of the decision approving the transfer. If an opposition is filed in court, the transfer operates if and when the opposition is rejected.

[¶ROM-1650] Merger and de-merger

Commercial companies may merge either by the acquisition of assets of an existing company or by the creation of a new company.

Company de-merger may be accomplished either by transferring the assets and liabilities of the company ceasing to exist to two or more existing or newly formed companies, or by spinning-off a part of the company's assets and liabilities and transferring it to one or more existing or newly formed companies.

Merger and de-merger plans drafted in view of these transactions must be registered with the trade registry and published in the Official Gazette or on the subject company's website. Any creditor of the involved company or companies, having claims prior to the publication date of the merger or de-merger plan, may file opposition.

[¶ROM-1675] Dissolution and liquidation

In specific cases regulated by law or based on a shareholders decision, the company may undergo dissolution.

As a matter of principle, following dissolution the company enters the liquidation procedure and its management during this period will be performed by specialised liquidators.

As a result of the liquidation, the company's assets shall be converted into cash for the subsequent payment of the company's debts towards its creditors, while any remaining assets will be transferred to the shareholders. For limited liability companies, shareholders may decide the dissolution of the company without supervised liquidation, provided that they agree upon: (i) the distribution and liquidation of the company's patrimony, and (ii) payment of all debts or their regulation, by agreement with creditors.

INSOLVENCY

[¶ROM-1700] General

In 2014, Romania adopted a new law on prevention of insolvency and insolvency proceedings, which brings together under one piece of legislation all the procedures applicable to companies, groups of companies, credit institutions, insurance and reinsurance companies, as well as cross-border insolvency proceedings. Despite repeated legislative attempts, to date Romania does not have a legal framework for the insolvency of natural persons.

The main principles of the Romanian insolvency framework are an integrated vision of illustrating a new approach for saving business and giving a second chance to debtors, while ensuring a fair treatment of the creditors and improving the recovery rate of the receivables.

The new insolvency framework provides also for new concepts and solutions, such as:

- a basis for coordinating insolvency proceedings for groups of companies;
- the possibility of the creditors or of the debtor to file for interim measures to safeguard the debtor's assets before the hearing of the application to open insolvency proceedings;
- the introduction of the private investor test;
- the possibility of the leasing companies to choose, within the first three months as of commencement of insolvency, either to terminate or maintain the financial leasing agreements concluded with the debtor.

Considering the economic background which favoured its adoption, the new insolvency frameworks aims to offer protection against abusive insolvency requests and to speed up the insolvency proceedings against debtors facing insuperable financial difficulties.

The following insolvency procedures are currently regulated by the Romanian insolvency law:

- pre-insolvency proceedings comprising the ad-hoc mandate procedure and the *concordat preventif*, and
- insolvency proceedings which can take the form of either a judicial reorganisation or of bankruptcy.

[¶ROM-1725] Pre-insolvency proceedings

The ad hoc mandate procedure is opened at the debtor's request based on which an ad-hoc principal designated by the court negotiates with the creditors various settlements to be concluded with the debtor, in order to help the latter avoid the entering into insolvency. This is the least energetic procedure as its commencement does not have any major effects on the debtor other than creating an organised and transparent framework to discuss debt restructuring.

The *concordat preventif* consists of an agreement with the creditors whereby the debtor proposes a business recovery plan comprising also a payment scheme of the creditors' receivables. By signing such agreement, the creditors confirm their support in helping the debtor to overcome the financial difficulties encountered. This is a more energetic procedure since, while the agreement with the creditors is negotiated, forced execution can be suspended for as much as several months.

[¶ROM-1750] Insolvency

Insolvency may commence at the request of the debtor or at the request of the creditors.

The creditor who wants to request the commencement of the insolvency proceeding against its debtor must hold a certain, liquid receivable outstanding for more than 60 days and exceeding the amount of RON 40,000 (roughly €9,000).

The official bodies implementing the insolvency proceedings are the court, the syndic judge, the general meeting of creditors, the special administrator and the judicial administrator/liquidator. The syndic judge has mainly coordination tasks while the administrator/liquidator have mainly executive duties.

Due to commencement of insolvency, all judicial or extrajudicial legal actions and forced execution measures for recovery claims against the debtor or its goods will be stayed by virtue of law. Also, no accessories shall be added to such claims.

Insolvency may result in either reorganisation procedures or bankruptcy.

The judicial reorganisation procedure requires the drafting, approval and implementation of a reorganisation plan aimed at the debtor to successfully redressing its activity and succeeding to perform the payment of its debts, in accordance with an agreed payment schedule. The reorganisation plan might provide for the financial or operational restructuring of the debtor's activity, the corporate restructuring by modifying the share capital structure, restructuring the debtor's activity by selling several assets, as well as any other means the insolvency practitioner may deem fit depending on the specificity of each insolvency case.

In case the financial situation of the debtor does not allow reorganisation or the reorganisation fails, the debtors will undergo bankruptcy. The purpose of bankruptcy is to convert the debtor's assets in money, with a view to perform the payment of the creditors' receivables. Upon finalising all proceedings implied by bankruptcy, the debtor ceases its existence and is deregistered from the relevant trade registry.

EMPLOYMENT LAW

Individual Labour Agreement

[¶ROM-1775] General

The written form is mandatory for the valid conclusion of the individual labour agreement. The individual labour agreements may not diminish the rights granted to the employee by law or the applicable collective labour agreement.

