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Interreg

# LEGAL GUIDE

# "DOING BUSINESS IN THE CROSS-BORDER REGION"

## Legal and tax framework in Romania and Bulgaria

## Sofia, October 2017

www.interregrobg.eu

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*The Guide is developed originally in English on behalf of*

*National Tourism Cluster "Bulgarian Guide" (www.bg-guide.org)*

*being a Partner in the project*

*"**Cross-border Sustainable Employment Mix-Centres in the fields of information technologies, tourism and agriculture**",*

*acronym SEM-Centres, code 16.4.2.077,*

*funded by Interreg V-A Romania-Bulgaria Programme 2014-202*

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## Introduction

Bulgaria and Romania both entered the European Union on 1 January 2007, bringing some 30 million new citizens into the EU fold.

While there are differences between Bulgaria and Romania – particularly in terms of economic size, the level of industrialisation and macroeconomic performance – the two Member States do share several common features. They both faced a significant outflow of labour in the wake of the economic upheavals in the 1990s. Today, they are both undergoing rapid economic growth, yet are suffering from relatively low employment levels and serious labour lacks in certain high-skill sectors.

## The Bulgarian Economy

Bulgaria, a former communist country, has an open economy that has historically demonstrated strong growth. The government undertook significant structural economic reforms in the 1990s to move the economy from a centralized, planned economy to a more liberal, market-driven economy. These reforms included the privatization of state-owned enterprises, the liberalization of trade, and strengthening of the tax system - changes that helped to attracting investment, spurring growth, and making gradual improvements to living conditions. From 2000 through 2008, Bulgaria maintained robust, average annual real GDP growth in excess of 6%, which was followed by a deep recession in 2009 as the financial crisis caused domestic demand, exports, capital inflows and industrial production to contract, prompting the government to rein in spending. Real GDP growth remained slow - less than 2% annually - until 2015, when demand from EU countries for Bulgarian exports, plus an inflow of EU development funds, boosted growth to more than 3%.

"Bulgaria's ambitious structural reforms and very prudent fiscal and wage policies have helped the country to achieve a remarkable level of macroeconomic stability," explained Peter Grasmann, Head of the DG ECFIN Unit for economic affairs within the candidate countries.

Overall, the future looks promising. The Bulgarian economy ended the first half of 2017 on a strong note, according to complete GDP data published by the Statistical Institute in September. Annual GDP growth was confirmed at 3.6%. Growth continued to be driven by healthy household consumption and export growth, and leading indicators suggest the momentum will be sustained throughout the rest of the year. Unemployment rested at its lowest level ever in August, which would point to household consumption remaining one of the main engines of growth over the medium term. Industrial production also continued to grow at a robust annualized pace in July.

## The Romanian Economy

Romania began the transition from communism in 1989 with a largely obsolete industrial base and a pattern of output unsuited to the country's needs.

The country emerged in 2000 from a punishing three-year recession thanks to strong demand in EU export markets. Domestic consumption and investment fuelled strong GDP growth, but led to large current account imbalances. Romania's macroeconomic gains have only recently started to spur creation of a middle class and to address Romania's widespread poverty. Corruption and red tape continue to permeate the business environment. Inflation

rose in 2007-08, driven by strong consumer demand, high wage growth, rising energy costs, a nation-wide drought, and a relaxation of fiscal discipline. As a result of the increase in fiscal and current account deficits and the global financial crisis, Romania signed on to a $26 billion emergency assistance package from the IMF, the EU, and other international lenders. Worsening international financial markets, as well as a series of drastic austerity measures implemented to meet Romania's obligations under the IMF-led bail-out agreement contributed to a GDP contraction of 6.6% in 2009, followed by a 1.1% GDP contraction in 2010. The economy returned to positive growth in 2011 due to strong exports, a better than expected harvest, and weak domestic demand. In 2012, however, growth slowed to less than 1%, partially due to slackening export demand and an extended drought that resulted in an exceptionally poor harvest. In March 2011, Romania and the IMF/EU/World Bank signed a 24-month precautionary stand-by agreement, worth $6.6 billion, to promote fiscal discipline, encourage progress on structural reforms, and strengthen financial sector stability. The Romanian authorities announced that they do not intend to draw funds under the agreement.

Romania recorded the most significant economic advance among the 28 EU Member States, with a Gross Domestic Product (GDP) growth of 5.6 pct in the first quarter of 2017, against the same period in 2016, shows the third estimate released Thursday by the European Statistical Office (Eurostat).

# Comparison of Legal Corporate and Tax Framework in Bulgaria and Romania

| Company Law | Bulgaria | Romania |
|---|---|---|
| **Corporate types** | Five types of companies: General Partnership; Limited Partnership; Limited Liability Company **(LLC)**; Joint-Stock Company **(JSC)**; Limited Stock Partnership.<br><br>Most common company type is LLC for small and medium businesses and JSC for bigger enterprises. | Five types of companies, as well: Unlimited Guarantee Collective Company; Limited Partnership, Limited Liability Company **(LLC)**; Joint-Stock Company **(JSC)**; Limited Stock Partnership.<br><br>Most common company types are: LLC and JSC. |

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| **Incorporation Registration** | **Founders** of the companies should be Bulgarian or foreign legally capable individuals or legal entities.<br><br>The **constitutional document** of a Bulgarian company may consist of: articles of association, statute or an Incorporation Act;<br><br>Every new registered entity starts existing from its registration in the **Commercial Register** and gets a unique unified<br><br>identification number. This number identifies the legal entity while it is existing. It is used for taxation, social security and statistical purposes. Secondary registration is not required. | Founders of the companies should be individuals and/or legal entities, irrespective of their citizenship or nationality.<br><br>The **constitutional documents** of a Romanian company may consist of: by-laws; articles of association or constitutive act.<br><br>**Trade Registry.** In order to register the company, several formalities have to be done: drawing up the constitutive act of the founder(s), subscription and payment of the company's share capital, and the registration of the new company with the competent trade registry (depending on the location of the registered office, the jurisdiction of the trade registry shall be decided). |
| **Capital required** | Minimum required capital is established for two types of corporations: Limited Liability Company (amount of capital required currently is BGN 2 = EUR 1 and Joint-Stock Company (the minimum capital that is required is BGN 50,000 (approx. EUR 25,600). | For LLC The minimum shared capital needs to be at least 200 lei= EUR 43.57 and for JSC is 90 000 lei=EUR 19,605.<br><br>A minimum share capital of EUR 5,000,000 is required when establishing a credit institution, which has to be fully paid in cash at the time of the subscription. Despite the legal provision, National Bank of Romania |

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| | There special requirements for the capital of some enterprises. For example, banks should be established in the form of a joint-stock company with a registered capital in the amount of EUR 5,000,000. | may establish a higher minimum value of share capital. |

| Tax system | Bulgaria | Romania |
|---|---|---|
| **Corporation tax** | Corporate tax regime is regulated by the Law on Corporate Income Tax (LCIT);<br><br>All legal entities and unincorporated associations, which execute economic activity in Bulgaria are subject to the levy of corporation tax at the rate of 10% (**the lowest in the EU);**<br><br>Non-resident legal entities are subject to corporation tax only in regard of their economic activity in Bulgaria;<br><br>Legal entities which are not registered/incorporated in Bulgaria but execute economic activity by opening a branch, an office, an agency or another form of representation within the territory of the country ("permanent establishment" within the meaning given by the LCIT) are liable to corporation tax on the profits and income accruing from their permanent establishment inside Bulgaria.<br><br>The annual taxable profit must be | As of 1 January 2016, New Fiscal Code and New Fiscal Procedure Code have entered into force;<br><br>*Profit tax:* the corporate tax rate applicable to taxable profit is 16% (the law provides exceptions for specific legal entities);<br><br>*Taxable subjects:* Romanian legal entities, foreign legal entities which have their place of effective management located in Romania and legal entities headquartered in Romania incorporated, in accordance with the European legal provisions, for the taxable profit obtained from any source both in Romania and abroad;<br><br>Foreign legal entities that carry out activities through one or more permanent establishments in Romania and the related income; Foreign legal entities obtaining income from a transfer of real estate located in Romania or any rights related to such real estate property. |

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| | declared in a tax return not later than 31 March of the following calendar year. | |
| **Personal income tax** | Local individuals and sole traders are tax liable for their incomes from sources worldwide, while the foreign individuals are tax liable only for their income originating from Bulgaria.<br><br>*Types of Taxable Personal Incomes*: Employment Income (10% flat rate) ; Non-employment Income (10% flat rate); | *Tax subjects:* resident individuals; (ii) non-resident individuals conducting independent activities through a permanent establishment in Romania; (iii) non- resident individuals carrying out dependent activities in Romania; (iv) non-resident individuals for revenues other than those obtained through activities provided at points (ii) and (iii) above.<br><br>*Tax rate*: the income tax rate is 16%, |
| **Value added tax (VAT)** | *Operations subject to VAT:* any taxable supply of a good or service; Intra-Community acquisitions of goods for consideration within the territory of Republic of Bulgaria from another EU Member Stat; acquisition of new means of transport; acquisition of excise goods by a taxable person or a non-taxable legal entity which is not registered under the law; Importation of goods (from third countries or territories).<br><br>Bulgaria has joined to the VAT Information Exchange System (VIES) | *Operations subject to VAT*: operations that cumulatively meet the following requirements: (i) they represent a supply of goods or services for consideration; (ii) the place of delivery of goods or supply of services is considered to be in Romania; (iii) the delivery of goods or supply of services is made by a taxable person; and (iv) the delivery of goods or supply of services is a result from economic activity. |

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| | from the date of the accession of Bulgaria in European Union.<br><br>*Vat payers:* A taxable person is any person who executes an independent economic activity, irrespective of the aims and the results thereof. Independent economic activity is the activity of manufacturers, traders and persons providing services, including in the sector of mining and agriculture.<br><br>*Rates:* There are two rates for VAT - a basic rate of 20% and a specific rate of 0%. | *VAT payers*: any person performing, in an independent manner and irrespective of the location, economic activities such as: a foreign entity/individual is obliged to register for VAT purposes in Romania, where the entity/individual carrying out taxable operations if they (i) do not have their headquarters or permanent residence in the EU, such entity/individual must appoint a fiscal representative residing in Romania (ii) do not have their headquarters in Romania, but in the EU, such entity may appoint a fiscal representative residing in Romania or may register directly for VAT purposes.<br><br>*VAT rates:* The standard rate of VAT is 19% and is applied to all supplies of goods and services. There are 3 reduced rates as follows:<br><br>9% is applied to medicines, supply of prosthesis and accessories thereof, restaurant and catering services, potable water, etc.;<br><br>5% is applied to supply of school books, newspapers, services consisting of access to castles, museums, housing supply for rehabilitation centres for minors with disabilities, homes for elderly, orphanages, etc. |

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| | *VAT Registration:*<br><br>The LVAT defines a compulsory and a voluntary registration. Subject to a registration are both persons established on the territory of the country and persons who are not established on the territory of the country provided that they effectuate taxable transactions as defined by the act. Foreign persons register through accredited representative with the exception of the cases of foreign persons' branches.<br><br>The obligation for a VAT registration occurs when the total taxable turnover of a person (taxable basis of all taxable transactions) for the previous twelve months is equal or exceeds BGN 50 000. | *VAT Registration:*<br><br>In order to obtain a VAT code a company has to draw up a file containing the mentioning statement / VAT registration form. The company shall be evaluated from the point of view of intention and capacity of performing economical activities in the application sphere of the VAT.<br><br>The Romanian law also defines a compulsory and a voluntary registration.<br><br>VAT payers: any person performing, in an independent manner and irrespective of the location, economic activities such as: a foreign entity/individual is obliged to register for VAT purposes in Romania, where the entity/individual carrying out taxable operations if they (i) do not have their headquarters or permanent residence in the EU, such entity/individual must appoint a fiscal representative residing in Romania (ii) do not have their headquarters in Romania, but in the EU, such entity may appoint a fiscal representative residing in Romania or may register directly for VAT purposes.<br><br>The obligation for a VAT registration occurs when the total taxable turnover of a person (taxable basis of all taxable transactions) for the previous twelve months is equal or exceeds RON 220,000 lei. Please note that very soon it is possible that |

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| | | the Romanian legislator decides to raise the threshold to RON 300,000.<br><br>If a business entity has exceeded the above mentioned threshold in a month, it has to fill in a form and submitted in 10-days term of the end of the month when the threshold has been exceeded. In this situation, the VAT code shall be applicable from the first day of the following month in which the registration has been required. |

# PART I: LEGAL GUIDE FOR BULGARIA

Table of Contents of Bulgarian Part

The present Guide is prepared in English for National Tourism Cluster "Bulgarian Guide" (association), BULSTAT 176488025, as part of the provision of specialized expert legal services and preparation of a comparative analysis of the legal and juridical framework in Romania and Bulgaria and elaboration of a joint Guide: "Doing business in cross-border region Romania-Bulgaria" (hereinafter the "**Guide**").

The present Guide is prepared under the effective legislation up to 15th of September 2017, and represents a general description of the effective legislation. However, the present Guide should not be considered as a legal opinion on which third parties may rely on and the Law Firms engaged in its preparation are not liable before any third party for the decisions taken based on the Guide. In the event of inconsistency or discrepancy between the English version and any of the other linguistic versions of

this publication, the English language version shall prevail! The original English version will be available on the web-site of NTC BG Guide – www.bg-guide.org.

## *Short Considerations about Bulgaria*

Bulgaria is located in South eastern Europe and occupies the eastern part of the Balkan Peninsula. Romania is situated on the North Bulgarian border – the Danube River, the Republic of Macedonia and Serbia – on the West, Greece and Turkey's European part – on the South, and finally the East border is the Black Sea.

Bulgaria is a unitary state, and includes 28 provinces and the metropolitan capital province (Sofia-City). Sofia is the capital and the largest city of Bulgaria. The population is 1.4 million people and the territory of the city is 1,186 km2. Bulgaria's other bigger cities are Plovdiv (338,153), Varna (334,781), Burgas (200,271), Ruse (149,642), Stara Zagora (138,272) and Pleven (106,954). The population of Bulgaria includes mainly ethnic Bulgarians (85%) and two sizable minorities, Turks and Roma.

The names of the 28 provinces come from their respective main cities. The provinces subdivide into 264 municipalities. Bulgaria is a highly centralised state. The national Council of Ministers directly appoints regional governors and all provinces and municipalities are heavily dependent on it for funding. Municipalities are governed by mayors, who are elected directly by the people residing in the respective municipality for four-year terms, as well as by directly elected collective bodies - municipal councils.

### 1. Politics

Bulgaria is a parliamentary democracy. The most powerful executive position is that of the Prime Minister. Normally, she is the leader of the party that won the majority of the votes in the parliamentary elections, although this is not always the case. The political system has three branches—legislative, executive and judicial, with universal suffrage for citizens at least 18 years old. The Constitution of Bulgaria contains also possibilities of direct democracy.

The National Assembly consists of 240 deputies elected to four-year terms by direct popular vote. It has the power to enact laws, approve the state budget, schedule presidential elections, choose and dismiss the Prime Minister and other ministers, declare war, deploy troops abroad, and ratify international treaties and agreements.

The President of Bulgaria serves as the head of state and commander-in-chief of the armed forces, and has the authority to return a bill for further debate, although the Parliament can override the presidential veto by a simple majority vote of all members of the Parliament.

### 2. Legal System

Bulgaria has a typical civil law legal system. The Supreme Administrative Court and

the Supreme Court of Cassation are the highest courts of appeal and oversee the application of laws in subordinate courts. The Supreme Judicial Council rule the system and appoints judges.

**3. Geographical Location**

Bulgaria has one of a kind and strategically important geographic location. The country has always been a focal point at the main crossroads between Europe, Asia and Africa. A network of eight motorways crosses the country, making connections to Western Europe, Russia, Asia Minor and the Black Sea.

**4. Foreign Relations**

Bulgaria became a member of the United Nations in 1955 and since 1966 has been a non-permanent member of the Security Council three times, most recently from 2002 to 2003. Bulgaria was also among the founding nations of the Organization for Security and Co-operation in Europe (OSCE) in 1975. It joined NATO on 29 March 2004, signed the European Union Treaty of Accession on 25 April 2005**.** On 1 January 2007 Bulgaria became a full member of the European Union.

## *Government Investment Incentives*

According to the Bulgarian Constitution foreign persons (legal entities, individuals or civil partnerships registered in a foreign country) must have equal rights with local persons when executing economic activities in the Republic of Bulgaria except where otherwise provided by the law ("national treatment"). This principle involves the whole range of economic and legal forms which are used for business activity.

The main legal rules establishing the legal framework of government investment incentives are covered by the Law on Investment Promotion (LIP). The law defines the kinds of investments supported by the state, the applicable thresholds for the amount of investments qualifying for support, the types of incentives, etc. The LIP establishes an Investment Agency entrusted with important functions related to investors such as the provision of information, investment marketing and individual administrative servicing.

A Certificate for Class Investment (Priority Investment Project) can be obtained for investments connected to the establishment of a new enterprise, to the extension of an existing enterprise or activity, to diversification of the output of an enterprise or activity into new additional products or to an essential change in the whole production process of an existing enterprise or activity;

**1. The investments must be executed in the one of these economic activities:**

(i) of the industrial sector: manufacturing industry;

(ii) of the services sector: high technology activities in the sector of information

technologies and services;

(iii) scientific research and development and professional activities of head offices; education; human health care; warehousing and support activities for transportation field;

Investors can apply for one of the following kinds of certificates based on the minimum investment amount and employment criteria: Certificate for investment project - Class A; Certificate for investment project - Class B; Certificate for Priority Investment Project.

**2. In accordance to the measures established by the LIP, investments shall be promoted through:**

(i) shorter terms for administrative services: Class A and B;

(ii) personalised administrative services for execution of the investment project: Class A;

(iii) sale or establishing, against a consideration of limited real rights of private state or private municipal property, without a tender procedure or competitive bidding: Class A and B;

(iv) sale, exchange of property or establishing, against a consideration, of limited real rights over immovable of solely owned state or municipal companies, without a tender procedure or competitive bidding, at market or lower price Class A and B;

(v) financial help for construction of physical infrastructure elements necessary for the execution of one or more investment projects: Class A (or two projects class B in an industrial zone);

(vi) financial help for vocational training for acquisition of professional qualification by the hired staff, which includes interns from higher schools in Bulgaria, who have occupied the new jobs created upon implementation of the investment project (only for investments in municipalities with high unemployment rate or in the sector of Hi Tech activities): Class A and B.

**3. Award of Investment Class Certificate**

The promotion measures under the LIP apply only in respect of investors who have been awarded an investment class certificate/ priority investment project. The certification procedure and the requirements of the plan for execution of the investment project are provided for in the LIP and the Regulation for its application.

**4. Investment Opportunities in Bulgaria**

Bulgaria, a member of the European Union and the World Trading Organization, is an incredible destination for great investments and start-up businesses with its low taxation and highly stable currency – the Bulgarian lev.

Bulgaria has lower than the average taxation, the 10 % corporate tax and personal income tax rate is one of the best in Europe, and the zero taxation and tariffs on

product imports from the European Union market shall be taken into account. Moreover, there is 0 % withholding tax on dividends and liquidation quotas if you are a legal entity from a country, part of the European Union or EEA area.

Attracting foreign investments is among the government's top priorities. Foreign direct investments in Bulgaria increased by EUR 26.80 mil. in April of 2017, and averaged EUR 184.44 mil. from 1996 until 2017, reaching an all-time top of EUR 1 018.40 mil. in December of 2007.

With the increased public investments after the accession to the EU, Bulgaria is fastly modernizing its infrastructure with highway connections to Greece, Turkey, Serbia, the Black Sea ports, the new bridge over Danube River and renovation of the railroads.

Foreign businesses are well- accepted in Bulgaria. Both foreigners and EU citizens with some minor limitations with regards to land acquisition enjoy the same Constitutional rights as Bulgarian nationals. According to the Constitution, investments and economic activity of Bulgarian and foreign investors are protected by law. The LIP contains the principle of equal treatment of local and foreign investors as well. Bulgaria has signed more than 50 international agreements for mutual protection and encouragement of foreign investments. The country is also a party to 68 bilateral agreements on avoidance of double taxation.

*PART I-LEGAL*

*CHAPTER 1-Company law*

## 1. Legal Framework

The business today is based on certain rules- written rules (laws, regulations, agreements, etc.) and established trade practices and customs.

This overview of the legal framework aims at capturing logically the major legal steps that every investor shall follow developing its investment intentions from an idea to a completed project. It gives detailed information on the key steps in the investment process from the beginning when making a choice about the type of commercial company.

Bulgarian commercial law introduces five types of companies, which could be established by foreign citizens for business activities. These types are: General Partnership; Limited Partnership; Limited Liability Company; Join-Stock company; Limited Stock Partnership.

