

Doing Business in Romania

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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

Romania has a civil law system.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

There are a few restrictions on foreign investment (for example, foreign persons cannot acquire land, subject to a limited number of conditional exceptions).

3. Are there any exchange control or currency regulations?

There are certain limited exchange control and currency regulations to deter money laundering. In addition, certain reporting requirements apply to foreign currency money market transactions and to loans from foreign lenders to Romanian private borrowers.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

Generally, there is no difference in the legal treatment of local and foreign investors.

Financial and/or tax incentives are provided for:

- Small and medium-sized enterprises.
- Non-residents deriving income from the transfer of derivative instruments or transfer of shares issued by Romanian entities.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- Registration formalities (including timing).
- Minimum (and maximum) share capital.
- Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).
- Any restrictions on the rights that can attach to shares.
- Any restrictions on foreign shareholders.
- Management structure and any restrictions on foreign managers.
- Directors' liability.
- Parent company liability.
- Reporting requirements (including filing of accounts) and cost of compliance.

The most common forms of business vehicle used by foreign companies are joint stock companies and limited liability companies. The following apply to both:

- **Registration formalities.** The shareholders must prepare the company's bye-laws (in a notarised form in limited cases) to be submitted together with a completed registration application form and other various documents, to the local Trade Registry Office. Registration takes about five working days from the submission of all required documents.
- **Share capital.** The minimum share capital for joint stock companies is RON90,000 (about US\$31,177) and for limited liability companies is RON200 (about US\$69). There are no maximum share capital requirements.

- **Non-cash consideration.** Cash consideration is mandatory when establishing any type of company. Shares can be issued for contributions in kind, which are evaluated by authorised experts. Prohibited or restricted contributions include contributions of services or labour and contributions of accounts receivables.
- **Rights attaching to shares.** Voting and dividend and distribution rights (under insolvency and tax laws) may be restricted, and agreements under which a shareholder undertakes to exercise voting rights in accordance with the instructions or proposals of the company or of the persons representing the company may be considered null and void.
- **Foreign shareholders.** There are no restrictions on foreign shareholders.
- **Management structure.** Joint stock companies can adopt a one-tier (that is, board of directors) or a two-tier (that is, directorate and supervisory board) management structure. Limited liability companies can be managed by a board of directors. There are no restrictions on foreign managers. Important decisions are made by the shareholders in their general meeting, which include:
 - decisions relating to a change to the company's legal form;
 - disposals of assets with value exceeding 50% of book value;
 - changes of nominal shares into bearer shares;
 - mergers;
 - division;
 - dissolution.
- **Directors' liability.** With certain exceptions, directors are jointly liable to the company for any mismanagement. They can be held criminally liable for embezzlement, forgery, use of forgery, bribery and fraudulent management.

Shareholders' liability in joint stock and limited liability companies is limited to their contribution to share capital. However, in certain conditions, a shareholder may be held jointly liable for the financial obligations of an insolvent company. For example, a shareholder taking advantage of the limited character of the company's liability and of its distinct legal personality.
- **Parent company liability.** The parent company is generally liable in relation to actions undertaken by its branch, but not for the actions undertaken by its subsidiary (unless the subsidiary is insolvent under

the Fiscal Procedure Code's conditions), where the branch does not enjoy legal personality and the subsidiary does.

- **Reporting requirements.** The reporting requirements to the Trade Registry are as follows:
 - annual and biannual financial statements;
 - details of the directors, financial auditors and censors/internal auditors;
 - restated articles of incorporation after any amendments.

Listed companies have stricter reporting rules in compliance with capital market legislation.

EMPLOYEES

6. What are the main laws regulating employment relationships?

The main laws regulating the employment relationship are:

- Labour Code (*Law No. 53/2003*), as amended.
- Law No. 319/2006 on safety and health at work.
- Emergency Governmental Ordinance No. 56/2007 regarding the employment and secondment of foreign persons in Romania, as amended.
- Law No. 130/1996 regarding collective labour agreements.
- Law No. 168/1999 on settlement of labour conflicts.
- Collective Labour Agreement at the National Level No. 2895/2006.

Employment agreements with an international element (for example, where the employer is a foreign company or the employee is a foreign citizen) may be governed by the law chosen by the parties, if the choice of law does not give less protection than Romanian law (as the law of the country in which the employee habitually carries out his work, the employer's place of business is situated, or the contract is most closely connected). Foreign persons working in Romania are subject to Romanian employment laws, provided they are more favourable.