[¶ROM-1800] Types of individual labour agreements

Aside from the full-time labour agreement for undetermined period, which is the common law in the field, there are several special types of labour agreements that may only be concluded under certain conditions and circumstances, as follows:

- agreements for a determined period, which may be concluded for a maximum number of 3 times and for a maximum initial duration of 36 months, which may be extended only under certain conditions provided by law;
- temporary agreements, which are concluded with a temporary labour agent and not with the employee; may be concluded for up to 24 months, and may be extended for up to a total of 36 months.
- part-time agreements, which provide for shorter working hours than a regular full-time schedule;
- agreements for work at home, where employees have the right to establish their own working schedule and the employer has monitors their activity as provided in the agreement.

[¶ROM-1825] Salaries

The salary includes basic salary, indemnifications, bonuses, as well as other additional payments, and has priority for payment over any other debts of the employer. The level of salaries is based on individual and/or collective negotiations between the employer and employees or their representatives, subject to minimum levels set out by law.

[¶ROM-1850] Working hours

With a few exceptions set out by law, the normal working schedule is 8 hours per day/40 hours per week on average. The maximum legal working time, including overtime, may not exceed 48 hours per week or an average of 48 hours per week during a a period of up to 6 months, including overtime work.

[¶ROM-1875] Annual paid leave

The minimum annual leave is of 20 working days, or 23 working days for certain categories of employees.

Employers are bound to grant annual leave until the end of the following year. Compensation in cash of the untaken annual leave is allowed only in case of labour agreement termination.

[¶ROM-1900] Suspension of the agreement

The suspension of the individual labour agreement may occur automatically (e.g. during maternity leave), pursuant to parties' mutual consent or at a party's initiative, in the cases expressly set out by law (and, in employer's case, subject to payment of compensation).

[¶ROM-1925] Termination of the agreement

The individual labour agreement may terminate in either of the following manners:

- automatically, where expressly set out by the law;
- by individual dismissal, occurring at the employer's initiative in cases expressly set out by law, either due to the employee or not related to the latter;
- by collective dismissal, which occurs within a 30-day period for at least 10 employees (for companies with 21–99 employees), 10 per cent of the employees (for companies with 100–299 employees) or at least 30 employees (for companies with over 300 persons), for reasons independent of the relevant employees;
- resignation, subject to prior notices from 20 to 45 working days, depending on the employee's position (no prior notice is required where the employer breached its obligations).

[¶ROM-1950] Employees' protection on transfer of undertaking

The rights and obligations of the transferor arising from labour agreements or from labour relations existing on the transfer date must be fully undertaken by the transferee. The transfer of business may not ground individual or collective dismissals by either party. Law no.67/2006 on the protection of the employees' rights upon transfer of business regulates in detail the mechanism and conditions pertaining to the employees' protection upon transfer of business. Employees' disciplinary liability.

The employer may apply the disciplinary sanctions set out by law to employees breaching their duties provided in the applicable labour agreements and employer's internal regulations, provided that a prior disciplinary investigation is carried out.

[¶ROM-1975] Collective Labour Agreement

The employer is bound to initiate collective negotiations when the number of employees is larger than 21, without their being an obligation for the negotiations to result in the conclusion of a collective agreement. When the employer does not initiate collective negotiations, unions and employee representatives may proceed thereto instead.

The collective labour agreement is concluded for a determined period of time, which cannot be less than 12 months nor larger than 24 months. Upon the expiry of the agreement, the parties may agree on a single extension for up to 12 months.

The collective labour agreement may not diminish the rights set out by law or a collective labour agreement concluded at superior level.

The labour agreement may be amended by the parties' consent and may not be unilaterally denounced.

Labour Associations

[¶ROM-2000] Trade unions and employees' representatives

A trade union may be set up by a minimum of 15 people belonging to the same unit.

Trade unions are entitled to represent their members in the collective labour agreement negotiations and during labour conflicts.

Groups of over 20 employees of a single employer, who not affiliated to a trade union, are allowed to choose and appoint one or more representatives among them, entitled to defend, support and promote their work interests.

[¶ROM-2025] Employers' associations

The employers may associate in associations, federations or confederations which promote and defend the economic, legal and social interests of their members.

Labour conflicts

[¶ROM-2050] General

Conflicts between employees and employers can be either collective (when they concern collective negotiations) or individual (where they concern the individual interests of employees).

[¶ROM-2075] Strikes

Strikes may be declared during the collective work conflicts and only in order to protect the professional, economic and social interests of employees. Throughout the duration of the strike, the individual employment agreement is suspended by virtue of law and the employees will enjoy only the rights on health insurance.

[¶ROM-2100] Health and Safety

The employer must ensure at all times, and at its own costs, the health and safety of its employees at work. Measures to be taken in this respect include the prevention of occupational risks, regular information and training measures, organisational measures and provisions of proper outfits, equipment and working tools, health insurance for all employees, etc.

When developing the health and safety measures, the employer must engage in discussions with the trade unions or the representatives of the employees, and observe a number of principles, such as assessment of the imminent risks, prevention planning, ensuring appropriate instructions to employees, etc.

Where there are at least 50 employees, employers are required to set up a health and safety committee. Where, the working conditions are unhealthy or dangerous, the labour inspector may request the establishment of a health and safety committee.

Where there is no health and safety committee, specific assignments are to be handled by a health and safety manager appointed by the employer.