Founders of the companies should be Bulgarian or foreign legally capable individuals or legal entities. Irrespective of the foreign nationality of its incorporators, each company incorporated in Bulgaria is considered a Bulgarian entity.

The other forms for organizing business activities in Bulgaria are: Branch, Representative Office, Cooperative, Sole entrepreneur (individual).
In order to organize a business activity under this type of form, the sole entrepreneur – foreign citizen must have a license for a permanent residence in the country, which could be obtained from the Ministry of Justice.

## 2. Corporate Types

### (i) General Partnership

The general partnership is an entity incorporated by two or more partners who are jointly and fully liable for the debts of the entity. There is not a requirement for the amount of the capital. The unique of this form of business activity is that each partner could represent the partnership, unless the articles of partnership provides otherwise. One of the methods of the dissolution of the partnership is notice of termination from a partner, due to the personal characteristics of the entity.

The articles of association of an unlimited partnership should be notarised and the entity shall be registered in the Commercial Register at the Registry Agency.

### (ii) Limited Partnership

A limited partnership should be formed by a contract between two or more persons for execution of commercial activities under a common trade name. Limited partnerships contain two or more general liability and limited liability partners. The general liability

partners are entirely liable for the company's debts with their whole property while the limited liability partners are liable for the entity's debts up to the amount of their contribution to the partnership.

The articles of association of a limited partnership shall be notarised and the entity should be registered in the Commercial Register at the Registry Agency.

**(iii) Limited Liability Company**

Limited liability company ("LLC") is an entity, which is formed by one or more persons or legal entities. There is no limitation in the number of shareholders. The company could be owned by a sole owner or by multiple shareholders. The shareholders are liable for the debts of the company up to the amount of the contribution they have made into its capital. The company is liable for its obligations with its assets.

The most common company form in Bulgaria is LLC. The reason is that LLC are essentially hybrid entities that include the characteristics of a corporation and a partnership or sole proprietorship. Small and medium businesses prefer LLC mostly because of the easy way of incorporation and the small amount of capital required (currently BGN 2 = EUR 1).

**a. Contributions.** The contributions could be done in either monetary or non-monetary form. That includes movable and immovable assets, existing and documented receivables. Future labour, services or funds are not allowed as a contribution.

**b. Shares and capital.** The capital of the company is separate into shares (interests) which are subscribed by the shareholders of the company. Each share of the capital shall be at least BGN 1. The sum of all shares should be equal to the amount of the capital of the company and each share shall be divisible by 1. The shares of the partners could have different amount. Several shareholders could own jointly one share. The shares cannot be traded at the stock exchanges market.

**c. Transfer of Shares.** According to the Bulgarian Law on Commerce (LC) the transfer of a partner's share from one partner to another is unrestricted, while the transfer to third parties is a subject to the provisions for admission of a new partner because the partners in the LLC are obliged to take part in the management of the company and provide assistance to its business activities.

**d. Company's Bodies.** LLC has two mandatory bodies and one optional:

- The General Meeting of the Shareholders makes decisions on the most essential issues for the company. When the persons employed at the company exceed 50, they shall be represented at the General Meeting with an advisory vote;
- The Manager/managers (does not necessarily have to be partner/s) should organize and direct the activities of the company in accordance with the law and the General Meeting resolutions.

- The Controller (optional body) shall supervise the observance of the company's bylaws, the preservation of the company's property and should report to the General Meeting.

**(iv) Solely Owned Limited Liability Company**

**LLC** formed by one person is a solely owned LLC with one owner of the capital. The single shareholder shall make the decisions vested in the LLC General Meeting and could govern and represent the company either personally or through a manager appointed by him. In case the owner is a legal person the manager of such legal person or a person designated by him shall manage the company.

**(v) Joint-Stock Company**

**a. General Characteristic.** Joint-Stock Company (JSC) is the purest form of corporation. The capital of the JSC is separated into stocks. The participation in the capital of the JSC with stocks is an investment, which determines the investment character of the company. JSC is the most appropriate corporate form for bigger business.

**b. Foundation.** JSC could be incorporated by more than one person. In that case the foundation document is the Statute adopted at an Incorporation Meeting. If the JSC is incorporated by one person, then the Statute is approved by means of an Incorporation Act. The Statute/Incorporation Act is required to be in a notarised form only in case of in-kind contribution of immovable assets (real estate) in the company's capital.

**c. Founders.** Founders are those persons who have subscribed stocks at the Incorporation Meeting. Persons who declared bankruptcy could not be founders. The JSC should be constituted at a Incorporation Meeting which shall be attended by all persons who register stocks. Founders can be represented by a proxy with an explicit power of attorney with a notarised signature.

**d. Contributions.** Monetary contributions should be made to a fund-raising bank account opened by the managing board, respectively by the board of directors, in the name of the company, with an indication of the contributor, and any transactions with the deposited sums shall be effected with the unanimous decision of this body.

**e. Form of contribution to the registered capital.** Shareholders of the JSC can make either monetary or non-monetary (in-kind) contributions.

**f. Minimum registered capital.** According to the LC the minimum capital that is required is BGN 50,000 (approx. EUR 25,600) divided into stocks, each with minimum nominal value of BGN 1. The whole capital should be subscribed and at least 25 per cent of the capital should be paid up prior to the registration of the JSC in the

Commercial Register at the Registry Agency. The remaining part of the capital shall be paid up within the terms specified by the Statute but this term shall not be more than two years from the registration of the company. A higher statutory minimum registered capital is required for banks, investment companies, insurance and health insurance companies.

### (vi) Stocks

The term "stock" has 2 meanings. The first one refers to a **part of the capital** as a number and the sum of all the shares shall be equal to the capital itself. When the stock is seen as part of the capital, the law refers to the nominal value of the stock. The second meaning of stock refers to a **document** which incorporates the membership of the shareholder and its rights.

**a. Forms of Stocks:**

- Materialised stocks – paper stocks;
- Dematerialised book-entry stocks – Shareholders are registered in the register kept by the Bulgarian Central Depository.

**b. Types of Stocks:**

- Registered stocks – the name of the stockholder is indicated on the stock certificate and is entered into the Book of Shareholders of the company. The transfer of those stocks binds the company if registered into the Book of Shareholders.
- Bearer stocks – As opposed to the first type of stocks, the bearer stocks are characterized with anonymous possession. Title over the stocks is evidenced by the mere physical possession of the stock certificate.
- Ordinary stocks – granting their holders with the right to a vote at the General Meeting of the Shareholders, a right to a dividend and liquidation quota.
- Privileged stocks – they grant to the respective holder additional rights such as additional voting rights, a guaranteed or additional dividend or liquidation quota, or special managerial rights such as veto rights.
- Shares granting equal rights form a separate class of stocks.

**c. Shareholders.** JSC could be joint by Bulgarian and/or foreign nationals and/or legal entities when they subscribe stocks in the company.

**d. Number of Shareholders.** The number of shareholders is unlimited.

**e. Liability of Shareholders.** The company is liable for any breach of its obligations with all its assets. Shareholders are liable for the Company's debts up to the amount of their participation in the capital.

### (vii) JSC Bodies:

The LC envisages two alternative management systems. These two management systems are (i) a one-tier management system and (ii) a two-tier management

system. In the one-tier system, there is a permanent body - the board of directors, and for the two-tier system there are two permanently acting bodies - a supervisory board and a management board. In any case, each JSC also has a general meeting of shareholders. Each JSC can choose freely between the two systems and can change them at any time.

**a. General Meeting (obligatory)**- the General Meeting comprises the shareholders with voting rights. They can choose how to participate in the General Meeting- in person or by a proxy. A member of the board of directors, respectively of the supervisory and managing board, may not represent a stockholder.

When the persons hired by the company are more than 50 they shall be represented in the General Meeting by one person with consultative capacity.

Participants in the General Meeting without the right to vote are the shareholders of preferred stocks without voting right, as well as the members of the board of directors, respectively of the supervisory and managing board, when they are not shareholders.

The General Meeting is a collegial body that can only carry out its work at meetings.

In the General Meeting the shareholders discuss the most important issues related to the company and its operations (for example, amendment of the statutes, increase and decrease of capital, termination, election of the permanent bodies of the company, the determination of their remuneration, etc.)

**b. Permanent Bodies of the JSK**

*One-tier System of Management*

- **Board of Directors (obligatory)-** According to the LC the members of the board of directors shall be minimum three and maximum nine. The board of directors adopts its own rules of procedure and elects a chairman and a vice chairman from among its members. The board of directors commissions the management of the company to one or several executive members elected among its members and shall determine their remuneration.

*Two-tier System of Management*

- **Supervisory Board (obligatory)**- the supervisory board does not take part in the management of the company. The supervisory board represent the company only in its relations with the managing board. The members of the supervisory board are appointed by the General Meeting. Their number may be from three to seven persons. The supervisory board adopts its own rules of procedure and appoints a chairman and a vice chairman from among its members.
- **Management Board (obligatory)** – The members should be minimum three and maximum nine. It performs the management of the company and executes the decisions of the General Meeting. The management board reports on its activity to the supervisory board at least once at every three months.

*Personal liability of a member of the JSC Boards*

The Board's members in JSC provide a guarantee for their management in an amount determined by the General Meeting of Shareholders which shall not be less than three gross monthly remunerations. The members of the Boards are jointly liable for the damages caused to the company.

**(viii) Annual Business Report and Distribution of Profits**

The annual business report should include the company's operations and its state of affairs, and shall clarify the annual financial report.

Payment of dividends and interest-dividends and interest should be paid only if, in accordance to the inspected and accepted financial report for the respective year, the net value of the property reduced by the dividends and interest subject to payment, is not less than the sum of the capital of the company, the reserve fund and the other funds, which the company is obliged to establish by virtue of a law or the statutes.

**(ix) Audit of the Annual Closing Report**

The annual financial report should be audited by registered auditors appointed by the General Meeting.

**(x) Debentures**

The joint-stock company is the only commercial company that can issue debentures. The procedure for issuance of debentures could include or not public offering. The public offering of debentures is regulated by special laws.

The debenture is kind of a loan, given from the debenture holders to the company. Generally, the debenture grants the debenture holder the right to receive the nominal value of the debenture and the corresponding interest.

The holders of debentures of the same issue shall form a group for protection of their interests before the company. The group should be represented by trustees elected by the general meeting of debenture holders.

**(xi) Special Investment Purpose Companies**

Special Investment Purpose Companies are joint-stock companies established to invest the funds acquired through issuance of stocks into real estate or receivables ("securitisation" of real estate/ receivables). Those companies are governed by the Law on Special Investment Purpose Companies Law.

**(xii) Public joint-stock companies**

The only company form that a Public Company could be is JSC. Public Companies are registered as such in the Financial Supervision Commission. Those companies are subject to specific restrictions and reporting requirements. Special rules apply to the convening of General Meetings of Shareholders, the majority for making decisions, and membership into management bodies of the company. The activity of such companies is regulated by the Law on Public Offering of Securities.

### (xiii) Partnership Limited by Shares

Partnership limited by shares is formed by at least three limited liability partners whose liability is limited up to the amount of their contributions to the company's capital and by general liability partners.

The Statute is prepared by the unlimited liability partners who also convene the Incorporation Meeting and have the right to choose the limited liability shareholders. The company should be registered in the Commercial Register at the Registry Agency.

### (xiv) Corporate Structures

#### a. Consortium

The Consortium is a contractual association of traders. The aim of this structure is to execute commercial activity. It is possible the Consortium to be organised as a joint-venture under the rules of the civil law.

#### b. Holding

Holding could be organized in three forms: a joint-stock company, a limited partnership or a limited liability company. The aim of the company is to participate in any form in other companies or in their management.

At least 25 per cent of its capital should be invested directly in subsidiaries. Subsidiaries are companies where the holding holds or controls directly or indirectly at least 25 per cent of their shares or could define directly or indirectly more than half of the members of the management board.

### (xv) Other Business Forms for Doing Business in Bulgaria

#### a. Branch

Foreign legal entities or unincorporated entities could register branches in the Bulgarian Commercial Register at the Registry Agency if they are entitled to conduct business activities under their national laws. Registered capital is not required for the establishment of a branch.

Although branches are obliged to keep commercial books and prepare separate financial statements, they are not treated as separate legal entities. Commercial transactions between foreign entities through their branches in Bulgaria are governed by the rules applicable for local persons.

#### b. Representative Office

Foreign persons who have the right to conduct commercial activity under the laws of their home country could open a Representative Office ("RO") on the territory of Bulgaria after registration at the Bulgarian Chamber of Commerce and Industry and subsequently at BULSTAT Register. ROs are regulated by the LIP and according to Bulgarian law they are separate legal entities only for tax purposes and they are not allowed to do business activity in Bulgaria.

ROs may participate in marketing, informational and promotional activities and can have employees, rent offices, etc. Transactions made by the foreign persons through their ROs in Bulgaria are subject to the same regime as transactions between local persons.

### c. Co-operative

The Co-operative is a voluntary association that includes at least seven individuals for the implementation of commercial activity. The capital and the number of the members could be different. The Co-operative is a legal entity and is liable for its debts with its assets. It is managed by a General Meeting of Co-operators, Management Board and a Controlling Board. The Chairman of the Co-operative represents it before third parties. Seven co-operatives can form a Co-operative Union.

### d. Sole Proprietor (Individual)

A sole proprietor could be any legally capable individual. He has to have permanent residence in Bulgaria. A person may register only one trade name as a sole proprietor and there is not capital requirement.

### (xvi) European Forms of Business Associations

The European forms of business associations are unions of legal entities, individuals or both, from different member states of the European Union. The EU's legislation regulates these forms of business associations: (i) European company, established as European Joint-Stock Company; (ii) European Co-operative Society; (iii) European Economic Interest Grouping.

In Bulgaria, these entities are mostly regulated by the LC, the Law on Co-operatives and the Law on the Commercial Register, in conformity with EU legislation.

## 3. Registration of a Company in the Commercial Register

Since 01 January 2008 all kinds of commercial companies, branches of foreign entities, sole proprietors and co-operatives are registered in the Commercial Register administered by the Registry Agency operating under the authority of the Ministry of Justice. This register does not include civil partnerships. The Commercial Register is accessible to the public, including via the Internet (www.brra.bg).

The reservation of company names and announcement of documents and facts such as annual financial statements, Articles of Association, invitations to shareholders, etc. also take place in the Registry Agency.

Every new registered entity starts existing from its registration in the Commercial Register and gets a unique unified identification number. This number identifies the legal entity while it is existing. It is used for taxation, social security and statistical purposes. Secondary registration is not required.

Usually for business activities such as banking, insurance, activity as a stock exchange, investment intermediary, investment company, management company or any other activity, a special law requires obtaining permission/license from a

government authority. If there is such a requirement to register these type of business activities in the Commercial Register, the respective permission/license should be presented.

## 4. Insolvency

There are general and special rules for insolvency in Bulgarian legislation. The general ones are placed in the LC. Special rules apply with regards to banks, insurance and social insurance companies.

The insolvency represents court proceedings for universal enforcement when the debtor is a trader.

The insolvency proceedings provide collective enforcement considering the interests of the creditors, the debtor and its employees. The LC specifies two different reasons for opening of insolvency proceedings. First of all, "insolvency" is understood as the incapability of a merchant (a sole trader or a company) to execute a pecuniary obligation deriving from or related to a commercial transaction, or a public obligation toward the state or toward a municipality related to its commercial activity or a private state claim. Another legal basis for initiation of insolvency proceedings applicable to capital companies is "excessive indebtedness" which refers to a situation where a company's property is not sufficient to cover its pecuniary liabilities.

Insolvency proceedings begin with a request to the court by a creditor, by the debtor himself or by the National Revenue Agency on state/municipality claims (where public liabilities are concerned). The debtor (its representatives by law) is obliged under the law to file a request with the court within 30-day term as from the occurrence of insolvency/excessive indebtedness. If this obligation is not complied with, the representatives of the debtor can be held liable for the damages caused to the creditors.

The decision, whereby the insolvency court opens the proceedings, declares the insolvency/excessive indebtedness and its date, names an acting insolvency trustee, allows security measures and chooses the date of the first creditors' meeting. It has to be not later than a month as of the date of the decision. The opening decision brings a number of important effects: the activity of the debtor is supervised by a insolvency trustee, subject to some exceptions all court/arbitration as well as individual enforcement proceedings against the debtor are suspended (and terminated at a later stage provided that the takings concerned are accepted for an enforcement within the framework of the insolvency proceedings), no security measures shall be executed under the general rules anymore.

During this phase of the proceedings the permanent insolvency trustee (chosen by the creditors' meeting and approved by the court) is supposed to prepare an inventory of the debtor's property and to undertake all the needful actions including judicial claims to collect debtor's takings and to consolidate his property.

As a rule, creditors could claim their rights within a 1-month period as from the registration of the opening decision in the Commercial Register at the Registry Agency

and the rights accepted by the insolvency trustee are entered on a list presented to the court. Also, the creditors may claim their right in the additional 2-month period (following the expiration of the first 1-month period). but they could not challenge claims already acknowledged or a distribution which has been made. Employment or public takings are included on the list of insolvency trustee ex officio. The court rules on the list of creditors' rights which are related to the objections filed against the list by the interested persons.

According to the LC there is a 1-month period to propose a recovery plan which start from the announcement in the Commercial Register at the Registry Agency of the court ruling approving the list with accepted takings. The aim of a recovery plan is to find an acceptable solution to creditors while the debtor can continue his activity. The LC gives the right to propose a recovery plan to the debtor, the insolvency trustee, and creditors to more than a third of the secured/non-secured takings, shareholders holding more than a third of the company's capital, a partner with unlimited liability or more than 20 % of the debtor's employees. The recovery plan could include deferral of liabilities, total or partial remittance, structural measures, and sale of the undertaking or part of it etc. After the approval by the creditors, the plan must be approved by a court decision which may also appoint a supervisory body monitoring the operation of the plan. Another possibility connected with the insolvency proceedings is an out-of-court agreement between the debtor and its creditors. Approving the recovery plan or the conclusion of out-of-court agreement end up with closing the insolvency proceedings which could however be reopened in a case of non-compliance with the plan/agreement.

The court declares the debtor insolvent and orders the termination of his activity if the recovery plan has not been approved or out-of-court agreement has not been concluded or the insolvency proceedings have not been reopened due to non-compliance with the plan/agreement. Through the second phase of the procedure the selling of debtor's assets and the distribution of the sold property take place.

The court makes a decision to terminate the insolvency proceedings when all the liabilities have been repaid or the debtor's assets have been depleted. In the second case, the court orders the deletion of the merchant.

*CHAPTER 2 – Commercial law*

## *Section 1-Transactions*

### 1. Commercial transactions

The general rules of the LC regulate the traits of commercial transactions. A commercial transaction is a form of civil legal transaction; however, it has some special features. The commercial nature of a transaction is determined by the parties thereto, i.e. traders, or by the transaction's nature. When non-traders conclude transactions they are still **commercial transactions and their conclusion by occupation gives commercial status of the parties.** Transactions include an offer and acceptance, so that the main elements of the offer, the possibility of withdrawal, its acceptance, the timing and place of the conclusion of the agreement in principle are all regulated by the rules of the Law on Obligations and Contracts (LOC). When the offer or the acceptance is made in electronic form, the rules of the Law on Electronic Document and Electronic Signature (LEDES) apply, where the legislature allows the relevant statements to be carried out in electronic form if the addressee of the statement is obliged, under the legal provisions, to receive electronic statements, or when based on unambiguous circumstances it can be considered that the addressee of the statement accept to take statements electronically. There is a possibility for the offer to not be addressed, i.e. addressed to an indefinite number of persons. This non-addressed offer is called a public offer.

There are two ways commercial transactions to be concluded: personally or via a representative. He is required to have a representative authority arising by law or on the basis of the authorization transaction.

In some cases, the conclusion of commercial transactions has to be approved or authorized by a public authority. When there is not such approval or authorization this does not allow the deal to produce the desired legal effects by the parties, and the party who is responsible to request approval or authorization should inform the other party thereof, with due diligence.

### 2. Form of commercial transactions

Commercial transactions can be done in all kinds of forms: oral and written; the parties may also agree on a form for the validity of transactions as well as on a stricter form than the one provided by the law. In the commercial law the electronic document and the written document are equal. Where the legislator has foreseen a certain form, it is considered satisfied when the electronic document is issued. There is no difference between copy and original- the electronic document could be reproduced an unlimited number of times.

The Bulgarian legislator also regulates the transactions under general terms. The general terms are used where it is necessary to standardize the content of commercial transactions.

### 3. Execution of commercial transactions

### 3.1. Principles of execution:

(i) Implementation must be timely, i.e. fulfilled in the stipulated time, and in the agreed quality, quantity, packaging;
(ii) principle of actual execution - in case of delay on part of the debtor, they only owe the initial amount;
(iii) principle of good faith.

