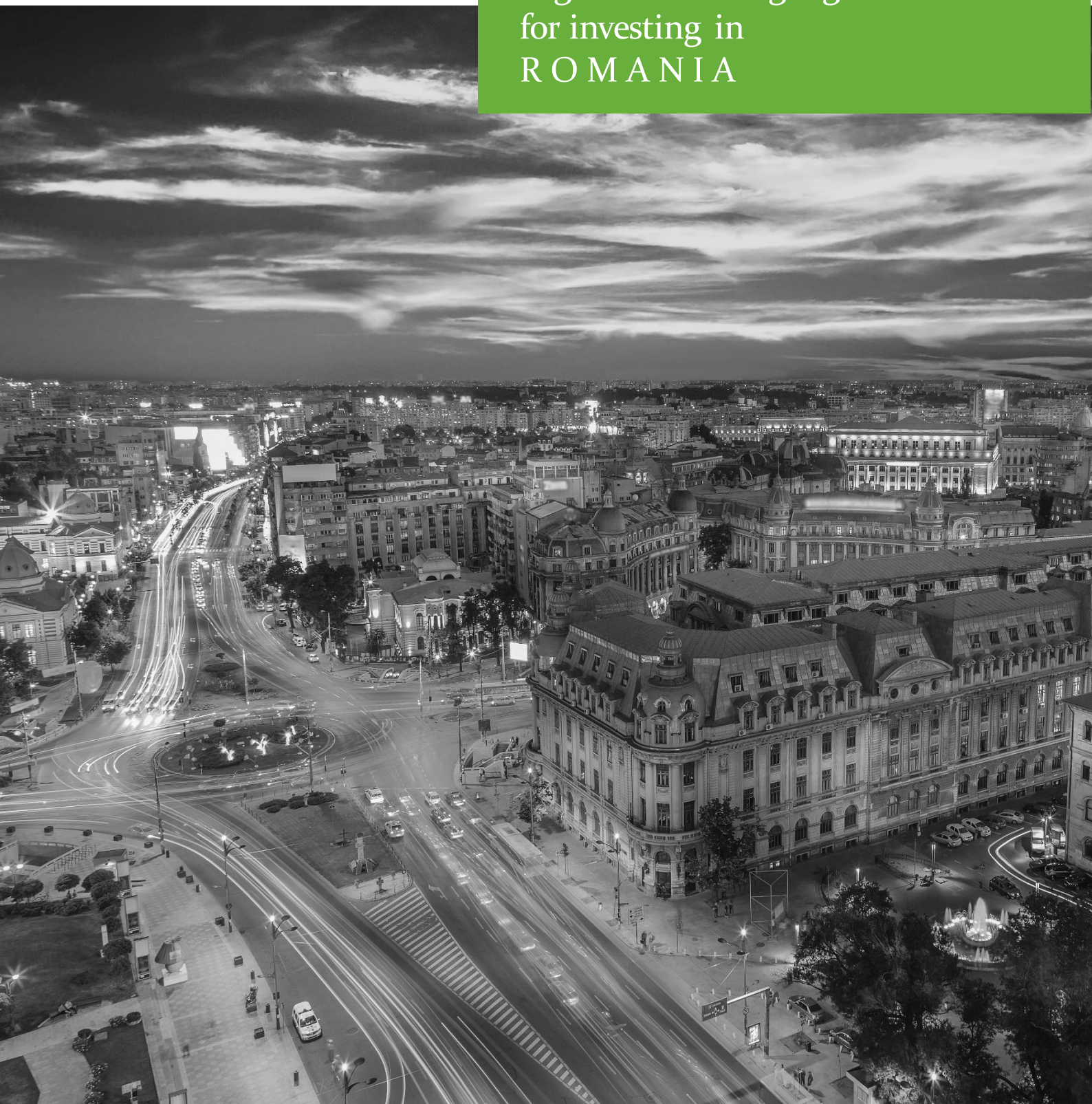
NNDKP
Legal & Tax

Legal and Tax Highlights for investing in ROMANIA



2023

Legal and Tax Highlights for investing in ROMANIA

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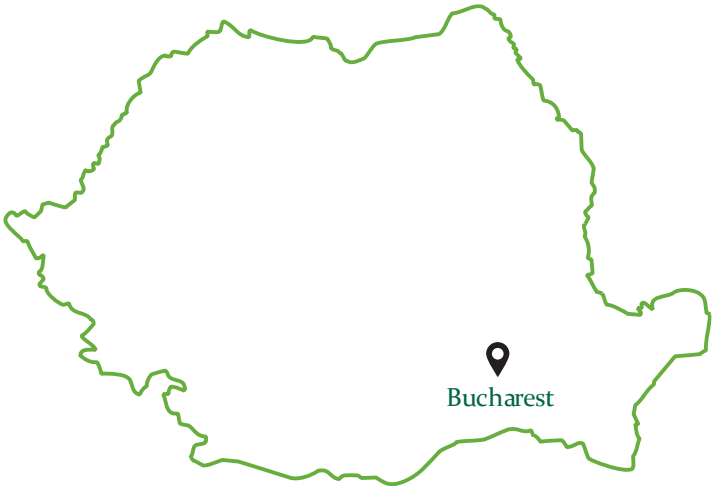
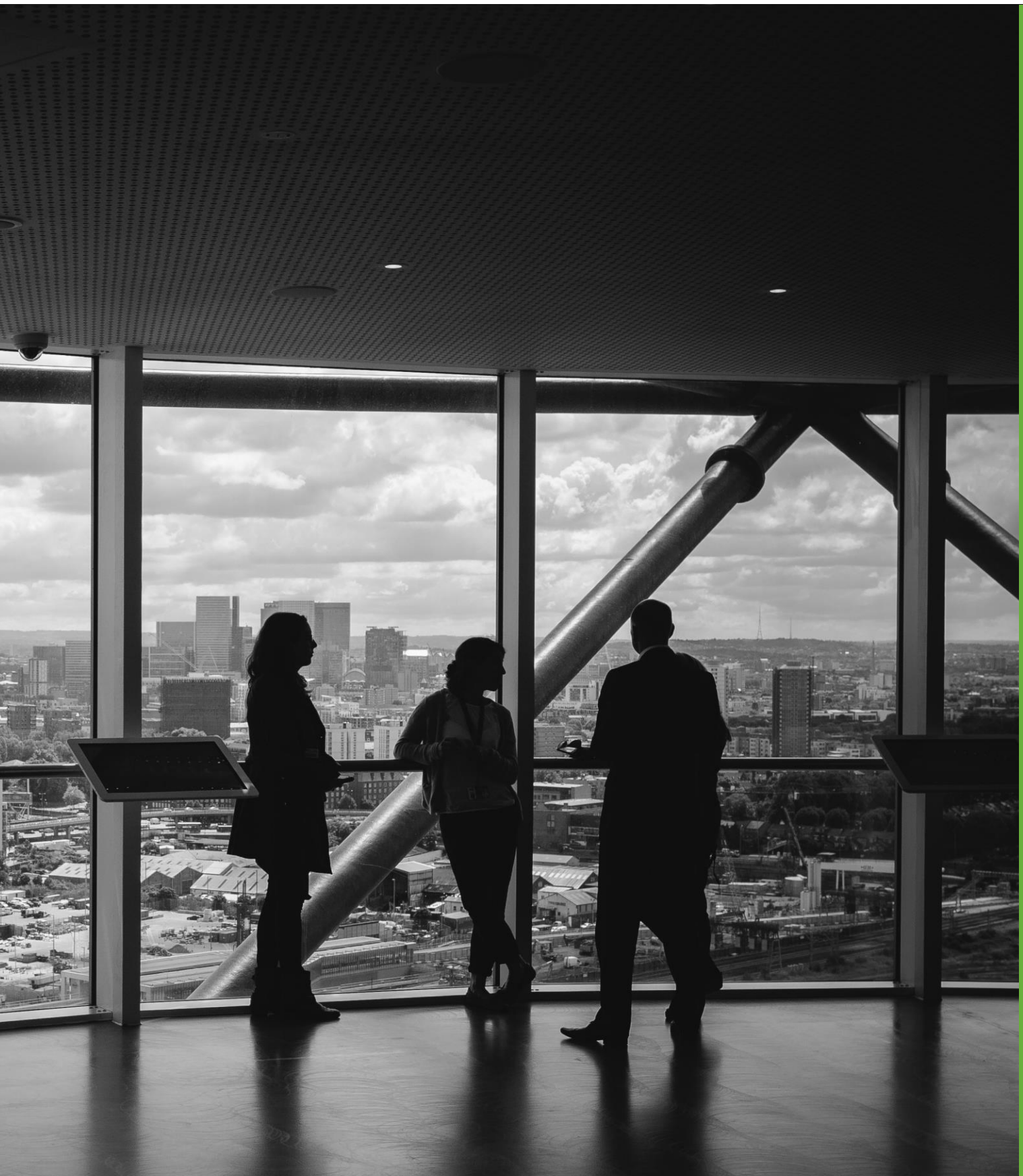


Key Facts:

- **Population: 19 million**
  (as of 31 January 2023) ** according to the Romanian National Institute of Statistics*
  (place in Europe by population: 9)
- **Size: 238,391 square kilometers**
  (place in Europe by size: 12)
- **Geographic location:** South East Europe, bordering the Black Sea
- **Official language:** Romanian
  (a latin/romance language, such as French, Spanish, Italian or Portuguese)
- **Capital:** Bucharest
- **Major seaport:** Constanta
- **Regime:** Semi-presidential republic
- **EU membership:** EU member state since 2007
- **NATO membership:** NATO member since 2004
- **Climate:** Temperate continental
- **Standard Time:** GMT + 2 hours (East European Zone Time)
- **Legal system:** civil law system



Corporate

CHAPTER 1

If you, as foreign investor, are considering or have already decided to invest in Romania or to set up a business in this country, here you may find some general guidelines pertaining to corporate related matters that might be of help.

One of the most attractive alternatives provided by the law and available for you, as foreign investor, is to set up a Romanian legal entity having its own legal personality. Among the five main types of companies provided by the law (general partnerships, limited partnerships, partnerships limited by shares, limited liability companies and joint stock companies), the limited liability company and the joint stock company are the most common forms used in practice.

5 main types of companies

- **General Partnerships**
- **Limited Partnerships**
- **Limited Partnerships by shares**
- **Limited Liability Companies**
- **Joint Stock Companies**

The main difference is that the joint stock company requires more formalities to be observed during the operation of the company and certain corporate actions require closer monitoring by the corporate registry. On the other hand, due to this more complex regulatory framework and more restrictive conditions for functioning, the joint stock company is generally considered more reliable and sound but, in practice, many investors opt for limited liability companies, which tend to be more flexible and easier to manage.