INTELLECTUAL PROPERTY

[¶ROM-2125] General

Legislation on intellectual property is in line with international practice, Romania having adhered to most of the international conventions on intellectual property, as well as to EU legislation in the field.

[¶ROM-2150] Patents

As a matter of principle, an invention is patentable if it is:

- novel;
- inventive (it must not be obvious to a person skilled in the field); and
- usable in at least one industrial sector.

Several types of inventions (e.g. varieties of plants or animal breeds, inventions strictly related to the human body, etc.) are not patentable, whereas several types of creations (e.g. scientific theories, mathematical methods, aesthetic creations, computer software, etc.) are not considered inventions and therefore may not be patented.

The patent and rights pertaining thereto may be assigned or licensed as well as transferred by succession. Under certain circumstances, the Bucharest Tribunal may grant a non-exclusive mandatory licence upon request. Mandatory licences will be usually ordered taking into account of the market conditions.

[¶ROM-2175] Industrial Designs and Models

The exterior appearance of a product may be registered as an industrial design or model, if the appearance is novel (the industrial design or model was not made available to the public before) and particular (the industrial design or pattern produces a different impact on an average user than the impact of any other industrial design or model made public before). Rights pertaining thereto may be assigned or licensed, as well as transferred through succession.

[¶ROM-2200] Semi-conducting products topographies

Semi-conducting products topographies may be protected provided that they are original, namely that they represent an intellectual creation not usual for the topography creators or for the integrated circuits manufacturers. The protection does not cover the concepts, procedures and devices, nor the information stored in the topographies.

Rights pertaining to semi-conducting products topographies may be assigned or licensed or transferred via succession. Under certain circumstances, the Bucharest Tribunal may grant upon request a mandatory non-exclusive licence.

[¶ROM-2225] Trade Marks

Trade marks are subject to registration if they are:

- fit for graphic or audio representation;
- distinctive (capable of distinguishing products or services of one trader from those of other traders);
- available (they must not affect any prior intellectual property right); and
- lawful.

Rights pertaining thereto may be assigned and licensed.

[¶ROM-2250] Copyright

Copyright is protected provided that the work is original, takes a concrete expressive form and is able to be made known to the public.

Patrimonial copyrights may be freely assigned. Moral copyrights may not be assigned. However, moral rights, such as the right to paternity and integrity, the right to oppose any alteration that may harm the author's reputation as well as the right to disclosure are transmissible by succession for an unlimited period of time.

[¶ROM-2275] Copyright related rights

Copyright related rights, i.e. the rights of artists or performers over their own interpretations or performances, the audio and video recording producers' rights over their own recordings, and the rights of the radio or TV broadcasting entities over their own shows and programme services are also protected. Patrimonial rights of all the related rights holders may be freely transferred.

Artists and performers' moral rights (right to the paternity of their own interpretation or performance, the right to have their name indicated, the right to claim respect of his/her performance quality and to oppose any transformation, counterfeit or any other substantial alteration of their interpretation or performance, or any other infringement of their rights, which might severely harm their honour or reputation) may not be transferred.

DATA PROTECTION

[¶ROM-2300] General

Law no.677/2001 on protection regarding processing and free movement of personal data ("Data Protection Act") sets the general framework in the field The Data Protection Act defines personal data and data processing, regulates consent rules, data transfer, the obligation of data controllers and the rights and remedies of the persons, subject to data processing.

In addition, Law no.506/2004 on personal data processing and privacy protection in the electronic communications sector provides the conditions required for the protection of data that is being processed by the electronic communication providers, the confidentiality of such data as well as the regime of the traffic data.

Under Romanian law, personal data means any information relating to a natural person and any reference drawn from such information. The Data Protection Act does not provide an exhaustive list of such personal data.

Data controllers must observe several principles with respect to personal data, such as:

- the personal data must be processed in good faith;
- the personal data must be collected only for specific reasons;
- the personal data must be adequate and relevant with regard to the scope for which it is collected and processed;
- the personal data must be stored only for a specific period of time, necessary for the processing of the personal data.

[¶ROM-2325] Consent

Personal data may be processed only with the relevant person`s prior, voluntary and informed consent.

Such consent may be given by the relevant person either in writing or electronically or, in case of sensitive personal data, only in writing. The data controller must be able at all times to prove that the consent of the relevant person was provided properly and lawfully.

When the processing is permitted by the law or if such processing is performed for statistical, historical or scientific purposes (provided that the data remains anonymous) or if processing is related to data resulting from publicly available documents/information, the consent is not required.

[¶ROM-2350] Special categories of personal data

The processing of personal data referring to racial, national or ethnic origin, political opinions and any affiliation with political parties, religious or philosophical beliefs, trade-union membership, data concerning health or addictions is as a matter of principle strictly forbidden.

However, there are a limited number of cases where such data may be processed subject certain conditions, such as: the processing of such data is necessary for the protection of the relevant person or as per labour law and the relevant person has given its consent thereto.

[¶ROM-2375] Rights of the persons concerned

If personal data is obtained directly from the relevant person, the data controller must provide to the latter at least the following information:

- the identity of the data controller or its representative;
- the scope of the processing of the personal data; and
- any other information, as required by the law.

If the personal data is not obtained directly from the relevant person, the data controller is in addition obliged to inform the relevant person with regard to the collection and processing of the personal data.

Moreover, the relevant person has the following rights, with respect to the collection / processing of the personal data:

- the right to access the data which is being processed;
- the right to rectify, remove or block the personal data;
- the right to oppose to the processing of personal data.