A specific trait is the higher standard of duty of care - the care that an honest and experienced trader of the same branch of the commercial area usually do in the performance of their duties. An argument in favour of the requirement for a higher standard of duty of care is the fact that the trader has professional knowledge. Bulgarian law pays attention of the features of the relevant trade, and this is reflected in the requirements in special laws regarding the care of some traders (e.g., care of a good banker).

**3.2. Types of commercial transactions:** Commercial sale; Transit sale; Lease contract; Commission contract; Forwarding contract; Contract of carriage; Insurance contract; Banking transactions etc.

## *Section 2-Banking Law*

The Law on Credit Institutions (LCI) regulates the commercial activities of credit and financial institutions in Bulgaria, effective from 1 January 2007, which is aligned with the requirements of Regulation 575/2013 of the European Parliament and of the Council and the Law on Banking (LB).

According to the LB a Bulgarian bank should be established in the legal form of a joint-stock company, issuing only dematerialized stocks and with a fully paid-up minimum registered capital of BGN 10,000,000. Banking activities in Bulgaria may be performed only upon obtaining a bank license issued by the Bulgarian National Bank (BNB).

There are two options that the LCI gives for a bank, licensed in a Member State or in a country that is part of the European Economic Area (EEA), to do banking activities on the territory of the Republic of Bulgaria:

Firstly, through a branch, of which no more than one may be on the territory of Bulgaria, i.e. freedom of establishment;

Secondly, directly, after specifying the names and addresses of the persons who will represent it before the BNB, i.e. freedom to provide services.

Member State banks, including banks from the EEA can perform only those activities that are specified in their licenses. Activity can begin after a notification to the BNB by the competent bodies which have issued the license of the bank.

A foreign bank registered in a third country (i.e. not in a Member State or the EEA) may perform banking activities in Bulgaria only upon opening a branch in Bulgaria and having a license issued by the BNB.

Financial institutions are legal entities which are different from credit institutions, which main subject of business is executing one or more banking activities and or granting credits with funds which have not been raised from receiving deposits or other repayable funds from the public and/ or acquisition of shareholdings in credit institutions or other financial institutions. The financial institutions should be registered in a special register kept by the BNB in case that certain requirements are met.

A financial institution can be formed as a joint-stock company, limited liability company or limited partnership with shares. The minimum share capital of a financial institution, regardless of the services to executed, is BGN 1,000,000.

Financial institutions having their registered address in a Member State or a country that is part of the EEA also have the rights to implement commercial activities on the territory of the Republic of Bulgaria directly or through a branch upon execution of a notification procedure between their home Member State regulator and BNB.

The representative office of any bank in the Republic of Bulgaria is obliged to send to the BNB a copy of the act for its registration with the Bulgarian Chamber of Commerce and Industry within 14 days after the date of issuance of the act. That type of representative office could not carry out commercial activity in Bulgaria.

## *Section 3- Insurances*

A new Code on Insurance (CI) entered into effect from 1 January 2016, which regulates the insurance activity in Bulgaria, including the requirements for undertaking activity by an insurer from a Member State on the local market. The newly CI is in line with all insurance directives of the European Union.

In accordance to the provisions of the CI, an insurance company licensed in a Member State could execute an activity in Bulgaria on the basis of freedom of establishment or freedom to provide services only if this activity is covered by its license. Before starting activity, the insurer has to perform a regulatory procedure which involves notification to the Bulgarian regulator – the Financial Supervision Commission (FSC). The notification must be performed by the home Member State regulator following the request of the insurer.

The FSC regulates and supervises the insurers and the insurance market. Some of the essential tasks of the institution are the protection of the rights and interests of insured persons. By developing and enforcing certain legal requirements and rules and by controlling market participants, the FSC helps building and operating a fair and open market and minimizing fraud and manipulation.

**a. Insurance and insurance mediation are executed on a voluntary basis.**

The persons or legal entities who could implement insurance activities shall meet the following requirements:

(i) a joint-stock company, a European company, a mutual insurance cooperative or a European Cooperative Society with a registered office in the Republic of Bulgaria, licensed under the terms and conditions of the CI (local insurer);
(ii) a person who has received an insurance license in another Member State and operate in the territory of the Republic of Bulgaria under the right of establishment or the freedom to provide services (an insurer from another Member State);
(iii) a branch of a third-country insurer registered under the LC, licensed under the terms and conditions of the CI.

Insurers and reinsurers with seats in the Republic of Bulgaria have the right of access to the market of the European Union and the European Economic Area (Single Market) if licensed under the CI.

According to the CI, an insurance intermediary can be an insurance broker or an insurance agent, who carries out insurance intermediation against remuneration. The insurance broker is a legal entity or sole proprietor (individual) who executes insurance intermediation upon the assignment of a consumer of insurance services and following the assignment of an insurer.

The insurance agent is an individual or a trader who performs insurance intermediation under assignment of an insurer, carried out on behalf and at the expense of the insurer. There are two kinds of insurance agents – tied and untied; a tied insurance agent could not collect premiums and effect payments to consumers of insurance services.

A mandatory requirement for executing insurance intermediation activities is registration of the broker/agent into a special register maintained by the FSC.

*CHAPTER 3-Employment law*

The Bulgarian Code on Labour (CL) governs all employment relationships in Bulgaria. It regulates all employment contracts concluded between Bulgarian employers and employees and between Bulgarian citizens and foreign legal entities in Bulgaria.

Furthermore, as a result of the accession to the European Union, Bulgaria began harmonising its legislation to the European regulations.

**1. The CL regulates the following major labour issues:**

(i) conclusion, amendment and termination of employment contracts;
(ii) working hours, absences and holidays;
(iii) employment discipline;
(iv) compensation and contractual liabilities of the parties to an employment contract;
(v) special protection for some categories of employees, etc.

Employment relations are ruled also by the Law on Healthy and Safe Conditions for Work, Law on Encouragement of Employment; Law on Protection of Personal Data, as well as by a number of ordinances adopted on the basis of the CL and the above said acts.

**2. Beginning of employment**

An employment relationship is established under Bulgarian law through an employment contract (mostly) or by the special procedures of election and competitive examination, which apply in a limited number of cases, which are specified in different acts.

Under the CL, an employment contract has to be concluded in writing. It should include information about the parties as well as the following general information:

(i) the place of work;
(ii) indication of the position and the character of the work; the date of its conclusion and the starting date of its performance;
(iii) the duration of the employment contract;
(iv) the amount of basic and extended paid annual leave and of additional paid annual leaves;
(v) equal length of the period of notice to be observed by both parties upon termination of the employment contract;
(vi) the basic and supplementary labour remunerations of a permanent nature, as was as the frequency of their payment;
(vii) the continuance of the working day or week.

Other issues, not regulated by the mandatory provisions of the law, could also be agreed by the employment contract.

The employer is obliged to declare the signing of the employment contract within 3 days thereafter in the relevant division of the National Revenue Agency (NRA). The

employee cannot begin work before he/her receives a copy of the employment contract together with a copy of the notification.

### 3. Types of employment contracts

In terms of time limits, two kinds of employment contracts may be executed in Bulgaria:

(i) employment contract for an indefinite period of time:

The most common type of employment contract used in Bulgaria is the contract for an indefinite period. It guarantees a stable and long-term employment relationship and protects the rights of the employees to a high extent. An employment contract signed for an indefinite period of time should not be transformed into a fixed-term contract without the prior written consent of the employee. The employment contract is considered as concluded for an indefinite time, unless exclusively agreed otherwise.

(ii) employment contract for fixed period of time:

The employment contract with a fixed -term should be signed only in the cases as specified by the CL. Fixed term employment contract could be signed as follows:

a. for a fixed term, which should not be longer than 3 years;
b. until the conclusion of a particular job;
c. for performing temporary, seasonal or short-term works and activities, as well as with new employees in enterprises in insolvency or liquidation etc.

A fixed-term employment contract turns into an indefinite contract if the employee continues to work after the expiry of the agreed term for 5 or more working days without a written objection from the employer and the job is free.

Bulgarian labour legislation allows also for employment contracts to be signed under a "probation period" clause. The probation period could be in benefit of the employer so that she could make the decision if the employee is capable of performing the work required or to the benefit of the employee to give him the opportunity to assess whether the work is suitable for him, or agreed to the benefit of both parties. The term of the probation period cannot be more than 6 months.

The party, to the benefit of which the probation period has been agreed, has the right to end up the employment contract within the probation period. She can do this without prior notice. If not terminated during the probation period, the employment contract becomes a final contract and the general regime for termination of employment contracts becomes valid for it.

The work-at-home labour contract, the contract for remote work, as well as the labour contract with enterprise providing temporary work are also regulated by the CL. According to the so-called employee lease contract the employee concerned is to be commissioned for temporary work at a user undertaking, such work being supervised and controlled by such user undertaking. The total number of employees commissioned by an employer providing temporary work at a user undertaking could not be more than 30 percent of the employees employed by such user undertaking.

Enterprises providing temporary work shall pursue their business after registering with the Employment Agency under terms and according to a procedure stipulated in the Law on Employment Promotion.

## 4. Termination of employment and protection against dismissal

The CL regulates the termination procedures and reasons for termination of employment contracts. Termination of employment contracts should be implemented in writing only on the grounds, specified by the CL - the employer cannot freely terminate the employment. The reasons for termination could be classified widely into three main categories: (1) common grounds for termination; (2) termination by the employee (with and without notice); and (3) termination by the employer (with and without notice).

The employer can dismiss the contract (unilateral termination) in the following cases:

- With prior notice:

(i) upon closure of the enterprise;
(ii) upon closure of part of the enterprise or staff cut;
(iii) upon reduction in the volume of work;
(iv) upon suspension of business for more than 15 working days;
(v) when the employee does not have the qualities for effective execution of the work;
(vi) when the employee does not have the required education or professional qualification for the work performed;
(vii) when the employee rejects to follow the enterprise or its division in which he works, when it relocates to another city or location;
(viii) when the position on which the employee was must be vacated for reinstatement of a wrongfully dismissed employee, who previously occupied the same position;
(ix) when the employee has acquired a right to a pension for social security length of service and age (there are specific rules for professors, associate professors or persons holding a doctoral degree);
(x) when the employment contract began after the employee exercised his right to a pension for social security length of service and age;
(xi) upon change of the requirements for the position, if the employee does not possess them;
(xii) when the execution of the employment contract is objectively impossible; or (only for managerial positions) within nine months after signing of a management contract (between the company and its manager).

- Without prior notice:

(i) when the employee is detained for enforcement of a sentence;
(ii) when the employee is deprived, by a sentence or according to an administrative procedure, of the right to exercise the profession, or occupy the position, to which he is appointed;
(iii) when the employee is deprived of his academic degree, if the contract of employment has been signed in connection with this degree;

(iv) when the employee does not accept suitable work, if there is a ruling by the medical authorities that he should be reassigned to a lighter work; or
(v) upon disciplinary dismissal.

There are also other reasons which apply to positions in public authorities (e.g. incompatibility, established conflict of interest), or for medical professions (deletions from the registers of the respective professional organisation.

The procedure for dismissal is different for every case.

- For instance, in case of staff reductions, the employer must:

(i) adopt a decision for staff reduction;
(ii) collect information about whether the employee has special protection against dismissal;
(iii) and serve the dismissal documents (if there is no special protection). The amount of compensation due varies depending on the type of dismissal, but in the most usual cases the compensation is covered to two monthly salaries plus compensation for unused paid leave.

The employee could file an appeal for wrongful dismissal which must be done not later than two months after the dismissal. The employee may request from the court: (1) to establish that the dismissal was unlawful and to repeal it; (2) to reinstate the employee to the position occupied; and (3) to be awarded compensation for the time of unemployment that is equal to the employee's salary and is due only for the first six months after the dismissal (i.e., capped to six monthly salaries, if the employee remains unemployed). The speed of the employment litigation could vary significantly. It depends on the court, but usually the case will be finally resolved within a period of one to three years.

- These categories of employees have protection against dismissal on the most common reasons:

(i) mothers of children who are under the age of three;
(ii) employees assigned to a lighter position due to health-related reasons;
(iii) employees who suffer from certain diseases (ischemia of the heart, active form of tuberculosis, an oncology disease, an occupational disease, mental illness, diabetes);
(iv) employees using permitted leave; or
(v) any employees' representatives in employees' organizations.

In the above cases, the employer has to receive a prior permission from the Labour Inspectorate for the dismissal, and sometimes an opinion from the medical authorities is required. The procedure can continue from seven days up to several months.

There are other categories of employees who also have protection against dismissal: members of trade union leaderships; pregnant women and women in an advanced stage of in vitro treatment; employees in the process of using leave for pregnancy, birth and adoption. The kind of protection and the employer's options in respect of these employees is very different, so each case must be considered separately.

Worth noting the employer must ask the employee in advance to declare the existence or lack of some kind of protection before serving him/her a termination notice and dismissal documents (if protection rules cover this type of dismissal). If the employer breaks this rule, the dismissal of a protected employee is unlawful per se.

Within seven days after the termination of the employment contract, the employer is obligated to notify the relevant division of the NRA.

Concerning the harmonization of the Bulgarian legislation with the EU law, the CL was changed considering the retention of the employment relation in case of change of the employer.

- The employment relationship should not be terminated in the event of a change of employer as a result of:

(i) consolidation of enterprises by the formation of a new enterprise;
(ii) merger by acquisition of one enterprise by another;
(iii) distribution of the operations of one enterprise among two or more enterprises;
(iv) passing of a self-contained part of one enterprise to another;
(v) change of the legal form of business organisation;
(vi) change of the ownership over the enterprise or over a self-contained part thereof;
(vii) cession or transfer of activity from one enterprise to another, which include transfer of tangible assets.

The rights and obligations of the transferor-employer which come from the employment relationships existing on the date of the change should be transferred to the new transferee-employer.

The employment relationship with the employee could not be terminated also in the case of a change of employer as a result of renting, leasing or granting under concession of the enterprise or of a part thereof. In these cases, the rights and obligations of the old employer coming from employment relationships existing on the date of the change should be transferred to the new employer. Upon expiry of the contract for rental, lease or concession, the employment relationships with employees should not be terminated but must revert to the old employer thereof.

## 5. Maximum working days, minimum wage and minimum holidays

The length of regular weekly hours could not be more than 40 per week, comprising five working days of eight hours each. Bulgarian law defines mandatory limits for working hours for the working day and week. The aim of this restriction is to protect the rights of employees and to prevent an employer from imposing extended working hours.

According to Bulgarian law overtime could be executed but only exceptionally. The prescribed overtime could not be more than 150 hours per year. There are specific cases in which overtime work is allowed.

Special regulations include part-time work, shift work, including night shifts, and overtime. These rules vary depending on the labour category of the employee and the associated working conditions.

Since 01 January 2017 the minimum monthly salary defined by the Bulgarian government is BGN 460 (approximately EUR 235) and the minimum hourly working salary is BGN 2,78 (approximately EUR 1,42).

Full-time employees are entitled to minimum 20 days of annual paid holiday. There are some categories of employees, as determined by the Council of Ministers, who have the rights to have extended holidays and/or additional holidays

The CL defines the official holidays. Since 01 January 2017 in case the official holidays are during weekends, the following Mondays shall be days off. The official holidays are not included in the annual paid holiday.

## 6. Healthy and safe working conditions

In accordance to the CL the employer has the obligation to provide healthy and safe conditions in the workplace. The purpose of the law is to have better protection of the employee's life, health and working capacity by holding the employer responsible for the conditions under which the employee has to perform his/her employment obligations.

The CL includes strict obligations of the employer related to the provision and maintenance of healthy and safe conditions for work.

The competent authorities can make inspection and control in connection to execution of the above obligations by employers. They can impose fines in the case of non-compliance with the rules and the standards for healthy and safe conditions.

## 7. Discrimination protection

Discrimination is prohibited by the CL and the Law on Protection against the Discrimination (LPD).

The LPD forbids discrimination on the following protected grounds: gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or other grounds that come from law or an international treaty to which the Republic of Bulgaria is a party.

Specifically, in the employment's field, the LPD has a separate section named "Protection in Exercising the Right to Work". It prohibits discrimination on any protected ground in the fields of recruitment, working conditions, pay, performance-evaluation criteria, vocational training, qualification, career, disciplinary measures, and the most common kinds of unilateral dismissal. There is a rule that employees have the rights to equal pay for equal or equivalent work, and the employer is obliged to apply identical work evaluation criteria, defined in the collective labour agreement if any, the internal salary rules, or in the legislative acts.

There are some circumstances when different treatment is acceptable, e.g. if it is based on genuine occupational requirements. Other examples include special treatment of pregnant women or women in an advanced stage of in vitro treatment, disabled employees, etc. One of the obligations of the employer is to promote (all other conditions being equal) employment and vocational development of a gender or an ethnic group which is less represented at the enterprise.

Breaches of anti-discrimination legislation may result in proceedings before the Commission for Protection against Discrimination or directly before the court. In these proceedings, the burden of proof is shifted and the employer shall prove she acted in accordance with the law.

## 8. Employees' privacy and personal data protection

The Bulgarian Constitution incorporates the principle of protection of a personal life, as well as of personal correspondence and all other communications. The Code on Crimes, the LPDP, and other legislative acts involve special rules about privacy and the limits to interference into someone's personal life.

It is considered that employees cannot have the same level of privacy at the workplace as at home. The LPDP provides rules which help employers define what is permitted and what is not. Firstly, employers must respect the main principles that personal data is processed legitimately and in good faith, for specific and legitimate purposes; the data should be corresponding and proportionate to such purposes; it must be correct; and it has to be deleted if its processing is not needful anymore. Secondly, as the LPDP specifies exhaustively the hypotheses which allow for processing of personal data, employers must be sure that the processing of each kind of personal data qualifies under at least one of them.

The monitoring's legality at the workplace must be assessed for each case. For instance, CCTV monitoring shall be done based on the legitimate interests of the employer, or on a legislative requirement (e.g., in banks, casinos), when it is important to protect the life and health of people (e.g., in hospitals), or if it is based on the explicit approval of the employee – in case that such processing meets the principles of legitimacy, proportionality and relevance.

In respect to monitoring of email/internet use, employers should keep in mind the constitutional right to confidentiality of correspondence, and that breach thereof is a crime under the Code on Crimes. Some employers solve this problem by prohibiting the use of the company's IT structure for personal purposes, in which case they can monitor email/internet use, because business correspondence is not part of the protection of private correspondence. Others allow limited use of the IT structure for personal aims, but require the employee's approval to process such data. However, the last approach is sort of questionable.

The scope of acceptable background checks is also disputable, taking into consideration that the law enumerates the certain documents to be produced for the conclusion of the labour contract, and forbids the employer to request for other

documents. Another thing to be considered are the anti-discrimination rules which forbid the employer from collecting information which is in relation to any of the discrimination-protected grounds, as well as the PDPL rules requiring proportionality and relevance for such checks. Generally, it should be accepted that the employer could request the employee's employment history, and documents which show education and qualification. However, calling ex-employers without the employee's approval, asking for credit history or for marital status would normally hardly meet the criteria for legitimate processing. Checks for criminal history could be made only for positions for which a legislative act requires clear record.

The employee could be tested (e.g. for alcohol or drugs, etc.) in the workplace only with her consent. If the employee refuses to be tested there are should not be any negative consequences for him.

### 9. Secondment

The Bulgarian employment law permits a temporary transfer to another job or post know as "secondment". If it is necessary for the enterprise, the employer should second the employee to the workplace outside the place of his permanent employment but this could be done for no more than 30 calendar days without interruption. Secondment for a period longer than 30 days is implemented with the written consent of the employee.

The law of Bulgaria has regulated secondment and sending employees within the provision of services in the territory of another Member State of the European Union, a State party to the Agreement on the European Economic Area or of the Swiss Confederation. This kind of change in the employment relationship is for the account of the employer and under its regulation on the basis of a contract signed between the employer and the service's user;

### 10. Work of foreigners in Bulgaria

According to the CL there is not specific treatment for expatriate personnel. Usually, foreign nationals who are looking for employment in Bulgaria must receive work permits. Employment contracts concluded by foreign nationals working in Bulgaria shall contain rules which regulate accommodation expenses, medical treatment, insurance, transportation costs to and from the country of permanent residence, etc.

#### i. European citizens

After Bulgaria's accession into the European Union the citizens of the member states of the European Union, the European Economic Area and the Swiss Confederation could be employed, self-employed or sent to a business trip to Bulgaria without restrictions and without any need for the issuance of a work permit.

The foreign employees shall be registered in the NRA by their local employer within three days from the beginning of their employment.

#### ii. Non-EU citizens

Local employers should request the work permits required for foreigners and issued by the Employment Agency. A number of legal terms and conditions must be met for the permit to be issued. The maximum duration for the work permit is one year.

If the terms and conditions for its issuance are still valid, the work permit may be renewed for an additional one-year term with an option to prolong for 12 months, but the total duration of the permit and its prolongations should not be more than 3 years (exception of the 3 year- restriction are managers and executive directors of companies, teachers and others).