The incorporation process and costs do not differ materially, noting however that the limited liability company does not have a required minimum share capital value, while the minimum share capital of a joint stock company is RON 90,000. The Government may amend this amount every 2 (two) years so that the minimum share capital remains the equivalent in RON of Euro 25,000. Contributions in cash are mandatory for setting up companies of any kind.

If you are not interested in the incorporation of an entity with legal personality in Romania, you have the option to incorporate a branch or representative office of your foreign company. Both business forms will act in the name and on behalf of the parent company and will engage in contractual relationships with third parties from this position, but they will also require registration formalities similar to the ones mentioned below (the representative office will be registered with the Ministry of Economy and not the Trade Registry).

	Limited Liability Company	Joint Stock Company
SHAREHOLDER STRUCTURE	**Minimum one (1) shareholder, maximum 50 shareholders.**	**Minimum two (2) shareholders required without a limitation on the maximum number. The joint stock company may also be established via public subscription.**
SHARE CAPITAL AND SHARES	**Minimum share capital**: no minimum requirement. *(at least 30% of the subscribed share capital shall be paid within 3 months as of the registration of the company, but before commencing any operation on behalf of the company)*	**Minimum share capital**: RON 90,000 *(at least 30% of the subscribed share capital shall be paid at the registration of the company).*
	Minimum value of shares: no minimum requirement.	**Minimum value of shares**: RON 0,1.
	The limited liability company cannot issue shares in the form of negotiated financial instruments.	The shares of a joint stock company may be listed and therefore traded on regulated markets.
	The shares issued by a limited liability company cannot be of the bearer or preferred type. The limited liability company cannot issue bonds.	Joint stock companies may issue nominative shares, including preferred shares. Joint stock companies may issue bonds (to increase their funds).