[¶ROM-2400] Registration

The data controllers must notify the Data Protection Agency (*Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal*) with regard to its intention to process personal data, prior to carrying out any data processing activities.

[¶ROM-2425] Security measures

The data controller must take all necessary technical measures in order to protect the personal data against unauthorised access, alteration, transfer or disclosure.

[¶ROM-2450] Transfer abroad

The transfer of personal data abroad by the data controller is subject to a prior notification to the Data Protection Agency. In such cases the Data Protection Agency will assess the adequate level of protection of personal data on a case by case basis, by taking into consideration the nature of the data to be transferred, the processing scope and the proposed duration of the processing.

The Data Protection Act provides that if the data is transferred abroad, the state in which such transferred is made must ensure the adequate level of protection.

COMPETITION LAW

[¶ROM-2475] General

Romanian laws on antitrust and unfair competition generally follow international practices in the field and are substantially attuned to European Union legislation.

The Competition Council (*Consiliul Concurenței*) is the independent administrative body entrusted with the enforcement of competition laws, supervision of the Romanian market and the preservation of a healthy competitive business environment.

[¶ROM-2500] Economic concentrations

Pursuant to the Competition Law, an economic concentration occurs mainly when:

- two or more companies, previously independent, merge; or
- one or more persons already controlling at least one company, or one or more companies acquire, direct or exercise indirect control of the whole or parts of one or more companies, irrespective of the method used in taking such control; or
- two or more independent companies form a concentrated joint venture company having full functionality on the market.

Control is deemed to be achieved if the acquired rights, contracts or other means, either together or separately, confer the purchaser the right and/or possibility to exercise, directly or indirectly, a material influence over the target company. The most common ways to achieve control are:

- the acquisition of shares;
- the acquisition of assets; and
- the establishment of commercial relations that may lead to economic dependency.

All economic concentrations which fulfil the relevant turnover thresholds and take place in Romania, as well as those taking place outside Romania, but having an effect on the Romanian market, are subject to the control and authorisation of the Competition Council,. Foreign-to-foreign transactions are subject to Competition Council authorisation if the involved parties achieve turnover in Romania.

Where EU merger control thresholds are met, the economic concentration will be subject only to European Commission's control.

Economic concentrations must be notified if the following conditions are met for any fiscal year prior to the transaction: (i) the parties' combined turnover exceeds €10 million; and (ii) at least two parties involved in the transaction have each achieved a Romanian turnover exceeding €4 million. The €10 million threshold is considered to be referring to the combined parties' worldwide turnover.

Before clearance is received from the Competition Council in relation to a notifiable transaction, the parties involved may take only those measures related to the concentration that are not irreversible and do not permanently modify the structure of the relevant market. Upon a motivated request of the interested party, the Competition Council may under certain conditions grant waivers or allowances from this restriction.

[¶ROM-2525] Anti-Competitive Practices

Any explicit or tacit agreements between companies or groups of companies, any decisions of association or any concerted practices between them, which target or may result in the restriction or distortion of competition on the Romanian market or a part of such are prohibited.

Prohibited practices include, in particular, those:

- establishing, in a concerted manner, sale and purchase prices, price lists, discounts, added values and any other inequitable commercial terms;
- limiting or controlling production, distribution, technological development or investments;
- applying unequal conditions for equivalent performances to various commercial partners;
- conditioning the conclusion of certain contracts by the partner's acceptance of supplementary performances that are not linked with the object of such contracts; or
- eliminating competitors, limiting or obstructing market access.

The prohibition does not apply where the undertakings involved in the agreement hold a market share of either (i) 15 per cent or less (calculated individually) if they are not competitors; or (ii) 10 per cent or less (calculated by combining the market shares of all parties to the agreement) if they are competitors.

Anti-competitive process may be also exempted from the restrictions mentioned above, for example, if:

- they contribute to the improvement in the production or distribution of goods, or promote technical or economic progress;
- they ensure an advantage to consumers comparative to the one obtained by the parties involved; or
- they do not allow the parties to eliminate competition on a substantial part of the relevant market.

The EU block exemption regulations for the application of art.101(3) of the TFEU are directly applicable in Romania. Such regulations provide for certain market share thresholds under which certain categories of vertical or horizontal agreements are block exempted, provided that they do not contain any hardcore restrictions (i.e. price fixing, market partitioning and bid rigging).

[¶ROM-2550] Abuse of Dominant Position

The Competition Council upheld the ECJ's view and defined the dominant position as the possibility enjoyed by an undertaking to act independently from its competitors, customers and ultimately of its consumers. The Competition Law also includes an express presumption that a market share of above 40 per cent indicates the presence of dominance on a given market.

As a matter of principle, dominant position per se does not amount to an infringement of competition rules, only the abusive behaviour of a dominant undertaking being prohibited.

The Competition Law provides several examples of behaviour which shall in particular be deemed as abusive, such as:

- imposing sale and purchase prices, price lists or other inequitable contractual terms or refusing to negotiate with certain suppliers or customers;
- limiting production, distribution, technological development to the consumers' detriment;
- applying towards various commercial partners unequal terms for equivalent performances, causing some of them a disadvantage in their competitive position; and
- exploiting the economical dependency of a client or supplier, etc.