Any foreigners who have been permitted long-term or permanent residence in the Republic of Bulgaria and the members of the family of a foreigner holding a long-term residence permit may start the employment relationship according to the procedure established for Bulgarian citizens.

Foreigners (e.g. managers of companies, members of boards in companies, etc.) do not need a work permit if they work in Bulgaria under contracts different from the labour contract. Additionally, foreigners holding prolonged or permanent residence permit also do not have to hold a work permit to work in Bulgaria.

Moreover, work permit is not required for some short-term assignments (e.g. scientific, cultural, sport assignments not exceeding 3 months, trainings, etc.).

Related to the issuance of an EU Blue Card for highly qualified foreign employees, the Employment Agency may grant written consent form approved by the Minister of Labour and Social Policy which grant rights to the foreigner to work only for particular employer and on particulate position.

*CHAPTER 4-Doing business in specific fields*

**Why start a business in Bulgaria?**

Bulgaria has become a very appealing choice to open a business due to its geographical position, the simplified registration process, low corporate taxes, low minimum wage, low insurance costs, etc. In relation with business sector, the most important sectors are:

## *Section 1-Agriculture*

### 1. Investing in Bulgaria's Agriculture:

#### i. General Information

Bulgaria covers an area of 110 900 km2 of which 81% is rural. 46.1% of the total area is agricultural land. Bulgaria's land is usually measured by the unit decare (dca), as 10 dca = 1 hectares.

Bulgaria has highly polarised farm structures and fragmented land ownership following the land restitution process.

Bulgaria has rich natural biodiversity and a significant share of high nature value farmlands.

Agriculture is close to 5% of Bulgaria's GDP.

The common agricultural policy (CAP) establishes common policy for all 28 EU countries, the CAP strengthens the competitiveness and stability of EU agriculture by providing direct payments aimed at stabilising farm revenues and finances projects responding to country-specific needs through national (or regional) rural development.

#### ii. EU Support for Bulgaria's Rural Development

For 2014-2020, a total contribution of more than €2.9 billion (€2.4 billion from the EU, including €28 million transferred from the Bulgarian allocation for direct payments, €0.5 billion in national funding) has been distributed for measures that will benefit Bulgaria's rural communities.

Through the CAP, the EU also supports producer organisations that can help farmers to become better organised and to present their products more effectively, strengthening their position in the food supply chain.

In the period from 2007 to 2013, more than €3.2 billion of public funds (of which €2.6 billion from the EU) was invested via Bulgaria's rural development programmes in a range of different activities which support agricultural production and benefitting Bulgaria's rural areas, preserving their diversity and enhancing their economic strength, cultural richness and social cohesion. More specifically, rural development funds helped: more than 5 400 young farmers to follow up the profession, contribute

to gross value added (GVA) of over €1.6 billion from farm holdings and enterprises supported by the programme and allowed more than 560 000 people living in Bulgaria's rural areas benefit from improved basic services.

Rural development funds have also helped for the development of a more sustainable model of agriculture: more than 4 900 farmers (accounting for 841 000 ha) received support for agri-environmental measures; nearly 1 400 farms (accounting for 71 000 ha) received support for organic farming measures;

**2. Agriculture in Bulgaria**

Nowadays in Bulgaria in different farms and agricultural cooperatives mainly produce these agricultural products:

(i) Plant products: - Cereals - wheat, barley, rye, oats, corn, rice, beans, lentils, alfalfa and others;
(ii) Technical crops - oilseed rose, lavender, sunflower, canola, soybeans, peanuts, pumpkin seeds, cotton, fennel, parsley, hops, coriander and tobacco;
(iii) Vegetables - tomatoes, sweet peppers, hot peppers, cucumbers, potatoes, squash, zucchini, cabbage, onion, leek, garlic, eggplant, carrots, etc.;
(iv) Fruits - apples, pears, apricots, peaches, plums, prunes, cherries, sour cherries, quinces, watermelons, melons, walnuts, hazelnuts, strawberries, raspberries, blueberries, blackberries, rosehips and others;
(v) Viticulture - dessert and wine grape varieties, red and white;
(vi) Herbs - sighting and collecting various herbs;
(vii) Mushrooms - growing edible mushrooms.
(viii) Beekeeping - extraction of honey;
(ix) Livestock products - in Bulgaria grown cattle, buffalo, sheep, goats, pigs, chickens, turkeys, ducks, geese and other. Yield total of approximately 250,000 tons of milk, 211 thousand tons of meat and 1.2 million eggs.

## *Section 2-Tourism*

**1. Investing in the Field of Tourism:**

Tourism is one of the most important business field in Bulgaria because of the excellent geographical location, fabulous pristine rich nature, diverse terrain and moderate continental climate. In the last three years, the Bulgarian tourism tends to advance progressively. Tourism (international and domestic) has traditionally been our No.1 export sector, accounting for about 13% of GDP in 2016.

Tourism is one of the fastest growing sector in the Bulgarian economy with superb opportunities for foreign investment with high return on investment ratios. Some of the tourism categories in Bulgaria are:

(i) **Sea tourism** - The Bulgarian Black Sea coast is an incredible place for summer holidays. Approximately 4 million tourists visit our sea coast. The coastline is 378 km long, with 209 beaches that have a total area of 16 sq. km. The beaches and the sea offer amazing conditions for various water sports such as windsurfing, water skiing, diving, underwater exploration, and fishing, whether from the surface or underwater;

(ii) **Mountain tourism -** about 30% of Bulgaria is mountainous. Conditions are exclusively conducive for tourism in both winter and summer. The ski season in the medium high and the alpine resorts lasts about 130 days each year. Total length of the ski tracks in Bulgaria is 210 km;

(iii) **Cultural tourism** - Bulgaria is a country with thousands of years of history and a cultural heritage that embraces ancient civilizations – we have 9 UNESCO world heritage sites with more than 330 museums and 160 monasteries. There are also many opportunities in connection with the traditional economic activities in our lands (such as the roes oil manufacture and wine production);

(iv) **Balneology, SPA and Wellness** - The healing power of mineral springs has been well-known since the time of the Thracians. There are more than 600 known sources with 1 600 springs that have a total capacity of 4 900 l/s. Bulgaria also possesses valuable deposits of curative firth mud and curative peat.

The management, regulation and control of tourist activities, services and sites is governed in the Tourism Law. The main aim of the law is to introduce uniform criteria for execute tourist activities and providing tourist services and to provide protection for the users of the tourist services. The state policy in the sector of tourism is defined by the Council of Ministers.

## 2. Hotel and Restaurant Activities

Providing hotel or restaurant services shall be carried out by a person who is a merchant according to the LC or is a legal entity who is entitled under another law to execute an economic activity, including under the legislation of another Member State of the European Union; is not in insolvency or liquidation proceedings; has a staff with the required education and language qualification, and for the management staff an internship is required.

Persons or legal entities that wishes to perform hotel or restaurant activities are obliged to provide tourist services in a categorized tourist site or in an establishment on which a temporary certificate of open categorization procedure has been issued. The accommodation places are two classes - "A" (hotels, motels, apartment complexes, holiday villages, tourist villages and villas) and "B" (family hotels, hostels, guest houses guest rooms, guest apartments, bungalows and campsites). Accommodation, dining and entertainment establishments are categorized as "one star", "two stars", "three stars", "four stars" or "five stars". The indication of the category of tourist sites is executed by the Minister of Tourism on the proposal of the Expert Commission for Categorization and Certification of Tourist Sites or by the Mayor

of the Municipality on the location of the site upon proposal of the respective Municipal Expert Committee on categorization of tourist sites.

### 3. Tour Operator and Tourist Agent Activities

Tour operator and /or tourist agent activity shall be executed by a person established in a Member State of the European Union or in another country party to the Agreement on the EEA if, upon establishing the territory of the Republic of Bulgaria, certifies his right to engage in such an activity and a certificate or other document from a credit or insurance institution which contains evidence of the existence of insurance covering his liability for damage caused which may to occur as a result of culpable non-performance of professional duties.

Tour operator or tourist agent activity on the territory of the Republic of Bulgaria is implemented only by persons registered under the Law on Tourism.

The registration is done by the Minister of Tourism in the Register of Tour Operators and Travel Agents. The register is public.

For the aim of tour operator or tourist agent activity in the Register of Tour Operators and Travel Agents, part of the National Tourist Register should be entered a person who meets the following requirements:

(i) is a merchant in the meaning of the LC or is a legal entity who is entitled, under another law, to do business;
(ii) has staff with suitable education, language training and experience;
(iii) the person executing the functions of managing tour operator or tourist agent activity has appropriate education, language training and traineeship;
(iv) has provided an appropriate room for tour operator or tourist agent activity;
(v) has signed a Preliminary Contract for "Tour Operator's Responsibility";
(vi) is not in liquidation or insolvency proceedings;
(vii) has not done tour operator or tourist agent activity without registration in the last 12 months;
(viii) does not have a prohibition to perform the activity in the last 12 months.

## *Section 3 - IT & ICT*

### Investments in the Sector of Information and Communications Technology (ICT)

There are new opportunities that exist in the ICT sector as Bulgarian companies work to increase their competitiveness in the EU, and the Bulgarian Government complies

with EU directives and legislation concerning its digital economy. Bulgaria's ICT sector for 2016-2017 is defined as stable and growing.

In Bulgaria, there are approximately 10,000 ICT companies, 70 percent of which are only exporting. The International Data Corporation (IDC) (the premier global provider of market intelligence, advisory services, and events for the information technology, telecommunications and consumer technology markets) points out that Bulgaria's ICT market reached about USD 1 billion in 2016, presenting a growth of 1.7 percent because of the good performance of IT services and software - while the hardware segment stagnated.

The increase towards cloud services, mobility and social business positively defines Bulgaria's future IT landscape with an anticipated annual increase in IT expenditures of 4.2 percent in the next 5 years, boosted by an accelerated digital transformation that comes from Bulgaria's newly launched e-Government State Agency.

**(i)** **Labour** Bulgaria has a respected, highly-qualified and inexpensive IT specialists. EUROSTAT estimates that 70,000 people are employed in the ICT field in Bulgaria, which is 2.3 percent of the total number of employees in the country. This is below the EU average of 3.5 percent. A highly-qualified IT specialist in Bulgaria earns about USD 20,000 per year which is two to three times more than the wages earned by the average Bulgarian.

**(ii)** **Use of Internet/On-line Activities**: Bulgaria is on 19th place among the EU's 28 countries with 82 percent of Bulgarians using voice or video calls, and 74 percent participating in social networks. However, Bulgarians do not want to participate in on-line transactions, with only 7 percent of Bulgarians using online banking and only 31 percent shopping online.

**(iii)** **Digital Public Services**: Better online/e-government public services will give an opportunity to Bulgarians to interact with public authorities. Bulgaria is the second lowest in the EU in terms of using e-government services. At the end of 2016, the Bulgarian e-Government Agency was established with a main purpose to combine all government efforts in executing the proper IT infrastructure for digital public services. By 2022, Bulgaria's public administration is expected to be fully digitally transformed, as per the policy of the State e-Government Agency.

**(iv)** **Technology Sub-Sector Best Prospects:** Cloud technologies, Big Data, Internet of Things, and social media are technology segments that grow up. Emerging sub-sectors include cybersecurity, e-health, e-education, automotive electronics, intelligent transportation and smart city technologies.

**(v)** **Opportunities:** Government tender opportunities exist for EU-mandated IT solutions to include: computers, peripherals, data centres, software, servers and other hardware technologies and integration services. Some of the current projects are: the national e-identification project of the Ministry of Interior, the EU funded project under the Program for Rural Development and the EU Operational Program for Good Governance for broadband access throughout Bulgaria.

*PART II - TAX*

**Tax and Social Security Systems in Bulgaria**

The Bulgarian tax system is based on the so-called declaration principle. The companies and persons disclose facts for their economic activity in the terms defined by the law. They also calculate the due taxes and transfer the respective amounts to the budget. The NRA has the authorization to check at any time if the factual activity matches the submitted declarations. The different laws specify different kind of declarations in different deadlines. In accordance to their activities and their legal status the companies are obliged to pay different kind of taxes.

Taxation regime in Bulgaria defines two principal categories of taxes depending on the subject of taxation. Direct taxes refer to property and income and shall be deducted directly from the taxpayer's income (corporation tax, personal income tax, withholding tax). Indirect taxes refer to certain business facts and events (Value added tax (VAT), excise duties, insurance premiums tax).

*CHAPTER 1- Taxes and Contributions*

## 1. Corporation tax

The corporate tax regime in Bulgaria is regulated by the Law on Corporate Income Tax (LCIT). In relation with the accession of Bulgaria to the European Union since 01 January 2007, the new LCIT was adopted to have harmonization between Bulgarian taxation legislation and the requirements of the European directives concerning direct taxation. Another reason for accepting the new act in this field is to make the perception and application of the corporate taxation easier for the taxable persons and for the revenue administration.

According to the LCIT all legal entities and unincorporated associations, which execute economic activity in Bulgaria, are subject to the levy of corporation tax at the rate of 10%, the lowest in the EU. The unincorporated associations are treated as equivalent to legal entities.

Resident legal entities are liable to taxation in respect of the profits and income accruing to them from all income sources both inside and outside Bulgaria.

Non-resident legal entities are subject to corporation tax only in regard of their economic activity in Bulgaria.

In accordance to the LCIT, "resident legal entities" are the legal entities incorporated under the Bulgarian law, the companies incorporated under Council Regulation (EC) No 2157/2001 and the co-operative societies incorporated under Council Regulation (EC) No 1435/2001, where their registered office is placed in the country and they are entered in a Bulgarian register. Legal entities which are not registered/incorporated in Bulgaria but execute economic activity by opening a branch, an office, an agency or another form of representation within the territory of the country ("permanent establishment" within the meaning given by the LCIT) are liable to corporation tax on the profits and income accruing from their permanent establishment inside Bulgaria.

The annual taxable profit must be declared in a tax return not later than 31 March of the following calendar year. The taxable profit is a positive quantity, computed on the basis of the financial result (accounting profit/loss) as the difference between income and expenditure before assessment of taxes on profit and adjusted according to the procedures established by the law. Depreciation expenses are defined to arrive at the taxable profit for tax purposes. The amount of depreciation varies by category of asset and is received by systematic application of the straight-line depreciation method. The rates of depreciation are determined on a single occasion for the calendar year and should not be more than the certain values as specified in the Bulgarian law.

## 2. Personal Income Tax

The regime of personal income taxation, which includes sole traders, local individuals for income sources in Bulgaria and abroad and foreign individuals for income from sources in Bulgaria, is regulated by the Law on Personal Income Tax (LPIT). Local individuals are tax liable for their incomes from sources worldwide, while the foreign

individuals are tax liable only for their income originating from Bulgaria. The tax year for the personal income tax purposes is the calendar year.

### 2.1. Residence (Local individuals)

There are four criteria for defining the residence of an individual in Bulgaria for personal income tax purposes: individuals who have a permanent address in Bulgaria, or who are physically present in Bulgaria for a period that is more than 183 days for each 12 months' period, are considered Bulgarian residents for tax purposes. The respective individual becomes a Bulgarian resident in the calendar year when his/her stay in the country is more than 183 days. The days of departure and arrival are treated as separate days of physical presence in Bulgaria.

There is an additional criterion for tax residence was set, namely the centre of vital interests. Individuals who have closer economic and personal relations to Bulgaria than to another country would be considered Bulgarian tax residents regarding the duration of their physical presence in the country. The personal income tax legislation also specifies that the centre of vital interests has priority over the permanent address criterion, i.e. if an individual has a permanent address in Bulgaria but his/her centre of vital interests is abroad, he/she would not be seen as a Bulgarian resident for tax purposes.

### 2.2. Types of Taxable Personal Incomes

#### 2.2.1. Employment Income

The tax on employment income is withheld by the employer and is remitted to the budget on a monthly basis. The tax on employment income is calculated on the gross amount of the income received for the respective month after defined statutory tax deductions. The tax rate since 2008 on employment income is 10% flat rate.

#### 2.2.2. Non-employment Income

Non-employment income is also subject to 10 % flat rate. The due tax is withheld and paid on a monthly basis by the payer of the income if a legal entity. Otherwise, the tax is paid by the recipient of the income on a quarterly basis.

Individuals executing economic activity as sole traders are required to adjust their taxable income under the rules regulated in the LCIT. The tax rate on the income of sole traders is 15 % flat rate.

Individuals have an obligation to report their income by filing an annual tax return and pay the annual tax as per the return by 30 April on the following year. In case the only income they have is from employment income, there is no obligation for the submission of such tax return.

## 3. Value added tax (VAT)

The regime of the Bulgarian VAT is regulated in the Law on Value Added Tax (LVAT). The LVAT is based on the rules that came from the Council Directive 77/388/EEC and Council Directive 67/227/EEC which was replaced by the Council Directive

2006/112/EC of 28 November 2006 on the common system of value added tax (effective as from 01.01.2007).

VAT accounts for about half of the government revenue.

These transactions are subject to Bulgarian VAT:

(i) any taxable supply of a good or service - this includes any transfer of ownership of a good or the provision of a specific service against payment of a specified amount of money in exchange for the end user;
(ii) Intra-Community acquisitions of goods for consideration within the territory of Republic of Bulgaria from another EU Member State:
(iii) by a VAT registered person or a person subject to an obligation for a registration;
(iv) in the case of acquisition of new means of transport;
(v) in the case of acquisition of excise goods by a taxable person or a non-taxable legal entity which is not registered under the law;
(vi) Importation of goods (from third countries or territories).

Bulgaria has joined to the VAT Information Exchange System (VIES) from the date of the accession of Bulgaria in European Union.

### 3.1. Who is liable for VAT?

A taxable person is any person who executes an independent economic activity, irrespective of the aims and the results thereof. Independent economic activity is the activity of manufacturers, traders and persons providing services, including in the sector of mining and agriculture. Independent economic activity is any activity implemented on a regular or occupational basis against remuneration, which include the exploitation of tangible and intangible property in order to receive regular income from it. Independent economic activity, however, does not include the activity of lawyers, notaries and private enforcement agents.

### 3.2. Rates

There are two rates for VAT - a basic rate of 20% and a specific rate of 0%.

The tax rate is 20 % for: taxable supplies other than those explicitly stated in the law as taxable at a zero rate.

A zero rate is levied, for example for passenger's transportation from outside the country to a place on the territory of the country, international transport of goods, etc.; import of goods in the country's territory; taxable intra-Community acquisitions.

The tax rate for accommodation provided in hotels and similar establishments, which include the provision of holiday accommodation and rental of camping or caravan sites, is 9 per cent.

There are some cases in which the legislation has foreseen that delivery will be released, that is, VAT will not be charged. These include the supply of goods and services for the aim of humanitarian aid, the delivery of social benefits, the transfer of land ownership, the organization of gambling games, etc.

The difference between the exempted deliveries and the zero rate is the right to deduct the tax credit after the delivery.

### 3.3. VAT Registration

The LVAT defines a compulsory and a voluntary registration. Subject to a registration are both persons established on the territory of the country and persons who are not established on the territory of the country provided that they effectuate taxable transactions as defined by the act. Foreign persons register through accredited representative with the exception of the cases of foreign persons' branches.

The obligation for a VAT registration occurs when the total taxable turnover of a person (taxable basis of all taxable transactions) for the previous twelve months is equal or exceeds BGN 50 000.

Taxable persons who do not have a registration under the general rules and non-taxable legal entities are subject to a compulsory registration in a case where they effectuate intra-Community acquisitions with total taxable amount for the relevant calendar year equal or exceeding BGN 20 000.

Persons not complying with their registration obligations shall be registered ex officio by the tax authorities if the conditions for a registration under the LVAT are met.

Any taxable person or non-taxable legal entity (for intra-Community acquisitions) who are not obliged to have a compulsory registration could register voluntarily under the LVAT.

## 4. Excise Duty

Excise duty is an indirect tax which is charged on these goods: alcoholic beverages; tobacco products; energy products and electricity.

They shall be subject to excise duty unless placed under an excise duty suspension arrangement: upon their production within the territory of the country; upon their introduction into the territory of the country from the territory of another Member State; upon their import into the territory of the country.

The import of excisable goods stands for the introduction of non-Community excisable goods into the territory of the country, as well as the introduction of Community excisable goods from third countries, which are part of the customs territory of the EU. When the goods are placed under a customs procedure, during their introduction into

the territory of the country, their import is considered complete when they are released for free circulation.

From the date of release of the excisable goods for consumption there is an obligation for payment of the excise duty.

## 5. Social Security

### 5.1. EU Social Security System

The movement of workers and self-employed persons between the Member States of EU inevitably involves also social security issues. The EU Regulations related to the coordination of social systems are directly effective in all EU Member States and their main aim is to define the applicable national jurisdiction.