7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

An employment contract must be in writing and registered with the competent territorial labour authority.

This obligation concerns the employer and the failure represents a minor offence, triggering fines.

The relationship between the employer and the employees is governed by:

- Employment legislation.
- Collective labour agreements.
- The internal regulations of the company.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees cannot participate as members of the company's management bodies (there are no works councils). They are entitled, however, to representation in relation to the management of the company where they are employed, by trade unions or employees' elected representatives. Employees' representatives are usually elected in companies with more than 20 employees where none of the company's employees is a member of a trade union.

Employers must inform and consult trade unions or employees' representatives in relation to:

- Any decision that could materially affect employees' rights and interests.
- Collective redundancies.
- Transfer of undertakings.
- The company's financial and economic condition.

9. How is the termination of individual employment contracts regulated?

An employment contract can be terminated by (*Labour Code*):

- The effect of the law.
- Resignation of the employee.
- The parties' agreement.
- Dismissal.

The termination of the employment relationships by the effect of the law occurs only in some cases expressly set out in the Labour Code, independently of the will of the parties. Termination by mutual agreement and the employee's resignation are governed by very few rules.

Dismissal is very strictly regulated, can occur only in some specific situations expressly provided by the Labour Code, and must comply with particular procedural rules. Dis-

missals made without satisfying the legal requirements are null and void. An unfairly dismissed employee is entitled to the payment of an indemnity equal to the indexed, increased or updated salary or other entitlements the employee would have otherwise benefited from for the period of dismissal, and, at the employee's express request, the reinstatement in the position he was dismissed from.

The following are considered fair grounds for dismissal:

- Gross or repeated misconduct.
- Professional or medical inadequacy.
- Detention in preventive custody for more than 30 days.
- Failure to ask for retirement if legal requirements are met.
- Re-organisation of the company, affecting the respective employee's position (redundancy).

10. Are redundancies/mass layoffs regulated? If so, please give details.

Collective redundancies can only occur if the employer has more than 20 employees. A collective redundancy is the dismissal over 30 days, for one or more reasons not related to the employee's person, of a minimum number of employees, as follows:

- At least ten employees where the employer has more than 20 and fewer than 100 employees.
- At least 10% of the number of employees where the employer has at least 100 but fewer than 300 employees.
- At least 30 employees where the employer has 300 employees or more.

In the case of collective redundancies, employers must:

- Notify the trade unions or employees' representatives and perform consultations.
- Notify the local employment authority and workforce agency.
- Implement fair selection criteria.
- Observe notice periods.
- Make redundancy payments.
- Give employees reasonable time off from work to search for a new job.
- Not hire any new employees to fill the positions of the dismissed employees for nine months following the dismissal without offering re-employment to the dismissed employees first.

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

Foreign employees are non-EU and non-EEA (European Economic Area) third country nationals. As a general rule, foreign employees require work visas, work authorisations and residence permits to enter, work and stay in Romania. The fees are the RON equivalent of the following:

- **Work authorisation:** EUR200 (about US\$292).
- **Residence permit:** EUR150 (about US\$219).
- **Work visa:** EUR120 (about US\$175).

These government fees apply per visa or per permit, and do not include related costs required by the supporting procedures, such as certified translations, public notary legalisation and other miscellaneous governmental costs. Depending on the volume of documentation required on a case by case basis, the total costs per case (work visa, work permit and one residence permit) may exceed the amount of EUR600 (about US\$877).

The adjudication deadline for a work authorisation and residence permit is 30 calendar days from the registration date of the local employer's application. The residence permit must be issued to the foreign employees based on the work authorisation within the same deadline.

European citizens only require the certificate of registration, which can be issued within a day.

TAX

12. In relation to employees, what constitutes tax residency in your jurisdiction?

Irrespective of a person's employment status, an individual is considered to be a Romanian tax resident if any of the following apply:

- He is domiciled in Romania.
- His centre of vital interests is in Romania.
- He is present in Romania for more than 183 days in any 12 consecutive months ending in the calendar year concerned.
- He is a Romanian citizen working abroad as an official or employee of the Romanian state.

The individuals meeting the second and third criteria above for three consecutive years become, starting with

the fourth year, subject to taxation in Romania for their worldwide income.