[¶ROM-2575] Unfair competition

Law 11/1991 on Fighting Unfair Competition governs the legal regime of unfair competition and the sanctions applicable by the Competition Council to entities committing activities leading to unfair competition. Examples of unfair competition acts include:

- disclosing, acquiring or using a trade secret without the consent of its rightful owner and in a manner which infringes fair commercial practices;
- communication, even confidential, or spreading, by another corporate entity, false assertions about a competitor or its goods/services, which can, by their nature, harm the proper operation of the rival company;
- offering, promising or giving, directly or indirectly, gifts or other advantages to a corporate entity's employee or to its representatives, in order to learn, by disloyal behaviour, industrial procedures, to know or to use its customers or to obtain any other profits for himself or for another person to the detriment of a competitor, etc.

Certain acts of unfair competition are sanctioned with imprisonment or fine, as per the provisions of the Competition Law.

CONSUMER PROTECTION

[¶ROM-2600] General policy

Romanian laws provide for a large number of consumer rights, including, amongst other things:

- right to protection against the risk of purchasing a product or a service which might cause injuries to life, health or safety or which might affect consumers economic rights and legitimate interests;
- right to complete, precise and accurate information on the main characteristics of the products and services acquired;
- access to market offer;
- compensation for damage resulting from shortcomings in quality of the products and services;
- right to establish associations for consumer protection designated to safeguard their interests;
- freedom to make decisions when purchasing products and services, without any abusive clauses or clauses influencing the free choice of the consumer by abusive practices imposed in contracts;
- right to clearly and precisely drafted contractual clauses, including with regard to quality, guarantees, prices or tariffs, credit or interest conditions;
- right to be exonerated from paying for products and services which have not been accepted;
- right to be compensated for damages caused by products or services which do not correspond to the contractual clauses;
- right to be granted the necessary technical assistance and spare parts for the entire average duration of use of the product, as set forth in the technical norms or as declared by the producer or agreed by the parties;
- right to pay for products or services the amounts determined in advance; the increase of the initially determined amount may not occur without the consumer's consent;
- right to notify consumer protection associations and the relevant consumer protection authorities of the breach of their rights or legitimate interests as consumers, etc.

General provisions on consumer rights and consumer protection policy are accompanied by detailed regulations ensuring the framework and tools for the actual enforcement of such laws, including as regards information and transparency (e.g. labelling), unfair practices, abusive clauses, sale practices, producers liability, advertising, health and safety, consumer protection authorities and consumer associations.

A considerable number of special regulations for consumer protection in certain fields (e.g. e-commerce, consumer credit, real estate agencies etc.) or industries, as well as specific industries or products and services, have also been enacted. In addition, EU consumer protection legislation in the field has been thoroughly transposed and implemented.

[¶ROM-2625] Conditions of sale

The law provides certain mandatory conditions related to pricing display, invoicing and product quantity information to be fulfilled by undertakings selling products or services.

In addition, sale location and sale methods are regulated in detail including as concerns discount sales, sale at distance, direct sale, sales with bonus, conditional sale and imposed sale (the latter two being prohibited).

The law also prohibits the refusal to sell a product or a service without a legally justifiable basis.

[¶ROM-2650] Advertising

Advertising laws aim to protect amongst other things consumers of products and services, by regulating the content of advertising materials and messages, misleading and comparative advertising, advertising of certain products (e.g. tobacco, alcohol, medicines, weapons, drugs, etc.) and advertising by media.

PART 4

SOCIAL SECURITY

[¶ROM-2675] General

The Romanian social security regime is based on the incorporation of common social security funds which are State budget funds, save for certain funds established and organised based on certain special laws for certain professional categories, such as lawyers or farmers. The contribution rates to the state social security funds are determined on a yearly basis.

[¶ROM-2700] Contributions to the public pension system

The social security contribution rates are differentiated depending on the work conditions, i.e. normal, hard or special, and are approved annually by the State social security budget law.

According to the Fiscal Code, the social security quotas have been established as follows:

- 26.3 per cent for normal work conditions (of which 10.5 per cent is owed by the employee and 15.8 per cent by the employer);
- 31.3 per cent for hard work conditions (of which 10.5 per cent is owed by the employee and 20.8 per cent by the employer);
- 36.3 per cent for special work conditions (of which 10.5 per cent is owed by the employee and 25.8 per cent by the employer).

The employer will calculate, withdraw and pay these contributions to the social security fund on a monthly basis.

[¶ROM-2725] Private pension funds

Private pension funds have also been regulated by law and are established based on civil partnership agreements subject to the provisions of the Civil Code.

All insured employees aged 35 or less must contribute to such a fund, whereas contributions of insured individuals aged between 35 and 45 is optional.

Insured individuals either choose the private pension fund themselves or are assigned randomly to one, if they did not choose one in four months from the requisite date.

Insured individuals are entitled to be paid the private pension upon reaching the age limit provided by the public social security legislation.

The contribution owed to a private pension fund is paid by the same procedure as the social security contribution owed to the state. The contribution rate thereto is 5 per cent, and it is included in the contribution rate owed to the state.

The private pension funds are administered by legal entities incorporated as joint stock companies and authorised by the Private Pension System Supervisory Commission, an autonomous public authority under the control of the Parliament.

[¶ROM-2750] Contribution to the unemployment security budget

The contribution to the unemployment security, professional integration support and social allowance fund owed by employers for 2015 has been set at 0.5 per cent and applies to the monthly gross salary fund.

All employed individuals owe a contribution amounting to 0.5 per cent of their monthly salary. The employer shall calculate, withdraw and pay these contributions to the unemployment security budget.