Under the rules provided in the EU Regulations, the main principles of determining the legislation applicable to employed persons are as follows:

(i) persons employed in one of the Member State's territory are subject to the legislation of that state, even if they reside in the territory of another state or if the registered office or place of business of the undertaking or individual employing him is located in the territory of another Member State;
(ii) they reside, if they do their activity partly in that territory or if they are connected to several undertakings or several employers who have their registered offices or places of business in the territory of different Member States;
(iii) the registered office or place of business of the entity employing them is located, if they do not reside in the territory of any of the Member States where they execute their activity.
(iv) The rules which are relevant to employees normally employed in a Member State and posted by their employer to another Member State lay down that these continue to be subject to the legislation of the first state if all the below conditions are executed:
(v) the reason for seconding the employee is execution of work for the original employer and the integral relationship between this employer and employee is saved,
(vi) the anticipated duration of the secondment is no longer than 12 months;
(vii) the employee is not posted to replace another posted employee.
(viii) The term of the posting could be extended under the conditions governed by Regulation No. 1408/71/EEC.

A person who is self-employed in the territory of one Member State should be regulated by the legislation of that State even if he resides in the territory of another Member State;

A person who is normally self-employed in the territory of two or more Member States should be subject: to the legislation of the Member State in whose territory he stays if he pursues any part of his activity in Member State's territory; to the legislation of the

Member State in whose territory he executes his main activity if he does not do any activity in the territory of the Member State in which he resides.

### 5.2. Social Security System in Bulgaria

If Bulgarian law is applicable pursuant to the rules described above, the following main points should be considered as far as social and health insurance system is concerned:

Social security model includes 3 parts:

(i) Compulsory social insurance (first part);
(ii) Compulsory additional pension insurance (second part);
(iii) Voluntary social insurance (third part).

The first part covers protection against sickness, accidents at work, occupational disease, maternity, unemployment, old age and decease.

The insured persons are generally separate in two sectors: insured for all insured contingencies such as workers/ employees, civil servants, magistrates etc.; and insured only against certain contingencies - liberal professions, craftsmen, sole traders etc.

The financial burden within the first part of the social security system is distributed between the insurer (employer/assignor) and the insured person. Self-employed persons are insured for their own account.

The computation base for calculating the social security contributions due is in general equal to the gross amount of the income (persons working under civil contracts can deduct certain percentage of expenditures fixed in advance by the law). The law however provides for the application of minimum and maximum amounts of the computation base/social insurance income. For 2017 the maximum social insurance income equals to BGN 2 600. The minimum social insurance income is differentiated for workers/employees (differentiated further in accordance to the economic activity and the profession), self-employed and agricultural professions.

The second part of the system contains the compulsory additional pension insurance in pension funds which are instituted and managed by social insurance companies subject to licensing and surveillance regime. The additional pension insurance is personal and each insured person has his own individual social insurance account. Persons, born after 31 December 1959, must be insured in a universal additional fund and who are subject to insurance under the first part. These persons are entitled to an additional life pension for age. The financial burden is shared between the insurer and the insured person as for the first part.
Persons who should be insured in a professional additional fund are those who work in certain labour conditions irrespective of their age. These persons shall receive

professional pension for early retirement. The financial burden falls fully on the insurer.

The third part of the social insurance system covers the voluntary additional pension insurance as well as the voluntary additional insurance for unemployment and/or professional qualification. The funds are also instituted and managed by social insurance companies which are subject to licensing and surveillance regime.

*CHAPTER 2 – Administrative Procedures and Institutions*

For certain kinds of companies and for execution of certain activities, the law specifically postulates that it is required for persons or legal entities to obtain an individual permitting administrative act as an element of their formation as merchants.

**1. Companies for which the license / permit is issued:**

(i) Insurance companies, Investment firms, Pension Insurance Companies – the authority issuing/revoking the license is the Financial Supervision Commission;
(ii) Banks- the license should be issued by the Bulgarian National Bank (BNB);
(iii) Tour operator or travel agency activities- license is issued by the Executive of the State Tourism Agency;
(iv) Sporting activities- license is issued by the Executive of the State Agency of Youth and Sports;
(v) Radio and /or Television activity- license is issued by the Council for Electronic Media;
(vi) Authorization for the production of all kinds of medicinal products according to the meaning of the Act, of active substances used as starting materials and of medicinal products referred for clinical testing is issued by the Executive of the Bulgarian Drug Agency etc.

**2. Concessions**

Concessions are regulated in Bulgaria by the Law on Concessions which defines the conditions and procedures for granting concessions, for conclusion, change and termination of concession contracts.
Concession procedures are related to any Bulgarian and foreign individual or legal entity subject to general limitations similar to the ones in the Law on Public Procurement.
As opposed to EU law which only cover works concessions, the Law on Concessions is entirely applicable both to works and services concessions (also to extraction concessions with special rules in other laws). No thresholds apply.
Object of concession may be state and municipal property but also the property of certain public organisations.

**2.1. Distribution of the role between public and private sector:**

(i) the concessionaire takes the risk of construction, management and maintenance (in a case of works concession) or the management risk (in a case of services concession); management and maintenance covers the availability of the relevant service and the provision of continuity and quality in line with the concession agreement;

(ii) the concessioning authority/entity can have to give to the concessionaire with a compensation payment for part of the construction/management/maintenance costs in cases where a socially acceptable price of the service must be achieved or in cases of recovery of the concession object following destruction in force majeure circumstances – this potentiality must be defined in the decision opening the award procedure depending on the expected economic efficiency of the concession operation;

(iii) the concessionaire may have to supply the concessioning authority with a concession payment while an acceptable price level of the service must be kept in mind – again this possibility must be defined in the decision opening the award procedure which depend on the expected economic efficiency of the concession operation;

### 2.2. Steps in awarding a concession include:

(i) preparatory actions – this stage involves execution of economic, legal, technical and environmental analyses justifying the concession; the initiative could come both from the relevant authority or from an interested person;

(ii) award procedure - after the changes in July 2008 concessions are awarded solely on the basis of an open procedure;

(iii) conclusion of a concession contract – the concession contract is a long-term agreement which may be signed for up to 35 years. This period may not be extended. The concession contracts could be changed through written annexes between the parties under certain legislative conditions;

(iv) After the amendment in July 2008 - possibility for providing the concession to a newly established company (special purpose vehicle) incorporated between a public body/public company and the candidate with the winning tender. This condition must be announced in the decision opening the award procedure which may also involve the rules concerning the participation and the relations in the newly established company. This new rule allows to public authorities to use a single competitive procedure both to determine the conditions for awarding a concession contract and the private sector partner to participate in the entity performing the project.

## 3. Public Procurement (PP)

### 3.1. Background

Public procurement market in EU is measured in thousands of billions euro and the existence of transparent, non-discriminative and competitive mechanisms for awarding of public contracts is very important for the smooth functioning of the Internal Market. The tendency of increase in the number of procedures and their value is around 20 %. Because of the constant economic growth and the expected input from the EU structural funds the figures are expected to grow higher.

### 3.2. Legislative framework

**(i)** **EU Legislation** covers the main Directives № 2004/18/EC (applicable to public authorities - so called "general directive") and № 2004/17/EC (applicable to the contracting entities operating in certain sectors - so called "sectoral directive") and the Remedies Directives № 89/665/EC and 92/13/EC (recently changed in December 2007) which arrange the access to legal protection of interested person.

**(ii)** **National legislation**: In February 2016, the National Assembly of the Republic of Bulgaria adopted a new Law on Public Procurement (PPA). The aim for adopting an entirely new law is the obligation to transpose two new directives adopted by the European Parliament in 2014 - Directive 2014/24 / EC repealing Directive 2004/18 / EC until 18 April 201 and Directive 2014/25 / EC (sectoral entities), which repeals Directive 2004/17 / EC.

In accordance to the LPP contracting authorities shall be state bodies, regional and local authorities, public organisations (persons created to serve public interests and controlled by other contracting authorities or financed primarily through public funds).

Contracting entities cover public undertakings involved in certain economic fields and other persons involved in those sectors if enjoying special or exclusive rights. The economic fields are those identified in Directive No. 2004/17/EC (water, energy, transport and postal services), exploration and extraction of oil, natural gas, coal and other solid fuels, operation of airports, ports or other terminal bases used for transportation by air, sea or internal water ways.

Local or foreign natural and legal persons as well as groupings thereof could participate in public procurement procedures in Bulgaria subject to some general limitations (for. ex. persons declared insolvent or candidates having as managers or members of the board persons convicted of certain categories of crimes).

### 3.3. The LPP provides for the following kinds of award procedures:

(i) open procedure - any potential supplier could give a tender;
(ii) restricted procedure - any potential supplier could ask to participate but only those selected by the contracting authority/entity may give a tender;
(iii) competitive dialogue - any potential supplier may request to participate but following a selection phase the contracting authority/entity chooses the operators to start dialogue with for the aim of identifying one or more reasonable solutions which are able to meet his needs; the candidates with adequate solutions will then be invited to submit their tenders;
(iv) a negotiated procedure (with or without a notice publication) – the conditions of the contract are negotiated between the contracting authority/entity and suppliers who are chosen by him.

The principle involved in the LPP is that contracting authorities/entities follow the open or restricted procedure in all cases where there are not any reasons to follow competitive dialogue or negotiated procedures. The last one can be applied under

strict conditions defined by the LPP. Most of the award procedures in Bulgaria are open.

# PART II: LEGAL GUIDE FOR ROMANIA

# Table of Content of Romanian part

## Short Considerations about Romania

Romania is a sovereign state situated in the South-Eastern region of Europe, close to the Western Europe and the Balkan Peninsula. Romania's surface is of 238,391 km2, representing 4.8% of the Europe's territory and 5.4% of the European Union's territory.

The State border is 3,149.9 km and Romania's neighbours are the Moldavian Republic (N-E), Ukraine (N), Hungary (N-W), Serbia (S-W), Bulgaria (S).

From the geographical natural environment perspective, Romania is a very rich country because it has mountains, hills, plains and sea (in the S-E of the country is the Black Sea). Romania has significant water resources and natural resources (oil, coal, natural gas, iron and other metal ores).

As for its population, according to the available official data, Romania's stable population is around 20,000,000 inhabitants. Romania's capital is Bucharest (in Romanian, Bucuresti), the biggest Romanian city and the best industrial and commercial centre of the country (population of 1,883,425 persons – the 10th city of the European Union as for population). Romania's main cities, with population of more than 100,000 inhabitants, are: Cluj-Napoca, Timisoara, Iasi, Constanta, Craiova, Brasov, Galati, Ploiesti, Oradea, Braila, Arad, Pitesti, Sibiu, Bacau, Targu Mures, Baia Mare, Buzau, Botosani and Satu Mare. It is important to underline that the Romanian rural area amounts to 207,522 km2, representing 87.1% of the total size of the territory, reason for which the agriculture is an important branch of the national economy.

We strongly consider that, for a foreign investor, in order to decide to invest in Romania, it is very important for him to know a few facts about its history because it shapes also its economy.

At the middle of the 20th century, Romania was a constitutional monarchy with liberal political and economic system, enjoying democratic political institutions. Unfortunately, this changed because of the Soviet occupation during World War II, when the communist regime was installed, eliminating the individual freedom and the private property.

The Romanian economy was under the communist regime very much structured under a totalitarian system focused on a highly centralized and nationalized economy. The communist regime resisted until 1989 under the lead of Nicolae

Ceausescu, when after the Revolution, Romania returned to its traditional democratic values, being in a deep socio-economic and political changes.

After the 1989 revolution, the main aims declared by the Romanian Government were to bring land property back into private ownership (by withdrawing the State from the main industries) and the construction of a free-market economy based on competition.

At the national level, after 1989 Romania has modernised its entire legislation - a new Constitution and new codes being adopted (the 1991 Constitution also amended in 2013, the new Civil Code enacted in 2011, the new Civil Procedure Code enacted in 2013, the new Criminal Code and the new Criminal Law Procedure Code enacted in 2014, the new Fiscal Code and the new Fiscal Procedure Code enacted in 2015).

At the international level, Romania is a member of several international organisations, among which we mention: United Nations (1955), Council of Europe (1993), Nord Atlantic Treaty Organization (2004), Organization for Security and Co-operation in Europe (2003), European Union (2007). Romania is also member of the World Bank Group, International Monetary Fund, European Bank for Reconstruction and Development, and the Organisation for Economic Cooperation and Development.

We really hope that this presentation introducing the Romanian business environment shall be a strong invitation to invest in Romania.

However, we underline that this present legal guide represents a general description of certain relevant topics, and does not provide any legal opinion on which third parties may rely on. We strongly advise any interested third party to call on specialised and constant legal guidance if decided to invest in Romania.

We remain at your disposal for any additional information you might require on this project.

CLIZA LAW OFFICE

*PART 1 – LEGAL*

*CHAPTER 1 – Company Law*

Please note that foreign companies may carry out activities in Romania by one of the following methods:

1. entering into business relationships with Romanian partners (e.g. distribution agreements with Romanian companies);
2. setting up subsidiaries in one of the forms provided for by the law (the most used form is the limited liability company, especially because its shares may be fully owned by a sole shareholder). These subsidiaries shall be registered as Romanian legal person and they shall enjoy the same rights as the companies held by the Romanian nationals (e.g. the right to own land);
3. opening secondary offices such as branches, agencies or working points. Secondary offices established in Romania, duly registered with the competent trade registry, are corporate entities without legal personality;
4. establishing representative offices, without being recognised as a separate legal entity, because they are not authorised to perform business operations on their own account. These representative offices opened in Romania shall be authorised by the competent Romanian Ministry (currently the Ministry for the Business Environment, Commerce and Entrepreneurship).

## 1. Relevant Legislation

*Company law*

- ☐ Law No. 15/1990 on the reorganization of public economic units as autonomous administrations and commercial companies;
- ☐ Law No. 26/1990 regarding trade registry;
- ☐ Law No. 31/1990 on companies (hereinafter the "Companies Law");
- ☐ Decree-Law No. 122/1990 regarding the authorization and operation, in Romania, of representative offices of foreign companies and economic entities;
- ☐ Government Emergency Ordinance No. 30/1997 on autonomous administrations;
- ☐ Law No. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities and offices, and in the business environment, for preventing and punishing corruption;
- ☐ Law No. 359/2004 regarding the simplification of the formalities for registration with the trade registry of authorized persons, individual enterprises and family enterprises and legal persons, their fiscal registration, as well as the authorization for functioning of legal persons;
- ☐ Government Emergency Ordinance No. 44/2008 on the performance of economic activities by authorized persons, individual enterprises and family enterprises;

- ☐ Methodological Norms on keeping the trade registries, performance of registrations and release of information approved by the Ministry of Justice Order No. 2594/2008;
- ☐ Government Emergency Ordinance No. 116/2009 on the enforcement of measures concerning registration with the trade registry;
- ☐ Government Emergency Ordinance No. 32/2012 regarding the undertakings for collective investment in transferable securities and investment management companies, as well as for amending and completing the Law no. 297/2004 regarding the capital market.

*Competition Law*

- ☐ Law No. 21/1996 on competition.

Insolvency Procedure

- ☐ Council regulation (EC) No 1346/2000 on insolvency proceedings;
- ☐ Government Emergency Ordinance No. 46/2013 on financial crisis and insolvency of the administrative-territorial units;
- ☐ Law no. 85/2014 on insolvency prevention procedures and on insolvency procedure.

## 2. Corporate Entities

In Romania, business activities may be performed by undertakings or individuals with or without distinct legal personality: companies, autonomous administrations, (European) economic groups of interest, authorised persons, individual enterprises and family enterprises.

Additionally, the new Civil Code also recognises the existence of undertakings without a legal personality: civil companies or joint ventures (if necessary, the shareholders can decide to transform them into companies with a legal personality).

## 3. Companies

Regulated mainly by the Companies Law, Romanian companies may be classified according to nationality and legal form. Irrespective of their shareholder's nationality, shall obtain Romanian nationality all companies incorporated under the Romanian law and having their registered office in Romania.

When deciding to incorporate a company in Romania, its founders may choose between the following forms of companies (although the first three forms are not very often chosen in practice):

i. ☐ unlimited guarantee collective company;
ii. ☐ limited partnership;

iii. ☐ limited stock partnership;
iv. ☐ joint stock company; and
v. ☐ limited liability company.

### 3.1. Incorporation and Registration

For setting up a new company, certain requirements are mandatory:

a) Its shareholders may be individuals and/or legal entities, irrespective of their citizenship or nationality.

For incorporating a company, the shareholders need to have full legal capacity (i.e. not to have restricted the ability to hold and exercise any type of rights and obligations), and good standing (i.e. not to have been convicted for certain crimes such as fraudulent management, breach of trust, forgery, use of forgery, corruption offenses, embezzlement, tax evasion).

From our experience, we emphasize that the most common forms of Romanian companies are either limited liability companies (one to fifty shareholders) or joint stock companies (at least two shareholders, with no restrictions as to the maximum number of shareholders).

Please note that an individual or legal entity may be a sole shareholder of only one Romanian limited liability company, while a limited liability company may not have as sole shareholder another limited liability company with sole shareholder.

b) Depending on the form of company chosen by the founding members, the constitutional documents of a Romanian company may consist of:

☐ by-laws (for limited liability companies with a sole shareholder);

☐ articles of association (for unlimited guarantee collective companies and limited partnerships);

☐ by-laws and articles of association (as distinct documents) or constitutive act (as a single document - for joint stock companies, limited stock companies and limited liability companies with at least two shareholders);

As one might imagine, the most frequently used constitutional document is the constitutive act, which must be concluded in writing and signed by all shareholders (either personally or by proxy). The constitutive act must be notarised if:

☐ a real estate asset is contributed in kind to the share capital at the time of the incorporation of the company;

☐ an unlimited guarantee collective partnership or a limited partnership company is incorporated;

☐ a joint stock company is constituted by public subscription.

According to the law, the constitutive act of a company has to include, among others, the following:

☐ the identification data of the shareholders:

- o in the case of individuals: family name, first name, personal identification number, place and date of birth, domicile and citizenship;

- in the case of the legal entities: corporate name, registered office, nationality, registration number with the trade registry or the (European) sole code of registration;

☐ the company's name, form, and registered office;

☐ the company's duration;

☐ the company's business object, specifying the main field of activity and the main activity;

☐ the amount of subscribed and paid-up share capital and the contribution for each shareholder; the nature and value of any assets representing contribution in kind to the share capital, the valuation method and the number of shares allotted in exchange for such contribution;

☐ the number and nominal value of shares;

☐ the identification data for directors, their powers, the ways of exercising such powers and their rights to represent the company;

☐ the identification data for the first censors or the first financial auditor of the company (mandatory for joint stock companies);

☐ the share of each shareholder to gains and losses;

☐ the secondary offices;

☐ the company's dissolution and liquidation procedure.

The constitutive act of every company, at its incorporation or during its functioning [when the constitutive act has to be amended by the shareholder(s)], has to be published in the Romanian Official Gazette in order that third parties be informed.

c) The company's share capital may be subscribed and paid in by its shareholders by contributions in:

☐ cash: mandatory for all company forms;

☐ kind: allowed for all forms of companies if they can be valued and may be transferred to the company to own or use; and/or

☐ receivables (depending on the case): not allowed in limited stock partnerships, limited liability companies and joint stock companies established by public subscription. Please note that the shareholders contributing receivables to a company will be liable to the company for the specific receivables if not paid at maturity by its debtor.

Limited liability or joint stock companies may not accept its shareholders' undertaking to work for the company as a contribution to their capital.

The minimum share capital of:

- joint stock companies are of RON 90,000 (every two years, the Romanian Government can decide to adjust the minimum level in order that this amount be the equivalent of EUR 25,000). At the incorporation, each shareholder must pay at least 30% of the subscribed share capital, while the remaining 70% may be paid within a maximum of 12 months as of the company registration date for the shares issued in exchange for the cash contribution, or within maximum 24 months, for the shares issued in exchange for an in-kind contribution. The registered capital is represented by shares issued by the company, which may be either registered or bearer shares. Registered shares may be issued in both material and dematerialized form, in the latter case being registered in the account of the shareholder and in the shareholder's registry. The constitutive act of the company provides if the shares are bearer or registered shares (registered shares in material and dematerialised form). The face value of one share may not be less than RON 0.10 each;
- limited liability companies is of RON 200 (approx. EUR 44), divided into equal shares whose value may not be less than RON 10 each.

d) The corporate name of the Company may contain one or several words or letters followed by an indication of the company type or its Romanian acronym [e.g. "Banca Transilvania S.A." (joint stock company) or "N.E.X.T. S.R.L." (limited liability company)]. Any new corporate name must be different from the existing ones registered with the trade registry. If the shareholders want to use in a corporate name certain words as "Romanian" or "national" (e.g. "Sephora Romania S.A."), a prior approval of the Romanian Government's General Secretariat has to be obtained in this regard.

e) The company can register a logo as its distinctive graphic, literal or figurative sign or name serving to distinguish a trader from another trader of the same type. If the shareholders decide to register a logo, it must be distinct from other logos registered in the same trade registry, for the same business, as well as from the logos of other companies acting in the market where the respective company carries out its activity.

f) The shareholders should establish the company's registered office on a non-fictive location, in order to address the problem of company's best functioning. If the location structure and surface does not allow several companies to perform their activities in different rooms (or even clearly separated areas), then several companies cannot have their headquarters within the same location. For this reason, the agreement concluded for the registered office (e.g. lease agreement, sale purchase agreement) has to be registered with the relevant fiscal authority, which shall issue a certificate that will provide if other companies have registered in the same location their registered office.

g) The business object of the company is set forth in the constitutional documents of the company. Only the general meeting of shareholders may change the business object of the company.

h) Please note that for incorporating a company, the Romanian shareholders and the company's legal representatives are required to provide fiscal record certificates, which are usually obtained by the respective trade registry.