	Limited Liability Company	Joint Stock Company
TRANSFER OF SHARES	**Shares can be freely transferred between shareholders.** The transfer of shares to third parties outside the company must be approved by the shareholders representing at least 3/4 of the share capital, except as otherwise provided in the Articles of Incorporation of the company.	**Unless provided otherwise in the Articles of Incorporation, shares are freely transferable between shareholders and to third parties in a straightforward approach (registration in the shareholders register).**
LIABILITY	The liability of shareholders of limited liability companies arising in the normal course of business is limited to their contribution to the share capital of the respective company. Piercing the corporate veil applies to: • The shareholders who abuse their limited liability and the distinct legal personality of the company to defraud creditors shall be liable for the unpaid debts of the dissolved or liquidated company. • The shareholders who contributed to the insolvency of the company under certain circumstances provided by the legislation in the insolvency field. • In certain cases provided by the fiscal regulations where shareholders are jointly liable with the company (e.g. the shareholder caused the technical insolvency (in	The liability of shareholders of joint stock companies is limited to their contribution to the share capital. Piercing the corporate veil is also applicable in the case of joint stock companies.

	Limited Liability Company	Joint Stock Company
	Romanian '*insolvabilitate*') of the company) • The shareholder who is deemed to have used the company to hide a fraud, commit an abuse or breach public order.	
MANAGEMENT	**The limited liability company may have one or more directors** (*administrator in Romanian*) who may form a board of directors. The director may substitute some of its duties to the general manager (*director in Romanian*).	**The joint stock company may choose between two systems of management, namely**: (i) the unitary system composed of the Board of Directors and the General Manager and (ii) the two-tier corporate system composed of the Directorate and the Supervision Board.
DIVIDENDS	**Dividends may be distributed** after the approval of the annual financial statements of the company by its shareholders. However, the shareholders may decide to distribute them on a quarterly basis based upon the interim financial statements.	**Dividends may be distributed** after the approval of the annual financial statements of the company by its shareholders. However, the shareholders may decide to distribute them on a quarterly basis based upon the interim financial statements.

When starting a business in Romania, irrespective of its form, certain steps need to be taken, as follows:

1. **Deciding on the essential elements of the company** – such as name, registered office, value of the share capital and form of contribution, object of activity of the new company, persons involved in the operation of the company: (i) shareholders, having decisional power in the company, (ii) directors, having as main duties to represent the company and to perform all necessary acts in order to fulfil the main object of activity of the company, by observing the shareholders' decisions and (iii) internal or external auditors, responsible for checking the accounting and financial situation of the company;

2. **Reserving the name of the company with the Trade Registry** – valid for 1 month;

3. **Preparing the file to be submitted with the relevant Trade Registry:**

   (a) **Preparing and signing the drafts of the required documents** – the articles of incorporation of the company, corporate resolution of the shareholders approving the establishment of the new company in Romania, certain statements of the shareholders and of the directors, as the case may be, and signature samples for the directors, copies of IDs/passports and certificate of incorporation from the country of home jurisdiction of the shareholder legal persons or excerpts from the Secretary of State/Trade Registry/Chamber of Commerce (some of the documents shall be submitted in original form and for others the notarized and apostilled form is required, if issued abroad);

   (b) **Performing the formalities for establishing the headquarters of the company** – which presupposes the execution of an agreement which grants the company in the process of being established the right to use the location which is the company's registered headquarters; other documents may be required depending on the particularities of the situation;

4. **Opening the bank account of the company** – for depositing the relevant cash contributions by the shareholders; evidence of the share capital transfer and bank account excerpts confirming the payment are no longer required by the Trade Registry;

5. **Submitting the registration file to the Trade Registry** – consisting of the documents mentioned above;

6. **Incorporating and registering the company** – the Trade Registry will analyze the submitted documents and it will issue a registration certificate within three (3) business days as of the submission of the file. The company will gain legal personality as from the date of registration with the relevant Trade Registry, as provided in the registration certificate.

AML

CHAPTER 2

General overview

- The Romanian Law no. 129/2019 on the prevention of money laundering or terrorist financing (the "**AML Law**") in force since 21 July 2019 and further amended, implementing the EU Directive 2018/843 amending Directive (EU) no. 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU ("**AMLD5**"), establishes certain obligations for the Romanian companies.

Identification of the UBO

- **All the legal entities** registered in Romania have the obligation to obtain and maintain up-to-date and correct information regarding their ultimate beneficial owner (UBO) and to provide such information to the relevant authorities and to the relevant reporting entities, upon request.
- Companies have the obligation to register the information regarding their ultimate beneficial owner in a register kept by the Trade Registry.
- Moreover, legal entities that are required to register with the Trade Registry must provide a statement about their beneficial owner whenever there is a change. This statement is then registered in the Register of beneficial owners of companies.
- After each change regarding the identification details of the ultimate beneficial owner (within 15 days from the change), companies must submit to the Trade Registry a statement regarding the ultimate beneficial owner; failure to observe such obligations can be sanctioned with fines ranging between RON 5,000 and RON 10,000.

Other obligations of the reporting entities

1. Reporting entities falling under the scope of the AML Law

The AML Law sets the reporting entities, including, among others:

(i) **the** company **service providers,** defined as: "**any natural or legal person which <u>in its capacity as professional</u> provides any of the following services to third parties:**

(1) is forming companies or other legal persons;

(2) **is acting as manager or director of a company** or has the capacity of shareholder in a company formed as personal partnership (*societate de persoane* in Romanian)[1] or in a joint venture (*asociere in participatie* in

[1] Such as general or limited partnership (*societatea in nume colectiv sau in comandita* in Romanian).