[¶ROM-2775] Contribution to the health social security fund

Health social security funds are established based on the insured persons' contributions, on the contributions of the individual and legal entities having employed salaried personnel, on state budget subsidies as well as other sources.

Such contributions are incumbent on both employers and employees. The employers are bound to pay health social security contributions of 5.2 per cent, applied upon the salary fund. The monthly cash contribution of employees is established at 5.5 per cent, applied upon the taxable salary income. The employer shall calculate, withdraw and pay these contributions to the health social security funds.

[¶ROM-3000] Contribution to the National Insurance Fund for Work Accidents and Professional Diseases

The National Insurance Fund for Work Accidents and Professional Diseases is designed to provide social protection against the risks involved by loss or diminution of one's working capacity, death as a result of a work accident or professional diseases. This fund was established by means of contributions owed by employers or, as the case may be, persons insured through agreements. The contribution for work accidents and professional disease owed by employers varies between 0.15 per cent and 0.85 per cent.

[¶ROM-3025] Sanctions

Employer's intentional failure to pay the amounts withheld from employees as contributions to the public social security system, to the unemployment security budget or to the health security budget within 30 days as of their maturity is deemed as a criminal offence.

IMMIGRATION

[¶ROM-3050] EU citizens

Citizens of EU Member States intending to stay on the Romanian territory more than three months have to register their residence with the local unit of the General Inspectorate for Immigration where the respective citizen is domiciled and obtain a registration certificate, a residence card or a permanent residence card, as the case may be.

The registration certificate and residence card are issued for periods of up to five years.

Citizens of EU Member States or their family members continuously and legally staying on the Romanian territory more than 5 year may request issuance of a permanent residence card. The validity of the permanent residence card is of 10 years.

Citizens of EU Member States and their family members may work on the Romanian territory under the same conditions as the Romanian citizens.

[¶ROM-3075] Non-EU citizens

Citizens of non-EU Member States holding a valid right to stay in Romania, and intending to obtain permission for a long-term stay, must request the same from the General Inspectorate for Immigration where they are domiciled, subject to certain conditions being met. Such right may be obtained either in their capacity as family members of a Romanian citizens or for other purposes (e.g. labour, commercial activities, etc.).

Non-EU citizens may be employed in Romania subject to certain conditions, and provided that the interested employer obtains an employment permit from the immigration authorities. The Romanian employer may be either a natural or legal person.

The work permit is issued upon the employer's request. Amongst other conditions to be met (depending on the category of each employee), when requesting the employment permit, the employer must effectively perform the activity that the foreign employee shall be assigned to.

An employment permit will not be necessary in several cases set out by law, e.g. where a relevant foreigner is appointed to lead a branch, a representative office or a subsidiary of a company headquartered abroad or is temporarily performing educational or scientific activities in specialised institutions or carrying out temporary activities requested by ministries or other administrative authorities.

ENVIRONMENT

[¶ROM-4000] General

Romania has transposed relevant EU legislation in the environmental field and is also a party to various bilateral, regional and international conventions and treaties on environmental matters e.g. UN Framework Convention on Climate Change and its 1997 Kyoto Protocol, the 1982 UN Convention on the Law of the Sea, the 1973 International Convention for the Prevention of Pollution from Ships and its 1978 Protocol.

The Ministry of Environment, Waters and Forests is the central public authority dealing with the drafting, implementation and coordination of environmental policies at national level. The National Agency for Environmental Protection, as well as the regional county Environmental Protection Agencies ensures the implementation and actual enforcement of environmental related regulations and issues most of the environmental permits, approvals/authorisations. The National Environmental Guard is the main enforcement authority, having competences mainly in respect of verifying compliance with environmental laws and regulations.

[¶ROM-4025] Air pollution

The regulatory regime for air pollution is provided by the Law 104/2011 on ambient air quality. The law provides, amongst other things, the requisite measures for determining the targets for ambient air quality intended to avoid and prevent the occurrence of damaging events and to minimise their effects on human health and the environment as a whole, assessing ambient air quality based on common methods and criteria, set forth at the European levels and in fulfilment of the obligations under international treaties concluded by Romania.

The discharge of emissions into the atmosphere is permitted only with the observance of the applicable regulations, as well as the conditions set out in the relevant environmental approval or authorisation.

[¶ROM-4050] Climate change

Romania has transposed and implemented the European directives on climate change in national legislation. Romania is also a signatory party to the UN Convention for Climate Changes and the Kyoto Protocol. Based on these enactments, Romania has established the national system for the allocation of emissions of gases with greenhouse effects and the scheme for greenhouse gas emission allowance trading.

[¶ROM-4075] Water pollution

As part of the Romania's efforts to comply with the EU directives on water protection, the Government has implemented a national monitoring and evaluation system for the reduction of pollution with nitrates resulting from agricultural sources, and new limits and procedures in respect of the discharge of wastewaters into the natural circuit. To perform any water related activity, a water management permit and a water management authorisation are required.

The authority issuing the permits and authorisations is to establish the limits for discharge and the integrated monitoring of the discharge of waste water.

[¶ROM-4100] Waste and waste management

There are various regulations on the general regime of waste, as well as rules on landfills, waste incineration, shipment of waste, waste electrical and electronic equipment, end-of-life vehicles, packaging waste and waste from batteries and accumulators.

The legal persons that produce or hold waste are obliged to classify all types of waste produced in the course of their activity in accordance with the waste list drafted by the European Commission. In addition, the producers and holders of waste are obliged to collect separately at least the following types of waste: paper, metal, plastic and glass.