For the foreign shareholders, irrespective if they are legal entities or individuals, if they are not fiscally registered in Romania, then they shall have no obligation to produce a fiscal record for the purposes of incorporating the company. In this respect, it is required that the respective persons provide a fiscal statement given before a public notary (stating that they have not perpetrated deeds and have not found themselves in situations as those subject to registration in the fiscal record and they are not fiscally registered in Romania).

i) Although a company may be established for a determined or undetermined period of time, the duration of the company is foreseen in the company's constitutional documents. If required, the duration of the company can be amended by decision of the sole shareholder or of the general meeting of shareholders.

### 3.2. Registration within the Trade Registry

Usually, the companies are set up at once, when the capital is not obtained for the public (exception the public owned companies set up as joint stock companies which may be set up at once or by public subscription).

In order to register the company, several formalities have to be done: drawing up the constitutive act of the founder(s), subscription and payment of the company's share capital, and the registration of the new company with the competent trade registry (depending on the location of the registered office, the jurisdiction of the trade registry shall be decided). If the required documentation is drafted and filed in correctly, the registration procedures shall take a few days and after the completion of the registration procedures, the founders shall receive a registration certificate proving therefore that the company is legally created. The incorporation fees due to the trade registry are not very high, being reduced since February 2017 (i.e. approx. EUR 40).

If the shareholders decide also to create branches or secondary units, agencies, subsidiaries or working points, in Romania and abroad, this can be done at the same trade registry where the company was registered.

### 3.3. Management and Corporate Structures

Having in view that in practice the most used forms of companies in Romania are joint stock companies and limited liability companies, for the purposes of this legal guide we have given a special attention to them.

### 3.3.1. Joint Stock Companies

#### a) General Meeting of Shareholders

The shareholders of a joint stock company shall work in general meetings of shareholders which may be ordinary (held at least once a year, not later than five months after the end of each financial year) or extraordinary (held whenever necessary).

According to the management structure of the joint stock companies, the general meetings of shareholders shall be convened by (i) the board of directors, (ii) the directorate or (iii) at the request of a shareholder with more than 5% of the share capital.

According to the Companies Law, the powers of the ordinary general meeting include:

- ☐ to discuss, approve and amend the yearly financial statements, after reviewing the report presented by the board of directors / directorate and the supervisory council, by the censors / financial auditors;
- ☐ to establish the dividends;
- ☐ to appoint and to revoke the members of the board of directors / supervisory council, as well as the censors;
- ☐ to establish the remuneration for the the members of the board of directors / supervisory council, as well as the censors, if not established through the constitutive act;
- ☐ to pass decisions regarding the liability of the members of the board of directors / directorate;
- ☐ establishment of the income and expenses budget and the planning of activity for the next financial period;
- ☐ passing of resolutions regarding the pledging, leasing or deregistration of the company's units.

The resolutions of the ordinary general meetings shall be valid if:

- ☐ for the first convening: (1) the shareholders representing at least 1/4 of the entire number of voting rights attend the meeting, and (2) the resolutions are taken with the majority of votes cast (unless the constitutive act does not provide for a higher quorum or majority);
- ☐ for the second convening: (1) no specific quorum is required, and (2) the resolutions are taken with the majority of votes cast. Please note that for the second convening, the company's constitutive act may not provide a minimum quorum or a higher majority.

The extraordinary general meetings shall be convened whenever deemed necessary to passing decisions concerning, among others:

- ☐ any amendment of the constitutive act of the company (e.g. change of legal form, change of registered office, increase of the share capital);
- ☐ conversion of bearer shares into nominative shares or vice-versa (if the case);
- ☐ approval of any operation whereby a director of the company acquires or alienates assets from or to the company, in exchange of an amount of money or of other consideration whose value represents at least 10% of the subscribed share capital.

The resolutions of the extraordinary general meetings shall be valid if:

- ☐ for the first convening: (1) the shareholders representing 1/4 of the entire number of voting rights attend the meeting and (2) the resolutions are passed with the majority of votes cast;
- ☐ for the second convening: (1) the shareholders representing 1/5 of the entire number of voting rights attend the meeting and (2) resolutions are passed with the majority of votes cast.

Please note that for changing the main business object of the company or its legal form, for decreasing or increasing the company's share capital, for proceeding to merger, split off or company's dissolution, it is required to pass the resolutions with a majority of at least 2/3 out of the votes cast (if the constitutive act does not provide for a higher quorum and voting requirements).

Any person who justifies a legitimate interest can challenge the decisions of the general meeting of shareholders, by an action based on grounds of absolute nullity which is not limited in time, with certain exceptions.

**b) Executive Management**

The Romanian legislation gives the joint stock companies the possibility to choose between two management systems: the unitary system (managed by one or several directors organized as a board of directors, always an uneven number) and the dualist system (managed by a directorate and a supervisory council).

In both cases, the directors may be either Romanian or foreign citizens, and the first directors shall be appointed through the initial constitutive act. The managers of a joint stock company (under the unitary system), and the members of the directorate (under the dualist system) are natural persons, although we stress out that a company may be appointed as a director or member of the supervisory council.

Please note that the directors, the managers of a company to whom directors have delegated management powers, and the members of the directorate cannot be employed by the company as employees.

As a distinction between the two managing systems, please note that, on one hand, the directors and the members of the supervisory council are appointed and revoked exclusively by the ordinary general meeting of shareholders, on the other hand, the members of the directorate are appointed and revoked by the supervisory council of the company (if in the constitutive act of the respective company has not been stipulated that the members of the directorate may also be revoked by the ordinary general meeting of shareholders).

The duration of the mandate of the members of the board of directors, the directorate and the supervisory council is established through the constitutive acts and may not exceed four years normally, except for the situation of the first members of the board of directors and of the supervision council which may not hold

office for more than two years. Each director, member of the directorate and of the supervisory council has to have valid insurance for professional liability.

Since the directors are supposed to work together, they are jointly liable towards the company for the:

- ☐ reality of the payment contributions made by the shareholders, as well as for the paid dividends;
- ☐ fact that accounting records required by law exist and are properly kept;
- ☐ exact fulfilment of any decision passed by the shareholders general meeting;
- ☐ exact fulfilment of any obligations stipulated either by law or by the constitutional documents.

The board of directors is allowed under the law to delegate its powers to one or more executive managers (one of them being appointed as general manager), appointed from inside or outside the board of directors. If the constitutive act does not prohibit it, by a decision of the general meeting of shareholders the chairman of the board of directors can be appointed general manager of the respective company. Usually, the performance of the operations to be carried out by the company is entrusted to one or several executives who are employees of the respective company. In case an employee is appointed as the executive manager of the company, his labour contract shall be suspended.

According to the Companies Law, the powers with whom the directors are invested with shall end upon the expiry of the mandate or before (e.g. revocation, incapacity or incompatibility, resignation, death or physical impossibility).

The Companies law provides that the quorum of the board of director's meetings is attained if at least half of its members attend the meeting (unless otherwise provided in the constitutive act), while the decisions are validly passed by the majority of votes of the members attending the meeting. The same conditions apply to directorate or supervisory council members. If the constitutive act does not foresee something else, please note that the chairman of the board of directors or of the supervisory council has the casting vote. We must stress out that the president of the board of directors, who is also an executive manager of the company, cannot have the casting vote.

### c) Control of Company Operations

According to the law, the censors elected by the general meeting of shareholders shall ensure the control of the joint stock companies. If the constitutive act does not provide otherwise, a Romanian joint stock company will be controlled by at least three censors (and one substitute), their number being always uneven.

The censors can be shareholders of the company (except the situation of censors chartered accountants, who may be third parties, practicing their profession

individually or in association). In the state owned joint stock companies one of the censors must be a representative of the Ministry of Economy.

Having in view the intuit personae character of the mandate, the censors cannot be replaced with another party in order to execute their powers and duties.

According to the law, the censors must:

- ☐ supervise the administration of the company;
- ☐ verify the proper keeping of the accounting books;
- ☐ verify the way the valuation of assets has been carried out.

In case the law provides that a joint stock company has the obligation to audit financial statements, these statements are to be audited by financial auditors, who can be legal or natural persons.

### 3.3.2. Limited Liability Companies

#### a) General Meeting of Shareholders

For limited liability companies, in order to pass decisions, the law requires a double majority vote: of shareholders and of shares. This double majority may be eliminated through the constitutive act.

#### b) Control of Company Operations

Usually, the shareholders who are not the directors of the company control the limited liability company's operations, but if the shareholders want, they may appoint one or more censors through a general meeting. The appointment of censors in limited liability companies is mandatory when there are more than sixteen shareholders, except when the company has a legal obligation to audit its financial situations, case in which a financial auditor shall be appointed.

#### c) Shares Transfer

Shares transfers are free among shareholders. Instead shares transfers to persons outside the company are possible if approved by a number of shareholders representing at least 3/4 of the share capital. In such cases, the shareholder decision approving the transfer of shares shall be published in the Romanian Official Gazette in order to inform the company’s creditors / interested third parties claiming damages by the said transfer may oppose the transfer thereof and request the company or the shareholders to cover damages. The transfer of shares will operate, if no opposition is filed, within 30 days of the publication of the shareholder’s decision approving said transfer or, if opposition is filed, at the date communicated by a court decision whereby the opposition was rejected by a competent court.

Additionally, please note that transfer of shares to persons outside the company upon testamentary or intestate succession, does not require approval according to the law.

### 3.4. Distribution of Profits

If the constitutive act does not provide otherwise, the shareholders shall receive dividends out of real profits, pro rata their paid up capital.

### 3.5. Civil and Criminal Sanctions

Please note that the Romanian law foresees several civil and criminal sanctions against the persons who infringe its provisions that regulate companies (the majority of sanctions are for persons who exercise the management and the directorship of the company.

## 4. Acquiring Already Set-up Romanian Companies, by Means of Mergers & Acquisitions Procedures

An investor can start doing business in Romania also by investing in already set-up Romanian companies, by means of mergers and acquisitions procedures. In order not to have a problem in this respect, each investor should analyse if the respective investment could be considered under the Romanian and European Competition Law an economic concentration:

- ☐ 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 indirect control of the whole or parts of one or more companies, irrespective of the method used in taking such control.

The Romanian Competition Law provides that a merger notice has to be filed with the Romanian Competition Council if the following requirements regarding turnover values, in the calendar year preceding the transaction, are cumulatively met:

- ☐ the combined turnover of the companies involved in the transaction exceeds the RON equivalent of 10,000,000 EUR, and
- ☐ each of the companies involved in the transaction has registered in Romania a higher turnover in RON than the equivalent of 4,000,000 EUR.

If the above thresholds are met, a notification and supporting documentation must be filed prior to implementing the concentration.

## 5. European Companies

In Romania are also operating European companies headquartered in Romania and which are governed by the provisions of the Council Regulation (EC) No. 2157/2001 on the Statute for a European Company. These European companies can register in

one of the European Union's member states and transfer their headquarters to other member state.

A European company that is headquartered in Romania acquires legal status from the date of registration within the competent trade registry, if an agreement regarding the employees' involvement into the company's activity is concluded.

## 6. Autonomous Administrations

Autonomous administrations are organised and designed to operate in strategic sectors of the national economy, such as energy, natural gas exploitation, defence industry, mining, railway transportation, as well as in certain areas belonging to other sectors established by the Government (being considered public utility companies).

The majority of the autonomous administrations have been reorganised as companies, on the basis of restructuring plans drafted by the Romanian authorities.

## 7. Economic Interest Groups and European Economic Interest Groups

These are associations 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 Economic Interest Group is set up by an agreement in an authenticated form, signed by its members (maximum twenty members). It acquires legal status as of the registration date with the trade registry.

Although, these groups do not seek to obtain profit for itself, if a profit is generated, it will be divided through the members of the group.

In addition, the European Economic Interest Groups comprises:

- ☐ two entities having the central management of their statutory activity located in different Member States;
- ☐ two individuals, which carry out their activities in different Member States; or
- ☐ an entity, whose central management of its statutory activity is located in a Member State, and an individual who carries out their principal activity in another Member State.

## 8. Authorized Persons, Individual Enterprises and Family Enterprises

The Romanian law allows that authorized persons, individual enterprises and family enterprises carry out economic activities, if they are authorised to perform such activities in any sector, profession or occupation, except for those activities that are subject to special legislation or are prohibited by law. In order to be recognized as

such, the respective persons must register with the trade registry and with the local fiscal authorities.

The authorized person and the individual enterprise cease their respective activities and are deregistered from the trade registry in case of death, on demand, in case the documents based on which their registration was made have been invalidated by irrevocable judicial decisions and a natural or legal person prejudiced as effect of such registration request the deregistration from the trade registry.

The family enterprise ceases its activity and is deregistered from the trade registry when more than half of its members die, withdraw or request its cessation, as well as in the situation when the documents based on which the registration was made have been invalidated by irrevocable judicial decisions and a natural or legal person prejudiced as effect of the family enterprise registration request the deregistration from the trade registry.

## 9. Private Equity Funds

In the last few years it can be noticed that the Romanian market is interested in attracting private equity funds because they provide important sources of liquidity in the economy that otherwise cannot be obtained but through debt. It is evident that the private equity has a positive influence on the economy, contributing to restructure and revitalize the existing Romanian companies.

According to the statistics available for Romania, total private equity investments fluctuated overall during the 2007-2016. The largest total value of private equity investments was registered in 2008, when total private equity investment of more than EUR 210 million was recorded. In 2016 the total private equity investment reached a value of EUR 108.29 million.

Romania has harmonised its legislation with the European legislation in this sector by adopting the Government Emergency Ordinance No. 32/2012 regarding the undertakings for collective investment in transferable securities and investment management companies, as well as for amending and completing the Law no. 297/2004 regarding the capital market.

In Romania the most active private equity funds are Enterprise Investor, Ged Capital, Global Finance, Axxess Capital, Abris Capital, 3 TS Capital Partners.

## 10. Insolvency Procedure

Since 2014, Romania is benefiting of a new law on insolvency, Law no. 85/2014 on insolvency prevention procedures and on insolvency procedure, which, by unifying several relevant pieces of legislation, is encouraging the recovery of viable companies.

### 10.1. Official Bodies Involved in the Insolvency Procedure

According to the law, the official bodies implementing the insolvency procedure are the creditors' assembly, the special administrator, the judicial administrator, the liquidator, the syndic judge and the court of law.

### 10.2. Categories of Entities Subject to Insolvency Procedure

The Romanian law provides two insolvency procedures: a general procedure and a simplified procedure.

The general insolvency procedure applies to all business professionals (including autonomous administrations), except for the ones who practice liberal professions or who are subject to special regulations.

The simplified insolvency procedure applies to several categories of persons:

- ☐ individual business professionals registered with the trade registry, except for the ones who practice liberal professions;
- ☐ family associations;
- ☐ business professionals that could be subject to the general insolvency procedure, but who meet at least one of the following conditions:
  - o they have no asset in their patrimony;
  - o their constitutive documents or accounting documents cannot be found;
  - o their director cannot be found;
  - o their headquarters no longer exists or no longer corresponds to the address in the trade registry.
- ☐ entities that have been subject to voluntary dissolution, prior to submission of the request to initiate insolvency proceedings;
- ☐ debtors that have declared in the claim filed with the courts their intention to undergo bankruptcy proceeding;
- ☐ any entity or individual who is conducting business-like activities and who has not obtained the necessary authorization for exploitation of a company and is not registered in the special publicity register.

### 10.3. Mandatory Conditions for Following the Insolvency Procedure

Two mandatory conditions have to be cumulatively met in order for the creditors to be able to start the insolvency procedure against a debtor:

- ☐ the creditor should hold a receivable that is certain, liquid and outstanding for more than 60 days;

- for receivables arisen from commercial relations - to exceed the amount of RON 40,000 (approx. EUR 8,900) or, in case of receivables arisen from labour relations – the equivalent of six national gross average salaries per employee.

If these two conditions are met, then the debtor has to submit a claim for the commencement of the insolvency proceeding within 30 days of the date the insolvent state has occurred (i.e. insufficiency of the available funds for payment of certain, liquid and outstanding debts).

Please note that the state of insolvency is relatively presumed if the debtor fails to pay its debt after 60 days of the maturity date. Moreover, the state of insolvency is reputed to be imminent if there is proof that the debtor cannot pay its debt at the maturity date with the available liquidities.

### 10.4. Procedures

Two procedures are instituted by law for the debtors that are not able to pay their debts:

- judicial reorganization procedure in order to save the debtor's business;
- bankruptcy procedure in order to liquidate the assets of the debtor and to pay the outstanding debts.

The debtors who are under the general insolvency procedure shall follow both the above mentioned procedures: they shall enter first in the reorganization procedure, and in case of failure of this procedure, they shall enter the bankruptcy procedure. As for the debtors for whom the simplified insolvency procedure is applicable, please note that they shall directly enter in the bankruptcy procedure or after a 20 days observation period.

#### 10.4.1. Judicial Reorganization Procedure

In this special situation, the business of the debtor shall be organised after a reorganization plan approved by its creditors and confirmed by the competent court of law. Please note that the activity of the debtor during this period is managed by a special administrator, elected by the general meeting of shareholders and supervised by a judicial administrator appointed by the syndic judge.

If the reorganization plan is not agreed by the creditors or the debtor does not comply with the respective plan, then the debtor shall undergo the bankruptcy procedure.

#### 10.4.2. Bankruptcy Procedure

The syndic judge shall decide that the bankruptcy procedure shall be applicable to a debtor case in the following situations:

- ☐ the debtor expressed its intention to undergo the simplified procedure;
- ☐ the debtor did not express its will to reorganize its activity;
- ☐ none of the entitled subjects of law proposed a reorganization plan or such proposed plan was not approved by the creditors and confirmed by the court;
- ☐ the payment obligations and other incumbent obligations are not accomplished according to the conditions set out in the reorganization plan or the activities carried out by the debtor during the reorganization procedure trigger loses to its patrimony;
- ☐ the judicial administrator's report proposing the commencement of the bankruptcy proceeding was approved;
- ☐ at the request of the creditor who has a certain, liquid and outstanding receivable against the debtor, acknowledged by the judicial administrator or by the court, that exceeds the amount of RON 40,000 (approx. EUR 8,900). If this amount has not been paid within a 60 days' period since the acknowledgement of the receivable;
- ☐ at the request of the judicial administrator or of any creditor, if the debtor does not comply with the provisions of the reorganization plan or if the debtor is accumulating debts towards his creditors during the procedure.

The bankruptcy procedure entails the following measures:

(i) to withdraw the debtor's right to manage its business;

(ii) to prepare an inventory of the debtor's assets;

(iii) to appoint a temporary liquidator which has to be further confirmed (in the general procedure), and to confirm the judicial administrator as liquidator (in the simplified procedure);

(iv) to establish the debtor's liabilities (e.g. to draw up the list of creditors, to verify their receivables, to draw up the final chart of the creditors);

(v) to carry out the liquidation (e.g. to sell the debtor's assets, to pay the due taxes, stamp duties and all sale-related expenses);

(vi) to distribute the amounts resulting from the liquidation;

(vii) to end the liquidation process.

## 11. Administrative Requirements

As previously mentioned, for incorporating a company under the Romanian law several administrative requirements have to be met. First of all, the company has to be registered at the trade registry and at the fiscal authorities, and to have a bank account.

For the registration at the trade registry, the founders have to fill in a special statement through which they declare on their own responsibility that they know and respect the legal provisions in the following domains: sanitary, sanitary-veterinary and for food security, environment protection and work protection. The law provides that for the obligation of legal entities to apply for the issuance of an environmental permit or authorization in case they perform or intend to perform an activity with a potential impact on the environment. In this respect, please note that the law expressly lists the economic and social activities deemed to have an impact on the environment. The authorization procedure for obtaining it is public.