13. What income tax or social security contributions must the following pay:

- **Tax resident employees?**
 - **Non-tax resident employees?**
 - **Employers, in relation to their employees?**
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Tax resident employees

The tax rates for tax resident employees are as follows:

- Income tax: 16%.
- Healthcare contribution: 5.5%.
- Social security contribution (pension contribution): 10.5%.
- Unemployment contribution: 0.5%.

Non-tax resident employees

Non-tax residents employed by a Romanian employer pay the same taxes and contributions as tax resident employees (*see above, Tax resident employees*).

Seconded personnel (non-tax residents) pay income tax of 16% and healthcare contribution of 5.5% and potentially social security contribution in case the seconded personnel is of EU citizenship. To the extent that the E101 and/or E106 certificates are obtained from another EU member state, EU seconded personnel may be temporarily exempt from paying social and health contributions.

Employers

Employers are liable for the following contributions:

- Social security contribution: 20.8%, 25.8% or 30.8% depending on the working conditions (for example, 20.8% for normal working conditions).
- Healthcare contribution: 5.2%.
- Contribution for indemnities and sick leave allowance: 0.85%.
- Contribution to the fund for guaranteeing salary liabilities: 0.25%.
- Unemployment contribution: 0.5%.
- Contribution for diseases and work-related accidents: 0.15% to 0.85%.
- Labour office commission: 0.25% or 0.75%.

14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

The following are deemed tax resident:

- Any Romanian legal person (any legal person incorporated in Romania) or any foreign legal person having their place of effective management in Romania.
- Any legal person having its headquarters in Romania and being incorporated in accordance with the European legislation.
- Any Romanian branch of a foreign legal person.

15. Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

Romanian companies (that is, tax resident business vehicles) are taxed on their worldwide income, while Romanian permanent establishments of foreign legal persons (branches included) are taxed on their Romanian (allocated) income. Romanian companies generally pay the following taxes in Romania:

- Corporate income tax: 16% of the company's worldwide profits. From 2009, a minimum annual corporate income tax is due; its level depends on the company's revenues recorded.
- VAT: 19%, however, 9% or 5% applies for certain supplies.
- Salary taxes and contributions (*see Question 13, Employers*).
- Various local taxes (for example, building, vehicle or advertising tax).

16. How are the activities of non-tax resident business vehicles taxed?

Non-resident companies are subject to a general 16% withholding tax on revenues derived from Romania (such as interests, dividends, royalties, commissions, services performed in Romania or management and consultancy services and capital gains). These tax rates may be reduced or even eliminated, if a treaty for the avoidance of double taxation exists and its provisions are claimed or if certain criteria of the EU directives are met (for example, Parent Subsidiary Directive, Interest and Royalties Directive).

17. Please explain how each of the following is taxed:

- **Dividends paid to foreign corporate shareholders.**
 - **Dividends received from foreign companies.**
 - **Interest paid to foreign corporate shareholders.**
 - **Intellectual property (IP) royalties paid to foreign corporate shareholders.**
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- **Dividends paid.** 0% for corporate shareholders residing in EU or EEA, provided the recipient of the dividend held at least 10% of the shares in the distributing company for a period of at least two years before the distribution date.
 - 10% for corporate shareholders residing in EU or EEA who do not meet the criteria above;
 - 16% in all other cases.

The domestic rate may be reduced or eliminated following the treaty for the avoidance of double taxation.

- **Dividends received.** A dividend received from an EU subsidiary may be exempt from corporate income tax if certain conditions are met. Other inbound dividend is included into the general taxable basis subjected to the 16% corporate income tax. Under certain circumstances a tax credit may be obtained in Romania.
- **Interest paid.** Interest is taxed at:
 - 10% (0% starting in 2011) for corporate shareholders residing in the EU or EEA, provided the beneficiary of interest held a minimum of 25% of the shares of the Romanian company, paying the interest for a continuous period of at least two years before the payment of interest;
 - 16% in all other cases.

The domestic rate may be reduced or eliminated under the treaty for the avoidance of double taxation.

- **IP royalties paid.** This is the same as for interest paid to foreign shareholders (*see above, Interest paid*).