In certain sectors (e.g. car manufacturing, manufacturing of electrical and electronic equipment, manufacturing of batteries or packaging materials), companies have the obligation to ensure the recovery and recycling of a determined percentage of waste resulting from their products. Generally, these companies have the possibility to organise this recovery activity through their own means or by delegating this responsibility to specialised organisations.

One of the current major concerns of the environmental authorities in this field is the Romanian companies' level of compliance with their obligation of recouping, recycling, incineration or reintroduction into the economical circuit of the energy resulted from the packaging of wastes.

[¶ROM-4125] Dangerous substances and biotechnologies

The production, use, storage, internal transport, handling, elimination, as well as the import and export of hazardous substances, must comply with specific regulations. Most of the EU legislation regarding hazardous substances has been transposed into domestic legislation. International transportation and transit of hazardous substances shall be made according to the agreements and conventions regarding international transport of dangerous materials ratified by Romania.

[¶ROM-4150] Environmental liability

The law provides for the preventive and remedial measures that must be taken in case of damage or imminent threat of damage towards the environment caused by certain professional activities.

The main principles are the following: the liability for damages shall be treated pursuant to the 'polluter pays' principle, the polluters shall have joint responsibility in the case of multiple polluters and the polluter shall bear all costs necessary for cleaning up and environmental recovery.

When an imminent threat occurs to the environment, the polluter is required to comply with certain obligations in order to avoid or limit any potential environmental damage. The operator is liable to cover the costs of the preventive and remedial measures on implementation, including cases when the preventive and remedial actions where enforced by the competent Environmental Protection Authority.

PART 5

LITIGATION

Remedies

[¶ROM-4175] Types of legal actions

Legal actions can be public or private. Public actions occur when the state institutes a legal proceeding against an individual or a legal entity. Generally, this is the case of criminal actions. Private actions can be civil (protecting family relations, ownership and possession, rights attached to the human personality, and legal relations between professionals/undertakings), administrative (protecting general rights prejudiced by an administrative authority), labour related or intellectual property related.

[¶ROM-4200] Interim and conservatory relief

Interim and conservatory reliefs include applications for bank accounts attachment, seizure of movable and immovable assets and judicial seizure. Such measures, which are temporary by nature, may not be awarded unless there is a main case on the merits undergoing trial. It is also very common that the court asks the claimant to set up a cash security as a condition precedent to ruling on the interim/conservatory measure.

[¶ROM-4225] Forced execution

Forced execution consists in the enforcement of a writ of execution (e.g. court decisions, arbitral awards, notarised deeds) with the help of qualified enforcement officers and police, where necessary. Unlawful forced execution acts/procedures may be challenged by any of the parties, as well as by third parties prejudiced by such execution.

Court system

[¶ROM-4250] Judicial Jurisdiction

Judicial courts rule upon all types of legal actions, save for those entrusted to the Constitutional Court. The judicial courts hierarchy consists of local courts ("*judecătorii*", i.e. first instance courts), county courts ("*tribunale*", i.e. tribunals), regional courts ("*curţi de apel*", i.e. courts of appeal) and the supreme court ("*Înalta Curte de Casaţie şi Justiţie*", i.e. the High Court of Cassation and Justice). Criminal matters arising from professional military service are ruled by specialised military courts.

Civil procedure and criminal procedure codes as well as various enactments containing provisions on legal actions regulate in detail the substantial and territorial jurisdiction of each such courts.

The judicial court system consists exclusively of panels of judges. There is no jury, in either civil or criminal cases. In criminal cases, and in a few civil cases (e.g. related to family rights and refugees rights), Romanian State is represented in courts by the prosecutor.

[¶ROM-4275] Constitutional jurisdiction

Constitutional jurisdiction is exercised by the Constitutional Court, which is mainly in charge with examining constitutionality of laws and government ordinances both before their enactment as well as thereafter, when pleas of unconstitutionality are filed.

[¶ROM-4300] Administrative jurisdiction

Beside courts of law, there may be various authorities settling disputes with a technical character in adversarial, impartial procedures ensuring a subject's right to defence (e.g. the National Council for the Solving of Challenges, which settles initial claims arising from public procurement procedures). As per the Constitution, such special administrative jurisdictions are facultative and gratuitous. Hence, the individual challeng-

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ing an administrative act subject to a special administrative jurisdiction may address the court directly. However, in such cases, it is as a matter of principle compulsory for the party to nonetheless file a preliminary complaint to the relevant authority.

[¶ROM-4325] Costs

Stamp duties payable in court generally consist of a fixed amount. In certain cases, e.g. the recovery of debts, stamp duties consist of a fixed amount plus a percentage of the claimed amount.

Parties may also benefit from various facilities (including exemptions from payment) with regard to stamp duties as well as from free legal assistance.

Litigation costs (including stamp duties, attorney fees, expert and witness expenses, etc.) are reimbursed to the party in favour of whom the relevant court decision was rendered, pro rata to such party's success. Compensation for attorney and expert fees may be however reduced by the court under certain conditions.

ARBITRATION

[¶ROM-4350] General

The Civil Procedure Code (CCP) is the main enactment dealing with arbitration in Romania, setting forth rules on domestic and international arbitration, as well as on enforcement and challenging of arbitral awards. The remainder of the national legislation mainly concerns special types of arbitration as stock market disputes or labour conflicts.