Romanian) or a similar capacity in other type of legal entities or arranging for another person to exercise such functions or roles;

(3) providing a registered office, working point, business address, postal or administrative address <u>or other similar services</u>;

Note 1: *The law does not distinguish between the services provided inside the group and the services provided outside the group of the reporting entity.*

Note 2: *According to the Norms approved by the AML Office Order no. 37/2021, art. 3, letter e), the entities having as object of activity CAEN 6420 (holdings), or CAEN 6820 (leases), or CAEN 6910 (legal services) are expressly mentioned as reporting entities.*

(4) acting as or arranging for another person to act as a trustee ("*fiduciar*") of an express trust or a similar legal arrangement or arranging for another person to exercise such capacity;

(5) **is shareholder or arranging for another person to be shareholder for a legal person**, other than a company whose shares are traded on a regulated market subject to publicity requirements in accordance with the legislation of the European Union or with standards established at an international level.

(ii) persons trading in goods and/or services, only to the extent such are based on **cash payments in an amount of EUR 10,000 (or equivalent) or more** (whether the transaction is executed in a single operation or in several operations which appear to be linked).

2. Obligations of the reporting entities

- The reporting entities have the specific obligations provided by the AML Law, including:

  (i) Know-your customer (KYC) requirements and KYC policies;

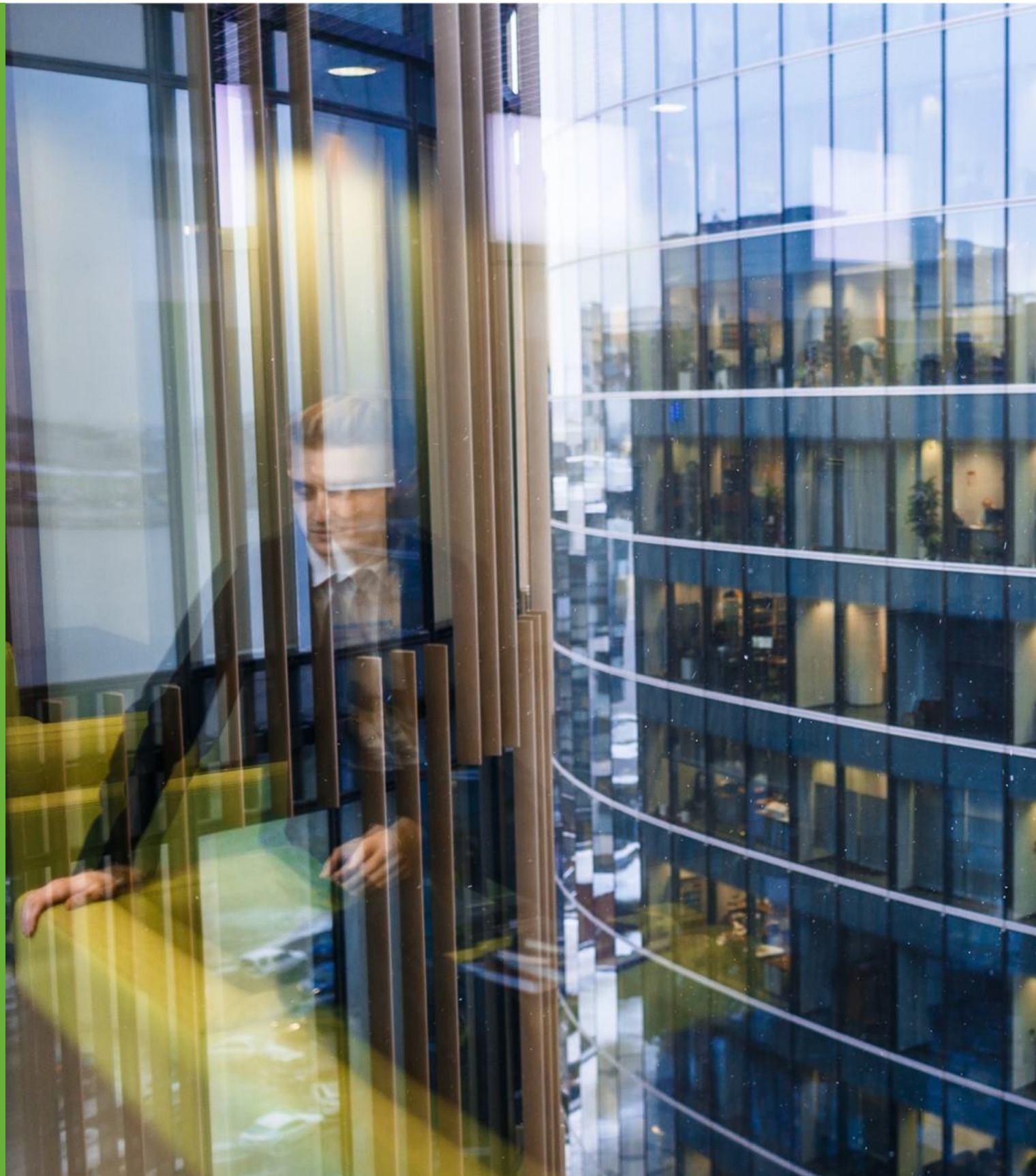
  (ii) Reporting obligations (for (1) suspicious transactions, whether in cash or not; and (2) transactions in cash exceeding EUR 10,000 or equivalent, if the case);

  (iii) Designating a representative office in relation to the AML Office;

  (iv) Obligation to establish internal norms and procedures; and

  (v) Other obligations (i.e. obligations to evaluate the risks, record keeping obligations and training obligations).

- Failure by a legal person to comply with the above-mentioned obligations under the AML Law is sanctioned with a fine ranging from **RON 10,000 (approx. Euro 2,100) to <u>10% of the total reported incomes</u> for the last financial period** (art. 43 (3)). The AML Office is also entitled to complementary sanctions, as set out in art. 44 of the AML Law, such as the suspension of the authorisation for a limited or larger number of activities for a period of six month or more or the closing down of the unit.



Employment/ Labor law

CHAPTER 3

General overview

- Under the Romanian law, a natural person may perform work based on an individual employment agreement, such a contractual relationship being governed by the labor legislation. Following the conclusion of an individual employment agreement, the natural person, called employee, undertakes to perform work for and under the authority of an employer, natural or legal person, in return for a remuneration called salary.
- In comparison with the contractual relationship specific to the Civil Code, the employment relationship is characterized by certain limitations, restrictions and by a high level of protection set by the legislator in favor of the employee.