Moreover, depending on the purpose of business of the new company, the law may provide that special licences have to be obtained in order to be able to work in that domain. For instance, if a company wants to operate as an organization for responsibility transfer, then a special administrative requirement is to obtain such licence from a special commission of the Environment Ministry (e.g. a company, operating under Order No. 932/2016 in order to take the responsibility for waste packaging, has to file for license with the Romanian Commission for Waste Packaging, the licence being valid only for five years).

As for the already set-up companies, please note that we have mentioned different administrative requirements in this present legal guide when addressing a specific domain (e.g. please see Chapter 3, Point 6 of the guide - Administrative requirements, incl. healthy and safety working conditions, personal data protection, etc.).

*CHAPTER 2 – Commercial Law*

## *Section 1 – Transactions*

The directors of a company may perform all operations required for achieving the company's object of activity, if no restrictions are provided by the law or by the constitutive act of the company.

In this respect, please note that, if the directors have obtained the prior approval of the extraordinary general meeting of shareholders, they may conclude transactions on the acquisition, transfer, lease, exchange or creation of security interests over the company's assets worth more than 50% of the assets' book value on the date of concluding the transaction.

Additionally, please be informed that, if the directors have obtained the prior approval of the extraordinary general meeting of shareholders, they may acquire or alienate company assets whose value exceeds 10% of the net asset value of the company, including also the conclusion of lease or leasing contracts.

These restrictions apply where one party to the transaction is the spouse of the director or relative or kin up to the fourth degree, or a civil or commercial company in which one of the above-mentioned persons is director or manager or holds interests of at least 20% of the share capital, except the situation when one of the relevant companies is a subsidiary of the other.

A few years ago, the Romanian legislator passed a law in order to strengthen the financial discipline of the Romanian entities. In this respect, please be aware that the receipts and payments made by legal persons, authorized individuals, individual enterprises, family businesses, self-employed persons, self-employed individuals, associations and other entities with or without legal personality from or to any of these categories persons are limited per day, being expressly mentioned in the law that fragmented cash payments are prohibited.

## *Section 2 – Banking Law*

The Romanian banking system is composed of, on one side, the national central bank (i.e. the Romanian National Bank), and on the other, of the commercial banks and financial institutions.

The most relevant current piece of legislation in this sector is the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy which was set in place with a view to implement into Romanian legislation the European applicable directives. Moreover, Law No. 83/1997 ensured the legal framework for the privatization of State-owned banks, which led to certain major investors entering the Romanian banking market (e.g. GE Capital, Société Générale, Raiffeisen Bank, International Financial Corporation, European Bank for Reconstruction and

Development, Erste Bank, by means of acquiring State-owned shares in Banc Post, Banca Romana de Dezvoltare, Banca Agricola and Banca Comerciala Romana).

Romanian banks may be subject to privatization by increasing the share capital by private capital contribution in cash (pursuant to a public offer or a private investment), by sale of shares administered by the State through the Authority for State Assets Administration (only in exchange for cash paid in full), or as a combination of the two methods above mentioned.

## 1. Relevant Legislation

- Government Ordinance No. 39/1996 on the creation and operation of the Bank Deposit Guarantee Fund;
- Law No. 83/1997 on the privatization of commercial banks where the State is one of the shareholders;
- Government Emergency Ordinance No. 51/1998 concerning the valuation of certain banking assets;
- Law No. 312/2004 on the Statutes of the National Bank of Romania;
- Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy.

## 2. National Bank of Romania

The National Bank of Romania was established in 1880, as a joint-stock company with both public and private capital. In 1901, the sale of the equity owned by the State in the National Bank of Romania was approved, the bank thus becoming a private bank under privileged status, but with the State maintaining control over the bank.

Before 1989, the National Bank of Romania used to be a State-owned bank, with certain commercial powers.

According to the Law No. 312/2004 on the Statutes of the National Bank of Romania, the National Bank of Romania is an independent public institution with legal status. The National Bank of Romania is entitled to establish branches and agencies all over Romanian territory, and it retains wide regulatory powers in the banking sector, with the role of sustaining the State's general economic policies and the maintenance of macroeconomic stability.

It has the following main statutory powers:

- to issue and apply the monetary and exchange rate policy;

- to authorize, regulate and supervise credit institutions from a prudential perspective, as well as to promote and monitor the good functioning of payment systems in order to ensure financial stability;
- to issue currency as a legal payment means on Romanian territory;
- to establish the foreign currency regime and to supervise its observance;
- to manage Romania's international reserves.

If you are interested in obtaining information about the operations performed by the National Bank of Romania with the credit institutions or with the State treasury, please let us know in order to develop this point.

## 3. Commercial Banks

The Romanian banking system is also made-up of credit institutions, distinctively regulated depending on their status as Romanian or foreign legal entities. The Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy no longer defines "credit institutions", but makes reference to the related definition contained in Regulation (EU) No. 575/2013, according to which a credit institution is defined as an undertaking whose business is to take deposits or other repayable funds from the public, and to grant credits for its own account.

Depending on its share capital structure, the following types of credit institutions operate in Romania:

- public credit institutions, which are state-owned (e.g. Casa de Economii si Consemnatiuni, reorganized as a joint-stock banking company); and
- private credit institutions, with private capital (domestic and/or foreign private capital).

Romanian credit institutions may be incorporated and may function as banks, credit cooperative organizations, saving and lending banks in the residential field or secured loans banks.

### 3.1. Incorporation and Operation of Romanian Credit Institutions

#### 3.1.1. Incorporation

According to the Romanian law, no credit institution may carry out banking activities on Romanian territory without the Romanian National Bank's authorization.

The general procedure for the authorization process of credit institutions supposes:

- obtaining the set-up approval from the Romanian National Bank;
- registration of the credit institution with the trade registry; and
- obtaining the operational authorization from the Romanian National Bank.

Please note that the commercial banks may only be established as joint-stock companies. For incorporation purposes, the set-up approval of the Romanian

National Bank is mandatory. Pursuant to the credit institution's incorporation, the Romanian National Bank decides the granting of operational authorization.

A minimum share capital of Euro 5,000,000 is required when establishing a credit institution, which has to be fully paid in cash at the time of subscription. Despite this legal provision, National Bank of Romania may establish a higher minimum value of share capital.

Romanian commercial banks may establish branches and other secondary headquarters (agencies and other similar secondary seats) on Romanian territory, in accordance with the regulations of the National Bank of Romania.

### 3.1.2. Changes in Credit Institutions Status

As provided under the National Bank of Romania's Regulation No. 6/2008, the prior approval of the national bank is required in case the following changes occur in the status of a Romanian credit institution:

- ☐ change of its scope of business;
- ☐ changes regarding the persons appointed to carry out administrative and/or management duties;
- ☐ changes regarding the financial auditor;
- ☐ setting-up of branches in third countries;
- ☐ setting-up of new branches and secondary headquarters, if National Bank of Romania initially prohibited the establishment of branches and secondary headquarters, as a result of a negative evolution of banking prudence indicators;
- ☐ amendments related to the "General business terms" and "General terms for saving-crediting agreements", in the case of saving-credit banks acting in the residential field, as well as introducing other types of agreements;
- ☐ amendments to the articles of association drawn up by a central house of credit co-operatives;
- ☐ replacing persons holding medium level management positions related to highly important activities;
- ☐ acquisition of qualified participations in an entity of a third country, if, pursuant to such acquisition, such entity would fall under supervision on a consolidated basis of the acquiring credit institution, as well as the increase of such participation;
- ☐ reduction of the share capital or the acquisition of its own shares by credit institutions resulting in the reimbursement of capital to the shareholders.

The following changes in the status of a Romanian credit institution are subject to National Bank of Romania's notification, within 10 days as of their occurrence or as of the proper registration with the Trade Registry:

- ☐ change of name and logo;
- ☐ change of headquarters;
- ☐ limitation of its scope of business;
- ☐ share capital increase or reduction;
- ☐ change of persons tightly connected to the credit institution;
- ☐ changing an officer from a management position to another management position;
- ☐ setting-up and closing of branches and other secondary headquarters on Romanian territory;
- ☐ change of the qualified participations held by credit institutions, other than those that must be submitted to the prior approval of the National Bank of Romania, and the increase of such participations;
- ☐ any other amendments of a credit institution' articles of incorporation, other than those which must be submitted to prior approval of National Bank of Romania.

### 3.1.3. Allowed Activities

Romanian credit institutions and Romanian-based subsidiaries of foreign credit institutions may perform the following main activities, within the limits of their granted authorization:

- ☐ acceptance of deposits and other repayable funds;
- ☐ lending, including, among others, consumer credit, mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfeiting);
- ☐ financial leasing;
- ☐ money transfer services;
- ☐ issuance and management of payment instruments (e.g., credit cards, travellers' cheques);
- ☐ issuing guarantees and assuming commitments;
- ☐ trading for their own account or for the account of the customers:
  - o negotiable instruments (i.e. cheques, bills of exchange, deposit certificates);
  - o foreign currency;

- o futures contracts and financial options;
- o interest rate and exchange rate instruments;
- o tradable securities.

☐ participation in securities investment and provision of related services;

☐ advice to undertakings on capital structure, business strategy and related issues and advice with respect to business, as well as services relating to mergers and acquisitions and performing other consultancy services;

☐ intermediation on the inter-bank market;

☐ management of clients' portfolios and related consultancy;

☐ securities custody and administration;

☐ providing information and references regarding lending activity;

☐ renting of safe deposit boxes;

☐ issuing electronic money;

☐ transactions with precious metals and stones and objects made from these;

☐ acquisition of shareholdings in other entities.

### 3.2. Organization of Foreign Credit Institutions' Activity

Foreign credit institutions may perform banking activities in Romania either by incorporating a subsidiary in Romania, which will be a Romanian bank and will thus conduct its banking activity based on the authorization of the National Bank of Romania, or by establishing branches in Romania, which are subject to the authorization procedure of the National Bank of Romania, in cases where the parent credit institutions is a non-EU credit institution. Additionally, foreign credit institutions may establish representative offices on Romanian territory.

As regards EU credit institutions, GEO No. 99/2006 implements the EU passport principle, according to which EU based credit institutions may provide banking services in Romania via a branch or directly, based on the free provision of services principle, without the requirement of National Bank of Romania's authorization.

#### 3.2.1. Subsidiaries of Foreign Credit Institutions

The Romanian subsidiaries of foreign credit institutions are established, operate and are liquidated in accordance with the relevant Romanian legislation.

Please note that the subsidiaries of foreign credit institutions established in Romania are Romanian legal entities, subject to authorization by National Bank of Romania and to the Romanian banking legislation (they are subject to the same requirements

as to capital, organization, etc., as any credit institution having a Romanian legal personality and operating in Romania).

### 3.3. Banking secrecy

According to the Romanian law, the banking secrecy has to be respected and, therefore the credit institutions must observe the confidential nature of banking transactions and services rendered, including the identity of the account holders.

Provided that the purpose of disclosure is justified, the banking secrecy information can be disclosed only under the following circumstances:

- ☐ at the request of the account holders/their legal heirs, including their legal and/or statutory representatives, or with their express consent;
- ☐ when the credit institution proves a legitimate interest;
- ☐ at the written request of an authority/institution, or ex officio, in case a law entitles such an authority/institution to require and/or receive such information and the respective information subject to disclosure is clearly identified, in order for the said authority/institution to perform its specific attribute;
- ☐ at the written request of the account holder's spouse, if the latter proves the submission with the relevant court of a legal action of common goods division or upon the request of a court vested with such claim;
- ☐ at the request of a court of law, for settling various issues related to a lawsuit;
- ☐ at the request of a court bailiff for carrying out the enforcement procedure on the debtors' accounts;
- ☐ at the request of a public notary for carrying out the notarial inheritance procedure;
- ☐ at the request of prosecutors, in criminal proceedings.

As in other European legislations, the personnel of a Romanian credit institution may not directly or indirectly use privileged banking information, for their benefit or for the benefit of other persons.

### 3.4. Prohibited Transactions

The Romanian legislation provides that the credit institutions are not allowed to have the following activities:

- ☐ to deal with movable or immovable assets (except for those expressly allowed for credit institutions);
- ☐ to create pledges over its own shares in order to secure the credit institution's debts;

- ☐ to grant loans secured by shares, other equity instruments or bonds issued by the credit institution, or another entity from the credit institution's group;
- ☐ to accept deposits or other repayable funds, titles or other values, from the public, while undergoing insolvency procedures.

## 4. Credit Office

The Credit Office (in Romanian "Biroul de Credit"), a joint stock company, incorporated in accordance with the relevant corporate legislation, is a monitoring vehicle in the financial and banking market. Its main purpose is to establish a centralized information database system containing information on the financial conduct of individuals, clients of the credit institutions, other financial and insurance institutions or non-financial companies.

In this respect, the Credit Office provides financial and banking consulting services, while collecting, managing and processing information regarding the above-mentioned subject of law. Thus, the Credit Office will have a database containing the clients scoring, using uniform client evaluation criteria.

## *Section 3 – Insurances*

After Romania's accession to the European Union, the insurance law has been harmonized with the European law accordingly. The State is supervising and controlling the Romanian insurance market through the National Supervisory Authority (until April 2013, it was the Insurance Supervisory Commission).

### 1. Relevant Legislation

- ☐ New Civil Code;
- ☐ Law No. 32/2000 regarding the activity and supervision of insurance and reinsurance intermediaries;
- ☐ Government Decision No. 1194/2000 on certain measures related to compulsory third party liability insurance for motor-vehicle accidents;
- ☐ Order of the Insurance Supervisory Commission No. 13/2008 for the amendment of Guidelines on the Protection of Street Victims Fund;
- ☐ Law No. 260/2008 on the mandatory insurance of dwellings against earthquakes, floods and landslides;
- ☐ Government Emergency Ordinance No. 93/2012 regarding the establishment, organization and functioning of the Financial Supervisory Authority;
- ☐ Norm No. 9/2015 on the authorization and operation of insurance and/or reinsurance brokers;
- ☐ Norm No. 28/2015 on the operation of supervised insurers in accordance with the national regime;
- ☐ Norm No. 29/2015 on the registry of insurers-reinsurers and on the registry of insurance-reinsurers brokers;
- ☐ Law No. 237/2015 on the authorization and supervision of insurance and reinsurance activities;
- ☐ Norm No. 20/2016 regarding the authorization and monitoring of insurance and reinsurance companies;
- ☐ Emergency Ordinance No. 54/2016 on compulsory motor liability insurance for damages caused to third parties by motor vehicle accidents and trams;
- ☐ Law No. 132/2017 on the compulsory insurance against civil liability for the damage to third parties caused by vehicle and tram accidents.

## 2. Insurance Agreement

By concluding an insurance agreement, an insured person or an insurance contractor undertakes to pay an insurance premium to the insurer, and the insurer undertakes that upon occurrence of a certain defined risk, it will pay an indemnification to the insured, to the beneficiary or to a third damaged party, under the limits and terms agreed by the parties in the insurance agreement.

We recommend to always concluding in writing an insurance agreement, because otherwise in the absence of a written document, witnesses may not be used to prove the insurance agreement. The conclusion of an insurance agreement is ascertained by the insurance policy or the insurance certificate, issued and signed by an insurer or by a coverage note issued and signed by an insurance broker. In force majeure cases and in fortuitous cases, when the insured persons do not have the insurance documents and no duplicate may be obtained, the existence and the content of the insurance agreement may be proved by any legal means.

## 3. Main Types of Insurances Provided by Insurance Companies

### 3.1. Assets Insurance

Under the assets insurance, the insurer commits to pay indemnification to the insured person, to an appointed beneficiary or to other entitled persons upon occurrence of the insured risk.

The insured must have an interest with regard to the insured asset, keep the insured asset in good condition and in accordance with the legal provisions, and take any and all necessary steps to prevent the occurrence of the insured risk.

It is obvious that the insurer is entitled to verify whether the insured asset is properly used or maintained. In cases set forth by an insurance agreement, upon risk occurrence, an insured person is compelled to take measures on behalf of the insurer to mitigate the losses.

The insured person is bound to declare the existence of other insurance agreements for the same asset, both upon entering into an insurance agreement and during its performance.

Unless otherwise agreed under the insurance agreement, transfer of ownership over an insured asset does not trigger the termination of an insurance agreement. The insurance agreement continues to produce its effects between the insurer and the purchaser. An insured person, who does not notify to the insurer of the transfer, remains obliged to pay the insurance premiums due after the date of transfer.

We underline that the indemnification may not exceed:

- ☐ the value of the asset upon occurrence of the insured risk,
- ☐ the value of the loss, or
- ☐ the insured amount.

The insurance agreement may contain a clause providing the insured person will be its own insurer, for a so-called franchise that will not be compensated by the insurer.

In case an insurance agreement is concluded for an amount lower than the asset' actual value, the indemnification will be proportionally reduced, unless otherwise agreed in the agreement.

Please be informed that in Romania all individuals and entities which own constructions used as a dwelling, and that are registered with local tax authorities, must conclude insurance against earthquakes, floods and landslides, with insurers specially authorized for such a purpose and under conditions strictly provided for by law. Non-observance of this obligation is sanctioned with an administrative fine.

### 3.2. Personal Insurance

In personal insurance agreements, the insurer undertakes to pay the insured amount upon the occurrence of various insured risks related to the personal status of the insured person (e.g. reaching a certain age, invalidity or death, as defined in the insurance agreement).

Please note that a different person from the one concluding the insurance agreement may be insured only with the written consent of the respective person.

Indemnification is paid to the insured person or to the insurance beneficiary appointed by the insurance contracting party, while in the case of insured person's death, to his legal heirs, unless another beneficiary was expressly appointed in the insurance agreement.

Please note that the indemnification is due, irrespective of the amounts that the insured or the beneficiary may be entitled to obtain as social security rights, or damages received from liable persons or the amounts received from other insurers pursuant to other insurance contracts.

The insurer does not owe the indemnification if the insured risk occurs as result of:

- ☐ the insured committing suicide within 2 years as of the execution of the insurance contract; or
- ☐ the insured deliberately producing the insured risk.

In case one of the beneficiaries deliberately caused the death of the insured, the indemnification is paid to the latter's other appointed beneficiaries or legal heirs.

### 3.3. Liability Insurance

Under liability insurance agreements, the insurer commits to pay an indemnity for damages the insured may be legally held responsible for by a third party, as well as for any expenses paid by the insured in the related civil lawsuit.

The insurance agreement may also cover the liability of other persons than the executor of the agreement. The rights of the injured person are exercised against the persons responsible for causing the damage.

The insurer is liable for damages only within the limits of the incumbent obligations under the insurance agreement.

Indemnification is awarded based either on an agreement concluded between the insured, the injured person and the insurer or, on a court decision, in case of a disagreement between the parties.

The insurer pays the indemnification directly to the injured person to the extent he/she was not already compensated by the insured person; the creditors of the insured may not claim such indemnification.

The indemnification is paid to the insured person if they prove they have compensated the injured person.

A special insurance category is compulsory liability insurance for motor-vehicle accidents, where individuals or legal entities owning motor-vehicles registered in Romania are bound to be insured for third party liability resulting out of the damages caused by motor-vehicles accidents occurring within the coverage territorial limits (the territory of Romania, of the EU Member States and of the states connecting to EU Member States). The execution of a civil liability insurance agreement for damages caused by motor-vehicle accidents is proved with an insurance policy or with a Green Card document.

As regards the persons entering the Romanian territory with motor-vehicles registered abroad, please note that these persons are considered to be insured, if:

- ☐ they have international insurance documents, valid in Romania; or
- ☐ their registration number certifies the existence of the insurance, according to the law of the state where the motor-vehicle is registered or to international insurance agreements valid in Romania.

In case one of the above-mentioned conditions are not met, such persons are required to pay insurance premiums, according to the Romanian legal provisions previously mentioned.

An insurer will pay indemnification for damages the insured is liable for towards third parties, according to the law, as a result of car accidents (irrespective if the motor-vehicle accidents took place in motion or while stationary), as well as for all expenses incurred by the insured during the civil lawsuit. Please note than the indemnification also covers damages caused by the existence or operation of any equipment attached to the motor-vehicle, as well as for damage caused by trailers or sidecars.

In case of physical damage or death of a person, indemnification is granted for persons both outside and inside the vehicle causing the accident, but not for the driver of the respective motor-vehicle.

As regards the damage or destruction of goods, indemnification is granted for any goods outside the vehicle causing the accident, and for the goods inside the vehicle, only if transported outside the scope of an existing contractual relation with the owner or the user of said vehicle, as well as for the situation in which the goods do not belong to the owner, user or driver responsible for the accident.

It is very important to underline that in case of physical damage, the death of a person or the damage or deterioration of goods, compensation is granted if the motor-vehicle causing the accident is identified and insured, even if the actual author of the accident remains unidentified.

An indemnification shall be settled on the basis of the insurance valid at the moment the accident occurred or of a court decision, and shall be paid even if the damaged persons are not domiciled, resident, or with their headquarters in Romania.