Romania is also a party to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards ("New York Convention"), as well as to the European Convention on International Commercial Arbitration (Geneva, 1961) and to the ICSID Convention.

[¶ROM-4375] Arbitration agreement

Before or after a dispute occurs, parties are free to enter into arbitration agreements (taking the form of separate conventions or mere clauses inserted in the agreements potentially giving rise to the relevant disputes) whereby they agree that the disputes shall be resolved by way of arbitration. No such agreements can be however concluded in relation to disputes concerning civil status, capacity, inheritance issues, family relationships and rights of which the parties may not dispose.

The state and public authorities may enter into arbitration agreements in cases expressly indicated by law, such as in foreign investments, licenses and concessions, privatisation matters, etc. Other State owned/controlled entities may conclude arbitration agreements if not otherwise set out by law or their constitutive documents.

In case of international arbitrations, the CPC provides that States and State controlled entities may not avail themselves of national legislation in order to escape the jurisdiction of an arbitral tribunal.

Arbitration agreements are deemed as severable (autonomous) from the underlying agreement i.e. if the agreement is found invalid or otherwise unenforceable, the arbitration clause shall not automatically become void or unenforceable.

Arbitration agreements must be concluded in writing and in certain cases (such as disputes related to creation or transfer of real rights over immovable assets) in notarised form.

To the extent that the parties have concluded a valid and enforceable arbitration agreement, a court of law seized with an arbitrable dispute may not adjudicate it unless the respondent fails to avail itself of the arbitration agreement.

[¶ROM-4400] Arbitration procedure

The CPC provisions on domestic arbitration regulates all aspects of arbitration procedure including an arbitrators appointment, revocation and replacement, pleadings, administration of evidence, interim and conservatory relief, courts in charge to support the arbitration (similarly to the French institution of *juge d'appui*) and arbitration costs. As a matter of principle however, such provisions apply only in case the parties or relevant arbitration tribunal have failed to agree on a distinct set of rules.

International arbitration benefits from separate rules and in principle of a more flexible regime than domestic arbitration. Domestic arbitration rules may however become applicable in international arbitrations where expressly mentioned by the CPC (e.g. in case of setting aside of the arbitral award) as well as where neither CPC provisions on international arbitration nor the applicable rules of arbitration regulate a particular topic. Nonetheless, parties may agree to entirely waive the application of any of the CPC provisions to international arbitrations.

[¶ROM-4425] Award

The arbitral award is passed by the majority of the members of the arbitral tribunal. In case of parity, the chairman of the tribunal's opinion is decisive.

In case of ad-hoc arbitrations, the award and the entire file have to be submitted to the relevant State tribunal within 30 days of the service of the award to the parties. When a permanent arbitral body organises the arbitration, the file is deposited by that institution.

[¶ROM-4450] Challenges

An arbitral award may be challenged only by action to set aside. The grounds for challenging are limited and refer mainly to the arbitral tribunal's capacity to rule upon the case, the observance of the procedural rules during arbitration and the legality of the award. The State court receiving the challenge is not to hear any arguments related to the merits of the award. The decision of the court is subject to a second appeal before the supreme court.

[¶ROM-4475] Enforcement

As per the CPC, domestic arbitral awards may be enforced in the same manner as a court decision.

Foreign awards are subject to recognition and enforcement proceedings, which shall be conducted, where applicable, in accordance with the New York Convention, or otherwise based on CPC provisions, which are in substance very similar to the New York Convention principles.

Alternative Dispute Resolution (ADR)

[¶ROM-4500] General

Besides arbitration, another alternative dispute resolution (ADR) method customarily used in Romania is the mediation procedure regulated under Law no.192/2006.

Mediation is not mandatory. The mediator does not hold any decisional powers with respect to the content of the settlement to be concluded by the parties, as the case may be. Moreover, either party may terminate the mediation procedure at any stage thereof.

The mediator must decline a case if he is aware of any circumstances that would prevent him from being neutral and impartial, as well as if the mediator finds that the rights in question may not be subject to mediation.

[¶ROM-4525] Mediation Contract

It is forbidden for the mediator to conduct any mediation sessions before the conclusion of the mediation contract. The mediation contract is concluded between the parties in dispute and the mediator, in written form, and provides, amongst other things, for mediator's fees.

The mediator must keep confidential the information learned during mediation and he cannot be heard in court as a witness regarding the latter.

[¶ROM-4550] Proceedings

The mediator shall have the duty to make all arrangements so that the parties reach a mutually convenient settlement within a reasonable time and conduct the mediation process in an unbiased manner so that a permanent balance between the parties is provided.

The statute of limitations for filing court actions is suspended by law, during the mediation procedure.

For criminal cases, mediation may be conducted whenever the law states that prior complaint withdrawal or reconciliation of the parties removes criminal liability.

In the event that the parties of a civil judicial conflict reach a settlement by attending the mediation procedure, the court shall issue a ruling acknowledging the settlement and, except in few cases, will order the restitution of the stamp duty.

[¶ROM-4575] Enforcement

Mediation settlement is not binding on the parties. The settlement concluded by the parties following the mediation is not an enforceable title therefore the parties may ask its authentication by the public notary or may file a request before the court to acknowledge their understanding. Moreover, if the mediated conflict concerns real estate or other real rights transfer, partition or inheritance cases, mediation settlement must be presented to the public notary or before the court to check its content and to issue respectively a notarised deed or court decision. Amendments to the mediation settlements may be made by the latter only if the parties agree.

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