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

- **Debt/equity ratio.** Interest expenses are deductible only if the debt/equity ratio is a maximum of 3:1 (for example, loans are reimbursable in a period

exceeding one year). For a higher or negative ratio, interest expenses are non-deductible for corporate income tax purposes and can be carried forward until they are fully deductible under the same conditions. The difference between foreign exchange losses and foreign exchange revenues relating to long-term loans is treated as interest expense and is subject to the debt/equity ratio limitation.

- **Interest rate cap.** Interest related to loans granted by companies other than financial institutions is deductible within a specific cap (8% starting from 2009 for foreign currency loans).

Romanian thin capitalisation rules apply in respect of loans obtained from entities other than banks and financial institutions.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

There are no controlled foreign company rules.

20. Are there any transfer pricing rules? If so, please give details.

Transactions between related parties (that is, an entity which directly or indirectly holds or controls a minimum of 25% of another entity's shares or voting rights) should observe the arm's-length principle.

Methods used to fairly determine the market value for transactions between related parties include:

- Traditional transfer pricing methods: comparable uncontrolled prices, cost plus and resale price.
- Any other methods in line with the OECD Transfer Pricing Guidelines (such as transactional net margin and profit split methods).

Romanian transfer pricing legislation is largely similar to the regulations applied by developed countries, making specific references to the OECD doctrine and following the EU code of conduct on transfer pricing documentation.

21. How are imports and exports taxed?

Imports and exports are taxed in line with EU customs regulations.

22. Is there a wide network of double tax treaties? If so, please give details.

Romania has an extensive network of double tax treaties (currently more than 80). For foreign investment purposes, the most favourable treaties are those concluded with The Netherlands and Cyprus. However, the double tax treaty provisions may be claimed only if the non-resident makes a valid tax residency certificate available.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

Competition Law No. 21/1996 prohibits:

- Express or tacit agreements or concerted practices having as their object or effect the prevention, restriction or distortion of competition (especially those aimed at price fixing, output limitation or control of distribution, market sharing and bid rigging).
- Abuses of a dominant position by acts with an object or possible effect an impact on economic activity or damage to consumers (such as imposing prices, applying dissimilar conditions to equivalent transactions, and exploiting economic dependency).

Certain restrictive practices are allowed if they fall within the scope of block exemptions or have been approved by the Competition Council. As an EU member state, Articles 101 and 102 TFEU apply in Romania.

INTELLECTUAL PROPERTY

24. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- **Nature of right.**
- **How protected.**
- **How enforced.**
- **Length of protection.**

Patents

- **Nature of right.** A patent can be granted for any invention with a product or a process as its object, in all technological fields, provided it:

- is new;
- involves an inventive step; and
- is susceptible to industrial application.

The patent holder has an exclusive right to exploit an invention for the duration of the patent. Unauthorised production, use, marketing, sale or import of the patented product, the patented process or the product directly obtained through the patented process is prohibited.

- **How protected.** This patent is protected on registration with the Romanian State Office for Inventions and Trademarks (SOIT).
- **How enforced.** Infringing the rights triggers either civil or criminal liability.
- **Length of protection.** This is 20 years from the date of filing the application for patent registration and is not renewable.

Trade marks

- **Nature of right.** The trade mark represents a sign capable of graphical representation serving to distinguish the goods or services of a natural or legal person from those of other persons. The trade mark holder has the right to:
 - use the trade mark during the course of its business;
 - prevent others from using the trade mark;
 - prevent others from registering a similar or identical trade mark;
 - sell or license the trade mark.
- **How protected.** The trade mark is protected on registration with SOIT.
- **How enforced.** Infringing the rights triggers either civil or criminal liability.
- **Length of protection.** This is indefinite, subject to renewal every ten years and payment of fees.

Registered designs

- **Nature of right.** Designs or models that are new and have individual character can be registered. The registered design/model holder has an exclusive right to exploit, sell and license the industrial design or model.
- **How protected.** Register designs/models are protected on registration with SOIT.
- **How enforced.** Infringing the rights triggers either civil or criminal liability.

- **Length of protection.** This is ten years, renewable for a maximum of three successive periods of five years each.