Individual Employment Agreement

- Under the Romanian law, the individual employment agreement must be concluded in writing, based on the parties' consent, in Romanian.
- In compliance with specific legal provisions applicable in this area, the use of electronic signature is officially recognized in employment relations, as follows:
  - (i) for concluding, amending, suspending and terminating employment contracts (as well as the addenda and annexes thereof), the parties may use qualified electronic signature or advanced electronic signature;
  - (ii) under the conditions established by the internal regulations and/or the applicable collective bargaining agreement, the employer may use qualified electronic signature, advanced electronic signature or simple electronic signature or the employer's electronic seal, as the case may be, to prepare the specific documentation for work relations resulting from the conclusion, execution or termination of the employment contract.
- Employers are required to register the individual employment agreement in the General Employee Register, which shall be submitted to the Territorial Labor Inspectorate whose jurisdiction covers the territory where the employer is headquartered, the day before the employee's commencement date, at the latest.

- The law requires for the individual employment agreement to comprise the elements provided by the framework model (which was recently replaced by a new official model reflecting the latest changes in terms of mandatory content and wording thereof, thus prompting the necessity of changes in the templates used by the employer to hire new employees). However, following the parties' negotiation, the individual employment agreement may also include specific clauses, according to the law.
- As a rule, the individual employment agreement is concluded for an indefinite term. A fixed-term individual employment agreement may be concluded as an exception and only in the cases expressly provided by the Labor Code.
- In terms of working time, the individual employment agreement can provide for a full-time schedule or a part-time schedule. A full-time individual employment agreement corresponds to a schedule of 8 working hours per day and 40 working hours per week, while a part-time individual employment agreement corresponds to a schedule requiring fewer working hours than for a similar full-time individual employment agreement.

Collective Bargaining Agreement

- Under the Romanian law, a collective bargaining agreement may be concluded at different levels: company, group of companies' industry sectors and, as per the recent introduction of a new Social Dialogue Law, also at national level.
- Collective bargaining agreements concluded at lower level cannot establish rights inferior to those set forth by collective bargaining agreements concluded at higher level.
- The collective bargaining agreement can be concluded for at least 12 months and for maximum 24 months. Still, the duration of the collective bargaining agreement may be extended once, by no more than 12 months.
- The collective bargaining agreement concluded at company level produces legal effects for all the company's employees, irrespective of their membership in a trade union.
- The law imposes the obligation to perform collective negotiation at unit level, except for the case where the employer has less than 10 employees. However, the legislation does not impose the obligation to conclude a collective bargaining agreement.
- Several changes in the field of collective labor relations and the framework of social dialogue have been introduced since the recent introduction of a new Social Dialogue Law; implications thereof shall be assessed on a case-by-case basis, depending on the concrete situation existing in practice for each employer.

General conditions for hiring

- As a general rule, the individual employment agreement is concluded after the prior verification of the professional and personal skills of the person applying for employment. The Labor Code states that the information requested, in any form, by the employer, from the person applying for employment, shall have no other objective than to assess the ability to fill in the concerned position and the professional skills.

- The person to be employed must possess a valid medical certificate, attesting his/her ability to perform the respective activity. The lack of such certificate shall trigger the nullity of the individual employment agreement.
- Prior to concluding the individual employment agreement, the employer is required to inform the employee on the essential clauses to be included in the agreement. Such obligation is considered to be fulfilled by the employer upon the signing of the individual employment agreement.
- In light of the most recent legal developments amending the content to be included within the individual employment agreement, for ongoing employment relations by the time the respective changes entered into force (mid-October 2022), employers have the obligation to inform employees, upon their written request, about the conditions applicable to the employment relationship as per the new legal framework, no later than 30 working days from the date of receipt of such request.
- Foreign nationals and stateless persons can be employed on the basis of a work permit or a residence permit for work purposes, issued according to the law. As for the Ukrainian citizens from the armed conflict zone of Ukraine who have legally entered the territory of Romania, they may be employed, under certain conditions, without the employer having to obtain a work permit.

General rules regarding the termination of the individual employment agreement

- The individual employment agreement can only be terminated in the specific and limited cases regulated by, and in full compliance with the procedural requirements established by the Labor Code. Employer's failure to comply with the legal requirements may trigger the annulment of the dismissal decisions in court. The same sanction shall apply if the employers cannot prove that the dismissal reasons are real and fall within the categories recognised by the Labor Code as entitling employers to perform dismissals.
- The main categories of dismissals regulated under the Labor Code are dismissals for reasons not related to the employees' person (i.e., dismissal for restructuring – depending on the total number of employees to be dismissed, restructuring could entail collective or individual dismissal) and dismissals for reasons related to the employees' person (e.g., dismissals for poor performance or for disciplinary reasons, etc.).
- There are some categories of employees (e.g. pregnant employees, employees who are in maternity leave, employees who are in child raising leave, etc.) who benefit from protection against dismissal.

Employees' representatives

- The employees' interests may be represented by trade unions or by the elected employees' representatives.
- The new Social Dialogue Law has lowered the thresholds for the number of employees per unit / establishment based on which:

- employees' interests may be promoted by electing employees' representatives, namely, to have at least 10 employees;
- trade unions may be established, namely at least 10 employees/workers in the same unit or at least 20 employees/workers in different units of the same collective bargaining sector.

- The employees' representatives are elected with the vote of at least half plus one of the total number of employees in the respective unit. As a matter of principle, the employer is forbidden to interfere in the process of organizing and electing the employee representatives, unless required to do so by the employees. Employees may set up an initiative group which shall draw up procedures and/or rules for conducting the election of employee representatives. These shall be communicated to the employer, who will have to inform all employees of their content within 10 days of receipt at the latest.
- The employer agrees with the employees on the number of employees' representatives; in the absence of such an agreement, the law establishes the maximum number of representatives, depending on the total number of employees in the company.
- Further implications and requirements arise and should be assessed once the employees ensure their representation, under the conditions of the new Social Dialogue Law (e.g., the new law placing a particular focus on employer's obligations of information and consultation in various contexts towards the employees represented in accordance with its provisions).

Transfer of employees

- In case of a transfer of an undertaking, the rights and obligations of the transferor arising from the individual employment agreements and the applicable collective bargaining agreement, existing at the transfer date, shall be transferred to the transferee in full. Such a transfer is performed by virtue of law, no further action on the transfer being required.
- The law requires for the transferee to comply with the provisions of the collective bargaining agreement applicable at the date of transfer, until the date of its cancellation or expiration. Still, based on an agreement between the transferee and the employees' representatives, the collective bargaining agreement valid at the time of the transfer may be renegotiated, but not earlier than one year after the transfer date.
- A written information regarding the transfer and having the content required by law must be sent by the transferee and by the transferor for the attention of their employees' representatives or employees, as the case may be, at least 30 days before the date of the transfer.
- The change of the employer within the employment relationship may trigger, in principle, the application of the "transfer of undertaking" rules. The main enactments regulating the "transfer of undertaking, business or part of an undertaking or business" are the Labor Code and the Law No. 67/2006 on safeguarding employees' rights in cases of transfer of undertakings, businesses or parts of undertakings or businesses (the latter has transposed the Council Directive 2001/23/EC of 12 March 2001 on the

approximation of laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses). The above legislation provides protection for employees.

- The transferee employer is liable to observe the rights, which the transferred employee had with the transferor employer under their individual employment agreement and the applicable collective bargaining agreement. Both the transferor and the transferee shall be under the obligation to consult their employees about the transfer and to inform them on specific issues.
- For the purpose of the transfer, no consent from the employees is required. However, the transfer of undertakings, businesses or parts of undertakings or businesses shall not be used as grounds for the transferor or the transferee to perform individual or collective dismissal of employees. If a transfer involves a substantial change in working conditions to the detriment of the employee, the transferee is liable for the termination of the individual employment agreement.

Tax

CHAPTER 4

Corporate income tax („CIT"):

- CIT rate – 16%. Taxable basis assessed based on the accounting result which is subject to tax adjustments (e.g., non-deductible expenses, non-taxable income).
- Tax losses may be carried forward for 7 years. Loss carry back is not allowed.
- Exceeding borrowing costs (as defined in ATAD) are deductible within an annual threshold of EUR 1,000,000. The costs above this level are deductible within the limit of 30% of EBITDA. Standalone entities (as defined in ATAD) have the right to fully deduct the exceeding borrowing costs.
- CFC rules, hybrid mismatches and exit taxation apply according to ATAD. Group taxation regime applies for CIT purposes, under certain conditions.
- Entities with an annual turnover of less than EUR 500,000 and with at least one employee may opt to apply the microenteprise income tax – 1% on income. This regime does not apply to entities whose turnover consists, in a proportion of at least 20%, of income from consultancy and/or management.

Dividends:

- Dividend payments between resident companies are subject to an 8% withholding tax. Such rate is cut down to 0% in case of a shareholding of minimum 10% maintained for at least 1 uninterrupted year. Dividends are tax exempt in the hands of the recipient.
- Dividends received by a Romanian company from a foreign entity are taxed as ordinary income. However, dividends received from a subsidiary located in another EU country or a non-EU country with which Romania has concluded a double tax treaty, are exempt from tax if the minimum shareholding quota and period requirements are met (10%, 1 year).
- Outbound dividends paid by Romanian companies are subject to withholding tax of 8% unless the EU Parent-Subsidiary Directive or a lower treaty rate applies.

Capital gains:

- Capital gains obtained by a Romanian/foreign company from the sale of shares held in a Romanian entity are exempt from CIT, if the minimum shareholding quota and period requirements are met (10%, 1 year) – otherwise, 16% CIT is levied. The same applies to capital gains obtained by a Romanian company from the sale of shares held

in an entity established in a state with which Romania has concluded a double tax treaty.

- Capital gains derived by a non-resident company from the sale of immovable property located in Romania are taxable at the general CIT rate.

Interest and royalties:

- Interest and royalties payable by a Romanian company to a foreign entity are subject to 16% withholding tax unless a lower tax treaty rate applies.
- Under the EU Interest & Royalties Directive, such amounts are not taxable in Romania if their foreign beneficial owner owns at least 25% in the Romanian payer's share capital, for a minimum continuous period of 2 years.

Liquidation proceeds:

- Income obtained by a Romanian company from the liquidation of another Romanian legal person or of a foreign legal entity established in a state with which Romania has concluded a double tax treaty are exempt from CIT provided that it has held at least 10% of the liquidated entity' share capital for an uninterrupted period of one year. Otherwise, such income is subject to the general 16% CIT.
- In case the income derived by a non-resident from the liquidation of a Romanian company is higher than the paid-in capital, the difference is subject to 16% withholding tax. Under most of tax treaties, such income would fall under the „Business Profits" article, hence being non-taxable in Romania.

Double tax treaties:

- The provisions of double tax treaties prevail over the domestic legislation, based on tax residency certificates.

Incentives:

- No significant tax incentives are currently provided under the Romanian law. The main tax incentives are the following:
  - The profit reinvested in technological equipment is exempt from CIT, under certain conditions.
  - A supplementary deduction may be claimed, for CIT purposes, amounting to 50% of R&D expenses. The accelerated depreciation method may also be applied for machinery and equipment used for R&D activities.
  - Taxpayers have the possibility to reschedule the payment of tax liabilities for a maximum period of 5 years, under certain conditions.
  - Taxpayers performing exclusively innovation, R&D activities are exempt from corporate tax in the first 10 years of activity.

- The salary income obtained by software developers and persons working in the field of construction or agriculture benefit from income tax and social contributions exemptions/reductions, under certain conditions.

- The Romanian legislation also contains a general framework for stimulating investments in certain fields of activity and provides for certain regional state aid schemes.

Personal income tax:

- The general income tax rate is of 10%; dividends are subject to 8% tax. Social security contributions owed by the employee are due to the pension fund (25%) and health fund (10%). The employer owes a 4%/8% pension fund contribution for employees working under particular/special conditions and a 2.25% contribution for work insurance. For other revenues than salaries, the type of applicable social security contribution and the related computation basis depend on the nature of income.