Copyright

- **Nature of right.** Original literary, artistic or scientific works, regardless of the manner of creation, manner or form of expression and independent of their value and destination are protected by copyrights. The copyright holder has the right to authorise or prohibit the copyrighted work's:
 - reproduction;
 - distribution;
 - marketing;
 - renting;
 - import in order to market;
 - lending;
 - public communication;
 - making of derivative works.
- **How protected.** The right is automatically protected on creation of the original work.
- **How enforced.** Infringing the rights triggers either civil or criminal liability.
- **Length of protection.** There is unlimited protection for moral rights. Economic-related rights benefit from protection during the lifetime of the author and for 70 years after death.

Confidential information

- **Nature of right.** This is a contractual right.
- **How protected.** Protection can be agreed by contract.
- **How enforced.** Enforcement is agreed in the contract, either through the court or arbitration.
- **Length of protection.** The length of protection is agreed in the contract.

Geographical indications

- **Nature of right.** A geographical indication is the name identifying a product that originates from a country, region or locality of a state, in those cases where a quality, reputation or other determining characteristics may be essentially attributed to this geographical indication. The right holder can use and prevent unauthorised use only in connection with the products for which the geographic indication is registered.

- **How protected.** The right is protected on registration with SOIT.
- **How enforced.** Infringing the rights triggers either civil or criminal liability.
- **Length of protection.** This is indefinite, subject to renewal every ten years and payment of fees.

MARKETING AGREEMENTS

25. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
 - **Distribution.**
 - **Franchising.**
-
- **Agency.** Agents can negotiate and conclude business arrangements for or in the name of another undertaking (*Permanent Commercial Agents Law No. 509/2002*). Agents are entitled to minimum termination notice periods and compensation for termination of the agreement.
 - **Distribution.** There are no specific rules on distribution, except for restrictions under competition regulations, where they represent vertical agreements.
 - **Franchising.** Franchise agreements are regulated under Government Ordinance No. 52/1997. The franchisor must provide potential franchisees with specific disclosures, while the franchisee must provide the franchisor with certain information regarding its financial situation.

E-COMMERCE

26. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

Law No. 365/2002 on e-commerce sets out the legal framework for e-commerce. The law applies to service providers with registered offices in Romania.

Electronic signatures

Law No. 455/2001 on electronic signatures sets out the legal framework for electronic signatures and documents in electronic format, and the conditions for the supply of electronic signature certification services. Documents with a certified electronic signature attached have the same legal force as signed-by-hand documents.

Distance selling

Government Ordinance No. 130/2000 regarding consumers' protection when concluding and executing distance contracts sets out the legal framework for the protection of consumers that conclude distance contracts, imposing a number of mandatory obligations on the suppliers.

DATA PROTECTION

27. Are there any data protection laws? If so, please give brief details.

Data protection is regulated by Law No. 677/2001 on the protection of individuals regarding the processing and free movement of personal data (implementing the Data Protection Directive 95/46/EC), as well as by secondary legislation, such as:

- Decision No. 28/2007 on the transfers of personal data to other countries.
- Decisions No. 90/2006 and 100/2007 on the determination of cases where the filing of a processing notification is not required.
- Decision No. 11/2009 on the determination of the categories of processing operations that entail special risks for individuals' rights and liberties.

This framework sets out various obligations about processing data, including information and confidentiality/security-related obligations. Individuals should be provided with information covering, among others, their legal right to:

- Access.
- Intervention.
- Object to the processing.

A notification with the National Authority for the Supervision of Personal Data Processing is generally required for any processing and/or transfer of data abroad.

As a rule, processing data is conditional on obtaining the individuals' express and unequivocal consent, although the law also recognises instances when this consent is not required or is implied. Individuals' consent is not required:

- When processing is needed to enter into a contract with the individual.
- For observing a controller's legal obligation.
- For achieving a controller's legitimate interest (provided the interests and fundamental rights and liberties of the individual whose data is being processed are not prejudiced).

PRODUCT LIABILITY

28. Are there any laws regulating product liability and product safety? If so, please give brief details.

Product liability is mainly regulated by:

- Government Emergency Ordinance No. 21/1992 regarding consumer protection.
- Law No. 449/2003 regarding the sale of goods and associated guarantees.
- Law No. 245/2004 regarding the general safety of products.
- Law No. 240/2004 regarding liability for defective products.

Under this legislation, manufacturers, importers and, under certain circumstances, distributors and sellers, are liable for defective products or products that do not conform to the sale purchase agreement. Any contractual clause excluding or limiting consumers' legal rights are null and void. Special rules apply for certain categories of products.

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