Value Added Tax („VAT"):

- **General framework:** Romanian VAT is charged for all taxable operations performed in Romania. A company is deemed to require the VAT registration if the turnover of its VAT-able operations exceeds RON 300,000 annually. For VAT-able transactions performed below the turnover, the VAT registration is optional. For transactions subject to VAT in Romania performed by a non-resident, the VAT liability generally stays with the Romanian client, the VAT being recorded under the so-called reverse-charge mechanism (record the VAT as both input and output VAT, having thus a neutral effect).

- Non-resident companies are required to register for VAT purposes in Romania if they perform intra-Community trade in goods or VAT-able operations for which they are the person liable to pay the VAT. However, for specific structures performed by non-resident companies in Romania, such as: sale of goods under consignment, call-off stock, goods sent for testing purposes, bilateral work on movable tangible property (e.g., lohn contracts), specific simplification measures apply. The goal is that the EU contractor is not required to register for VAT purposes in Romania.

The **VAT** rates applicable are the following:

- standard rate 19%
- reduced rates 5 and 9%

- **Special mechanisms:**

  Simplification measures are applicable, namely the VAT reverse-charge is applicable for certain transactions (e.g., the sale of scrap wastes, under certain circumstances, taxable sale of immovable goods, supply of energy and gas towards traders) if the transactions are performed between two Romanian VAT payers.

  The import of goods is subject to VAT in Romania (unless an exemption could be achieved) if the goods, being dispatched from a non-EU country, are released into free circulation in Romania, according to the EU Customs rules. The VAT is payable by the importer of record in customs and may be subsequently deducted through the VAT return. Importers who achieve a turnover of Romanian imports of at least RON 50 million (approximately EUR 10.2 million) in the previous 6 calendar months can benefit from the so-called VAT deferment (i.e., account for the import under the reverse-charge mechanism without making any effective payment in customs). To this end, the importer of record has to hold a VAT deferment certificate issued by the Romanian competent authority.

- **International trade**

  The goods brought from an EU Member State to Romania give rise to an intra-Community operation, while the goods brought from a non-EU country will give rise to an import of goods in Romania. The dispatch of goods outside Romania will give rise to an intra-Community supply of goods if the goods are transported to an EU Member State, whereas the transport of the goods from Romania to a non-EU country gives rise to an export of goods – normally such operations are VAT exempt with deduction right, provided the necessary supporting evidence required by law is secured.

  The Intra-Community acquisition of goods is subject to VAT. The client will normally account for the VAT under the reverse-charge mechanism.

- **VAT exemptions**

  The VAT exemptions without deduction right are mandatory and are applicable for a series of social oriented economic activities (such as education, health, etc.), as well as for: financial services, insurance, sale and lease of real estate. However, the sale and lease of real estate can be subject to VAT if the supplier opts for the taxation regime and submits a special notification with the tax authority in this respect.

  The VAT exemptions with deduction right apply for a series of transactions involving international traffic of goods or services, as well as other special situations and are conditioned by the necessary proof required specifically by law.

- **VAT deduction**

  A company is entitled to deduct the input VAT incurred on the acquisitions of goods and services performed with a view to rendering VAT-able operations. The VAT deduction right can be achieved if the client holds an original valid invoice issued by the supplier, or the customs import declaration for imports.

  Companies rendering operations deemed as VAT exempt without deduction right cannot deduct the input VAT incurred on the acquisitions. Companies performing

both taxable and VAT exempt without credit operations are deemed mixed VAT payers and they will deduct the input VAT incurred on acquisitions depending on the destination for which the acquisitions were made. For those acquisitions, for which the destination cannot be determined, the VAT is deducted on a pro-rata basis.

- **VAT reporting**

The main mandatory VAT statements to be submitted in Romania are as follows:

- *VAT return* – to be submitted on a monthly basis until the 25th day of the following month if the annual turnover of VAT-able transactions exceeds EUR 100,000 or in case intra-Community acquisitions of goods are performed; otherwise, the VAT return must be submitted (and the VAT liability paid) on a quarterly basis, by the 25th of the month following the last month of the preceding quarter;
- *Monthly EC sales and acquisitions list* – to be submitted until the 25th day of the following month when transactions are recorded;
- *Local sales and acquisition list* – to be submitted on a monthly basis by the 30th day of the following month (if the VAT return is submitted on a monthly basis); otherwise, it must be submitted on a quarterly basis, by the 30th day of the month following the last month of the preceding quarter;
- *Monthly Intrastat Statement* – to be submitted by the 15th day of the following month, for physical movement of goods between Member States, if the specific annual threshold is exceeded (RON 1 million – approx. EUR 200,000).

Matters of concern when investing

CHAPTER 5

GDPR

- The General Data Protection Regulation (EU) 2016/679 ("GDPR"), which became applicable as of 25 May 2018, currently represents the framework law in the data protection field. The GDPR applies, amongst others, to the data controllers (i.e., entities setting means and purposes of the data processing) located in EU or located outside EU but processing the personal data of individuals located in EU.
- The GDPR sets the rules and principles for collecting, storing, disclosing and for other processing of information which relate to identified or identifiable natural persons.
- Moreover, the Romanian Parliament has enacted the Law 190/2018 which covers the aspects which were left by GDPR to the national legislators.
- Therefore, the rules set forth under GDPR, under the Law 190/2018 as well as under other incident data protection - related legislation must be considered when assessing the conformity of data processing activities.

Competition / State aid

- The Romanian legislation instates a similar level of compliance with competition and state aid rules as in the case of other EU Members States, the Competition Council being an active watchdog in this regard.
- First, any M&A transaction concerning the Romanian market should instinctively include a review in reference to the merger control requirements in order to assess whether, subject to severe fines, clearance from the competition authority is needed before implementation.
- Second, bear in mind that any economic activity/ contracts/ commercial mechanism might fall under scrutiny from the Competition Council, since the authority is interested in maintaining a level playing field for all undertakings irrespective of the industry in which they are active, and will indiscriminately sanction any breach of competition rules, whether it is the case of any agreements or practices restricting competition (agreeing with competitors or commercial partners to restrict competition or unilaterally abusing strong market power).

- Third, state aid rules should also be taken into account both when discussing the support needed for investment projects and when analyzing various forms of state aid involvement/ intervention which might grant a selective advantage.

Foreign investment review

Specific rules apply depending on the identity of the investor (EU/ non-EU), as well as on factors such as investment value or area of activity concerned.

- ***As to non-EU investments:***

  Non-EU foreign investments are currently subject to scrutiny in Romania under the regime established through Government Emergency Ordinance no. 46/2022 ("GEO 46/2022")[2], implementing EU Regulation (EU) 452/2019 establishing a framework for the screening of foreign direct investments into the European Union ("FDI Regulation"). Implementing a foreign direct investment prior to its notification and approval is prohibited, subject to administrative fines which cannot exceed 10% of the total turnover derived in the year prior to sanctioning.

  This specific regime applies to investments made by **non-EU foreign investors**[3] falling under the categories listed below:

  (i) ***foreign direct investments*** defined as investments of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the undertaking concerned or the separate organizational unit of that undertaking, to which the funds are made available or will be made available in order to carry on an economic activity in Romania, and which allow the foreign investor to exercise control over the undertaking;

  (ii) ***new investments*** defined as initial investments in tangible and intangible assets located in the same perimeter, linked to the start-up of the activity of a new undertaking (setting up a new location for carrying out the activity for which financing is required, technologically independent from other existing units); an expansion of the capacity of an existing undertaking (the increase of production capacity at the existing site due to the existence of an unmet demand); a diversification of the production of an undertaking into products not previously manufactured (obtaining products or services not previously

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2 Published in the Official Gazette on 18th of April 2022.

3 *Investors concerned* by the FDI regime:

a) non-EU citizens,
b) non-EU based companies,
c) EU-based companies controlled by non-EU citizens, by non-EU based companies or by legal entities without legal personality organized on the basis of non-EU laws,
d) the fiduciary trustee of an entity without legal personality or a person in a similar position, if not an EU citizen, or non-EU based, or organized according to a non-EU law.

produced in the concerned unit); a fundamental change in the overall production process of an existing undertaking).

The foreign direct investment also includes changes in the ownership structure of a foreign investor, should following such change, control be exercised, directly or indirectly by (i) non-EU citizens, (ii) non-EU based companies or (iii) other non-EU entities without legal personality.

An obligation to file an FDI notification (by a non-EU investor) before the Commission for the Examination of Foreign Direct Investments is triggered if two cumulative conditions are met:

(a) the economic activity concerns one of the areas provided by Decision no. 73/2012 of the Romanian Supreme Council of National Defense ("Decision 73/2012")[4], by reference to certain criteria provided by FDI Regulation[5]

and

(b) the investments have a value of more than EUR 2 million (although, exceptionally, foreign direct investments below the EUR 2 million threshold can also be subject to review and authorization, if they can impact or entail significant risks on security or public order).

Procedurally, irrespective of whether the transaction is notifiable or not to the Romanian Competition Council under the Romanian merger control rules, the parties will file an application to the Commission for the Examination of Foreign Direct Investments.

- ***As to EU investments:***

As the law currently stands, there is neither an obligation to notify investments made by EU investors, nor a corresponding sanction for failure to do so. As such, EU investors

4 Decision 73/2012 regulated the areas of activity subject to national security scrutiny in a rather broad manner, namely: *security of the citizen and of collectivities; *border security; *energy security; *transport security; *security of supply with vital resources systems; *critical infrastructure security; *security of information and communication systems; *security of financial, tax, banking and insurance activities; *security of production and circulation of weapons, ammunition, explosives, toxic substances; *industrial security; *protection against disasters; *protection of agriculture and environment; and *protection of privatization operations of state-owned companies or their management. While the area of activity of the target is the one directly triggering scrutiny, the areas of the activity of the target's clients should also be relevant since they might be in the end impacted.

5 The criteria in FDI Regulation by reference to which the areas of activity are to be looked at are: *critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure; * critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies; * supply of critical inputs, including energy or raw materials, as well as food security; * access to sensitive information, including personal data, or the ability to control such information; or * the freedom and pluralism of the media.

may notify on a voluntary basis, relying on the general provisions of the Romanian Competition Law.

Separately, according to the Competition Law, should an investment also fall under the merger control regime, the Competition Council ("RCC") can transmit the notified economic concentration to the FDI authority if, in its opinion, the investment is likely to be scrutinized also from a national security perspective. Thus, although there is no filing obligation, the Competition Council may inform the FDI authority in relation to the transaction with an answer to be expected within 30 days.

Please note that the authority seems to purport to amend Government Emergency Ordinance no. 46/2022 ("GEO 46/2022") establishing the FDI framework, in view of extending the scope of the FDI regime to EU investors as well. Such extension may be performed through the Law for approving GEO 46/2022 – currently under re-examination, and previously circulated in several versions.

Real estate

- As a general rule, foreign entities or individuals (with certain exceptions applicable for EU countries) cannot acquire direct ownership over land in Romania but only by creating a Romanian entity. Further restrictions and formalities are applicable in case of acquiring agricultural land located extra-muros (relevant especially for renewable energy and agribusiness projects). Pursuant to several pieces of legislation adopted during mid-2022 and early 2023, the development of renewable energy projects over agricultural land located extra-muros should currently be possible without an urbanism documentation, but only on the basis of a building permit and prior removal from agricultural circuit of the relevant area, however within a limit of 50 hectares per project. The legislation is however not clear in scope and application and applicability thereof is still subject to various interpretations and further legislative amendments are currently under debate.
- In case of direct real estate acquisition, as a general rule, acquisition agreements must be authenticated by a notary public and registered with the relevant land book (usually this leads to taxes and fees of approximately 1% of the acquisition price); this rule does not apply in case of purchase of the shares of an entity holding the real estate.
- VAT and other tax implications must be taken into account upon direct or indirect real estate acquisition.
- Legal due diligence on title is market practice and always advisable (such is requested also by financing entities in case of leveraged acquisitions for example).

Transfer pricing

- The transactions between related parties must be carried on at arm's length. Taxpayers are obliged to prepare a transfer pricing file either annually or upon the tax authorities' request, depending on their category (large, medium or small taxpayer) and the amount of related-party transactions. Country by country reporting applies according to the EU Directive 2016/881.

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