Please be informed that an insurer recovers the indemnification from the liable person in the following situations:

- ☐ the accident was deliberately caused;
- ☐ the accident was caused (i) while intentionally committing crimes against the circulation on the public roads regime, even if such crimes were not committed on such roads or (ii) while committing other intentional crimes;
- ☐ the accident was caused while the author of an intentionally committed crime attempts to escape criminal pursuit;
- ☐ the person liable for the damage drove the motor-vehicle without the permission of the insured person.

### 3.4. Credits and Guarantee, Financial Loss and Other Insurance

Credits and guarantee insurance covers risks relating to general insolvency, export credit, sales with the price paid by instalments, mortgage and agricultural loans, direct or indirect guarantees, as well as other such risks, in accordance with the norms issued by the competent authority.

Unless otherwise agreed under the insurance agreement, the compensation for financial loss insurance comprises both prejudice and loss of profit, as well as general expenses and expenses directly or indirectly deriving from the occurrence of the insured risk.

## 4. Entities Allowed to Perform Insurance / Reinsurance Activities

### 4.1. Insurance Companies

According to the law, in Romania the following entities are allowed to perform insurance/reinsurance activities:

- ☐ Romanian legal entities, incorporated as joint stock companies;
- ☐ Mutual Companies;
- ☐ European companies;
- ☐ European cooperative society, as defined by the provisions of the Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE);
- ☐ Insurance and reinsurance companies authorized in EU member states, performing insurance and reinsurance activities in Romania based upon the right of establishment and the freedom of provision of services;
- ☐ Branches of companies governed by third states' laws, authorized by the competent authority (i.e. Financial Supervisory Authority);
- ☐ Subsidiaries of third states insurance and reinsurance companies, authorized by the competent authority (i.e. Financial Supervisory Authority);

There are 2 (two) types of insurance companies, namely companies applying the Solvency II surveillance regime and companies applying the national surveillance regime.

### 4.1.1. Authorization of the Financial Supervisory Authority

Please note that the insurance companies are registered with the Trade Registry only with the prior approval of the Financial Supervisory Authority. Once a year, this authority publishes a factual report regarding the insurance field.

### 4.1.2. Insurers/Re-insurers Register

As a special administrative requirement for the insurance and reinsurance companies, headquartered on the Romanian territory, please note that they should be registered with the Insurers/Re-Insurers Register.

The Financial Supervisory Authority keeps and updates the above mentioned register and the data contained therein is permanently accessible to the public.

## 4.2. Special Legal Requirements for the Operation of Insurance Companies

Insurers may perform only life insurance or only general insurance activities. Any company exercising general insurance activities, or respectively life insurance activities is bound to set up and maintain the following technical reserves:

- ☐ premium reserve is computed monthly by summing up the gross subscribed premiums for the ongoing insurance contracts, so that the balance between the volume of gross subscribed premiums and this reserve shall reflect the gross premiums allocated to the part of the risks expired on the computation date;
- ☐ approved damage reserve is allocated and updated monthly, based on the estimations of the damage notifications received by the company, so that the created fund shall be sufficient to cover the payment of such damages;
- ☐ contingent damage reserve is allocated and adjusted at least at the end of the fiscal year, unless otherwise provided for by the internal regulations of the company, based on its estimates, using statistical data and actuarial computation for a representative period so the contingent damage reserve shall be sufficient to cover the damages that will be notified in the following financial years;
- ☐ non-expired risks reserve is calculated based on an estimate of damage that may occur after the end of the fiscal year, related to insurance contracts concluded prior to that date, to the extent that their estimated value shall exceed the premium reserves minus the deferred acquisitions costs;
- ☐ reserve for bonuses and discounts is applicable for insurance contracts which provide a premium discount, in case of their renewal, and reimbursement of the premium, in case the contractors shall participate in the company's profits;
- ☐ calamity reserve is meant to cover compensation related to calamity damages. It is created by applying a monthly percentage of no less than 5% upon the gross subscribed premiums, related to contracts that cover calamity risks, until the reserve funds reaches at least the level of its own retained amount or 10% of the accumulation of liabilities undertaken by the contracts covering calamity risks.

Additionally, companies exercising life insurance activities must set the following types of reserves:

a. mathematical reserve which is determined on a net value or through the Zillmer method (any negative mathematical reserves are reported and highlighted as being equal to zero);

b. additional technical reserve which is computed if the present or foreseeable yield of the company's assets related to the activity of life insurance is insufficient to fulfil the commitments towards the contractors with respect to the interest rates;

c. additional reserves for general risks which are not individualized;

d. unallocated prime reserve which is set for life insurance and annuities related to investment funds, and which is formed on the gross subscribed premiums, but unallocated to a contractor.

### 4.3. Protection Funds

Due to the specificity of the insurance field, the Romanian legislator obliged the insurance companies to set up different protection funds, in order to protect the insured persons, the insurance beneficiaries or the damaged third parties. Such protections funds are:

- ☐ Policyholder Guarantee Fund aimed to cover compensation arising from optional and compulsory insurance contracts, in case of the bankruptcy of any insurance company;
- ☐ Fund for Protection of Street Victims created in order to protect victims of motor-vehicle or tram accidents (i) causing body injuries or death, when the author remains unidentified or (ii) causing damages, destruction, injuries or death when a motor-vehicle or the tram is not insured.

Both funds are constituted, managed and used under regulations issued by the Financial Supervisory Authority.

## 5. Insurance Brokers

Insurance brokers are legal entities which negotiate for their clients insurance or re-insurance contracts and render professional assistance prior to and during the execution of insurance contracts.

Insurance brokers may be set up and registered only with the prior authorization of the Financial Supervisory Authority, and should meet inter alia, the following conditions:

- ☐ to be a Romanian legal entity;
- ☐ to have a corporate name that shall comprise the mention "insurance broker", "re-insurance broker" or "insurance and re-insurance broker";
- ☐ to have registered capital paid up in cash of minimum RON 150,000;
- ☐ to have a liability insurance contract valid in EU Member States, with a minimum coverage limit amounting to EUR 1,250,000/event and EUR 1,850,000/year;
- ☐ to have the activity of insurance and/or re-insurance broker as the sole purpose of business;
- ☐ to have a registered office exclusively designed for conducting the business, with specific requirement for buildings; at this registered office one employee has to be present during the working hours;
- ☐ not to be a direct/indirect shareholder or director of an insurer/reinsurer or insurance/re-insurance agent and not to have an insurer/reinsurer or insurance/re-insurance agent as direct/indirect shareholder or director;

- ☐ its shareholder(s) and/or the significant management' members should not have a criminal record containing crimes against the patrimony or fiscal-accountancy crimes;
- ☐ chief executive officers thereof should be graduated in superior education and have a minimum 2 years' experience in an executive management position in insurance activity, or at least 4 years' experience in the same position in the financial-banking system;
- ☐ directors must not be employees of insurance/re-insurance companies during their tenure at an insurance/re-insurance broker;
- ☐ chief executive officers should have a good reputation, honesty and moral probity, and they should not hold the same position in other Romanian or foreign legal entities after the operational authorization has been granted;
- ☐ the chief executive officers and the directors are to be properly hired (e.g. management agreement or employment contract) by the insurance brokers;
- ☐ to pay an authorization tax.

Insurance and/or re-insurance brokers authorized to conduct business within the territory of Romania should be registered in the Insurance and/or Re-Insurance Brokers Register, which is kept and updated by the Financial Supervisory Authority, and accessible to the public.

## 6. Foreign Insurers in Romania

Currently, foreign insurers may perform insurance activities in Romania either (i) by incorporating a subsidiary in Romania or (ii) by establishing branches in Romania.

As regards EU insurers, the Romanian legislation provides for the EU passport principle according to which EU based insurers may provide insurance services in Romania via a branch or directly, based on the free provision of services principle.

Please note that any insurer headquartered outside the Romanian territory, irrespective of its nationality, willing to set up an insurance agency or a branch in Romania, must request an official authorization from the Financial Supervisory Authority.

In case the insurer fulfils several conditions, then the Financial Supervisory Authority will authorize the respective branch. The respective conditions suppose that the respective company:

- ☐ is authorised to perform insurance activities according to its national law;
- ☐ undertakes to open specific insurance accounts and to record all transactions;
- ☐ holds in Romania assets with a certain value established by Romanian law;

- ☐ appoints a general representative authorised by the Financial Supervisory Authority;
- ☐ presents a business plan according to Romanian legal requirements in this respect;
- ☐ fulfils the governance requirements as provided by Romanian legislation;
- ☐ attests that it complies with the solvency capital requirements and minimum capital requirements; and
- ☐ communicates the name and address of the claim representative appointed in other Member States.

If the Financial Supervisory Authority is notified by a surveillance authority from a Member State of origin about the intention of an insurer authorized in that Member State to set a branch according to Romanian legislation, the Financial Supervisory Authority must provide within 2 months to said surveillance authority with the legislation regarding the protection of the public interest to be followed in conducting insurance activities in Romanian territory.

*CHAPTER 3 – Employment Law*

Please note that the legal framework in the employment sector has been updated for the purposes of aligning to and implementing the European rules.

In respect of Romania's profile in the employment sector, as of 2007 when Romania became a Member State of the European Union, Romania's attractiveness to foreign business-oriented entities has grown substantially. A series of factors emphasize such feature of the employment sector in Romania:

- ☐ Romania's population is young, more than 50% being under 40 years old, thus Romania is able to provide good workforce. Moreover, given that in Romania exist more than 100 universities providing more than 120,000 university graduates per year, workforce in Romania is generally specialized;
- ☐ Romania has an extensive industrial experience, developed especially during communism period. Ever since the political regime has changed, industrialization has slipped on a slowing slope but industrial businesses find in Romania great opportunities for development;
- ☐ Romania provides great prospects to develop businesses without making significant expenses, as highly skilled workforce in Romania comes at competitive prices, which are the 2nd lowest in the EU;
- ☐ There are reduced language and cultural barriers, Romanians being well known for their hospitality, friendliness and eagerness to welcome foreigners.

## 1. Relevant Legislation

- ☐ The Labour Code;
- ☐ Government Emergency Ordinance No. 102/2005 on the free movement on the territory of Romania of the citizens of European Union, European Economic Area or of Swiss Confederation;
- ☐ Law No. 67/2006 on the protection of employees' rights in case of a transfer of undertakings, of units or part of those;
- ☐ Law No. 62/2011 on Social Dialogue;
- ☐ Government Ordinance No. 25/2014 on employment and secondment of foreigners on Romanian territory, and for the amendment and completion of certain enactments on foreigner's regime in Romania.

## 2. Employment Contracts

In Romania, may have the capacity as "employer": (i) any subsidiary, branch, agency or representative office incorporated and authorized under Romanian law to operate and hire personnel; (ii) the branch of a foreign company.

As regards employees, note should be made that there are no work restrictions for nationals of EU/EEA and Switzerland. In this case, no formalities are needed for employment engaged for 90 days or less. However, registration is necessary for more than 90 days.

Nationals outside EU/EEA and Switzerland who want to become employees are required to have visa, residence permit and work permit. However, there are no age or nationality restrictions on company's managers or directors.

Special provisions for the employment of graduates and persons with disabilities have been adopted, given their special condition and vulnerabilities.

In terms of remunerations, the salary includes basic salary, indemnities, bonuses, as well as any other additional payments, and is paid prior to any other debts of the employer. As of 1 February 2017, the minimum gross salary is set at 1,450 RON/month (approx. 315 EUR/month), 8.73 RON/hour (approx. 1.89 EUR/hour) for a full working time of 166 hours/month, in accordance with the legislation in force. The average gross salary is 3,256 RON/month (approx. 707 EUR/month).

Settling the basic salary below the level set forth by the law is deemed as a contravention and shall be sanctioned by a fine amounting from RON 300 to RON 2,000 (approx. EUR 65 to EUR 435), for each individual labour contract in which the minimum salary is set below the one aforementioned.

### 2.1. Individual Employment Contract

- ☐ Form: the individual employment contract is concluded in writing, on the basis of parties' mutual consent, in Romanian language, before the employee starts the activity in this capacity. The obligation to conclude the individual employment contract is born by the employer.
- ☐ Prior information before entering the labour contract: the employer must inform the applicant or the employee, as the case may be, on the general provisions it intends to insert/revise in the contract (e.g. the parties' identity, work place details, criteria for the evaluation of the professional activities of the employee applicable at the level of the employer, risks of work, etc.). Non-observance of the employer's obligation to provide information, entitles the applicant or the employee, as the case may be, to notify the competent court within 30 days and to request recovery of the damages incurred as a consequence of the employer's breach of its obligation to provide information.
- ☐ Probation period: during the execution of the individual employment contract, a sole probation period may be established, which cannot exceed (i) 120 calendar

days for management positions, (ii) 90 calendar days for executive positions, (iii) 30 calendar days for employees with disabilities. The first 6 months from the beginning of graduates of higher education employment are considered as an internship period, except for professions where internship is regulated by special laws. At the end of the internship period it is mandatory for the employer to issue a certificate, certified by the competent territorial labour inspectorate from its headquarters.

- ☐ Minimum rights compliance: it is forbidden that the provisions of the individual employment contract contravene or grant rights to the employee below the minimum level established by the law or by a collective employment contract. Note should be made that private life and correspondence observance on part of the employer is imperative. In this regard, it is worth mentioning that the European Court of Human Rights recently rendered a decision in the Barbulescu v. Romania case, ruling that there had been a violation of Art. 8 (i.e. right to respect for private and family life, the home and correspondence) of the European Convention on Human Rights.
- ☐ Special types of individual employment contract: full time, part time, temporary, home work, apprenticeship/internship contract.
- ☐ Working time: Undetermined or determined period (but maximum 36 months). The regular working time set forth by the applicable legal provisions is 8 hours per day, 40 hours per week. Young people under the age of 18, have a work schedule involving no more than 6 hours/day and 30 hours/week. The maximum legal working time may not exceed 48 hours/week, including overtime.
- ☐ Special clauses: damages may be awarded to the party of the individual employment contract if the other party fails to observe the:
  - o Non-compete clause - for the entire duration of the individual employment contract and for a certain period after its cessation, employer and employee may agree not to disclose any data or information to which they had access while the individual employment contract was in force, according to the terms of internal regulations, of the collective employment contract or of the individual employment contract.
  - o Mobility clause - the parties may agree that it is not mandatory that the employee performs his/her work tasks within a permanent location. Thus, the employee may benefit from additional allowances, either in cash or in-kind. The amount of cash allowances or the forms of granting the in-kind allowances must be provided for in the individual employment contract.
  - o Confidentiality clause - the parties may agree that, for the entire duration of the individual employment contract and for a certain period after its cessation, not to disclose any data or information to which they had access while the

contract was in force, according to the terms of internal regulations, of the collective employment contract or of the individual employment contract.

### 2.2. Collective Employment Contract

- ☐ Negotiation/bargaining obligation: the collective employment contract is concluded between the employer or employers' organization, on the one hand, and employees represented by trade unions or otherwise provided by law on the other, in writing, laying down clauses on working conditions, salary, as well as other rights and obligations arising from employment relationships. Collective employment contracts may be negotiated per unit , groups of units or activity sectors. The initiative of collective negotiation must be made at least 45 calendar days as of the expiry of the collective employment contract, or as of the expiry of the applicability of the provisions of the supplements to the collective employment contract.
- ☐ Duration: collective employment contracts are concluded for a fixed period of time, not shorter than 12 months or longer than 24 months. Collective employment contract can be extended only once, for no longer than 12 months.
- ☐ Subjects: collective employment contracts effects concern the following: (i) all the unit's employee, in case of collective employment contracts concluded at this level; (ii) all the employees of the units included in the group of units for which the collective employment contract was concluded; (iii) for all the employees of the units from the activity sector for which the collective bargaining contract was concluded, and that are part of the employers' associations that executed the contract.
- ☐ Associations:
  - o Trade unions (trade unions, federations and trade union confederations): are constituted by employees on the basis of the right of free association in order to promote their professional, economic and social interests, as well as to defend their individual and collective rights provided for in collective employment contracts and individual employment contracts and employment relationships, as well as in national legislation, covenants, treaties and international conventions to which Romania is a party. A trade union may be set-up by minimum of 15 persons belonging to the same company. An individual may belong, at the same time, only to one trade union of the same employer.
  - o Employers' associations: are independent, non-political employers' organizations set up as legal entities under the applicable law, without patrimonial purpose, in order to defend and promote common rights and interests of their members. Employers may associate in federations and/or confederations or other associative structures, according to the law.

### 2.3. Suspension and termination of the employment contracts

- Dismissals: can be performed for reasons:
  - related to the person of the employee: (i) disciplinary reasons - the sanction may be appealed by the employee before the competent courts within 30 calendar days from the notification. Moreover, such sanction shall be notified to the employee no later than 5 calendar days after the date of issue and shall take effect from the date of notification; (ii) preventive arrest or arrest at the domicile, for more than 30 days; medical inaptitude; poor performance;
  - not related to the person of the employee (e.g. suppression of the workplace of the employee). Employees shall benefit from active measures designed to fight unemployment and may enjoy compensations under the terms of the law and the applicable collective employment contract (the law does not provide the amount of the compensation);
  - collective dismissals: dismissing, for reasons not related to employees, within a 30 days, of at least 10 employees (for companies with 21-99 employees), 10% of the employees (for companies with 100-299 employees) or 30 employees (for companies with at least 300 employees).
- Resignation: a minimum prior notice is required (i) 20 working days for the employees in executive positions; (ii) 45 working days for the employees in management positions.

## 3. Services Contracts

Apart from employment contracts, many companies chose not to conclude individual employment contracts but service performance contracts with certified natural persons. Thus, the applicable law defines a certified natural person as a natural person that may carry out the activities for which authorization was granted, either alone or together with up to 3 persons, employed by the certified natural person in its capacity as employer, by concluding and registering individual employment contracts under the law.

- Employer benefits to conclude service performance contracts compared to individual employment contracts: inter alia, employers may benefit from the following advantages if choosing to conclude service contracts over individual employment contracts:
  - Significant reduction of tax obligations (i.e. contribution to the public pension system CAS - 15.8%; contribution to the public health system CASS - 5.2%; contribution to the unemployment insurance budget - 0.5%; contribution to holidays and allowances, medical leave - 0.85%; insurance contribution for work-related accidents and diseases - 0.85%);

- Reducing the bureaucracy generated by the existence of individual employment contracts (e.g. registration of individual employment contracts with competent authorities/bodies);
- Reducing risks of unpredictable amendments/changing the legal framework regulating employment relationships;
- Nonexistence of obligation to observe employees' rights and/or protection measures set forth by the employment legislation (e.g. regarding paid leave, work hours, grant of allowance or payment of travel expenses).

## 4. Management contracts

Although management contracts are used both in public and in private sectors, they are especially regulated for the state owned companies and autonomous administrations, as agreements between a legal entity carrying out an economic activity as the owner and a manager entrusted with organizing, managing and leadership relating to the owner's business, based on quantifiable performance objectives and criteria, in exchange for payment.

☐ Parties: management contracts are concluded between the following parties:

- the company - through its board of directors;
- the manager - a team consisting of up to seven natural persons, Romanian or foreign, or a natural or legal person, Romanian or foreign. The manager performs his/her duties as set out in the management contract. The manager (i.e. a natural person/one of the members of the management team, appointed by the other members of the team/one of the legal representatives of the manager-legal person) is a non-voting and indemnifying member of the board of directors of the company who is a party to the management contract.

☐ Incompatibilities - the following categories cannot be designated as managers:

- natural persons who: (i) they have the status of manager or administrator at another company; (ii) they have suffered final criminal convictions rendering them incompatible with this quality; (iii) appear on the list of managers and administrators whose mandate was revoked; (iv) have been sanctioned for breach of legal provisions in the field of taxation; (v) they or their relatives and their affiliates up to the second degree hold shares in another company whose purpose of business is similar to that of the company interested in concluding the management contract;
- legal persons that: (i) have been declared bankrupt; (ii) have been sanctioned for breach of the legal provisions in fiscal matters, for which purpose they will also submit, upon selection, evidence issued by the financial body; (iii) appear on the list of managers whose mandate was revoked.

- Relationship particularities: the manager is not an employee of the company-party to the management agreement; thus, employment legal framework shall not apply. According to Law No. 31/1999 on companies, during the term of office, managers are forbidden to conclude individual employment contracts with the company. If such managers are appointed from the employees of the company, the individual employment contract concluded with the company is suspended during the term of office. Upon the end of the term of office, the manager/members of the management team may be employed, upon request, in the company for at least 6 months, in accordance with their professional training and available positions in the company.
- Management v. Employment Contract: given that the manager is not an employee of the company, he/she is not subordinated to it. However, the manager shall not benefit from the rights/protection measures set forth in the benefit of employees (i.e. paid leave, protection against dismissal in certain situations expressly stipulated by the law, granting a minimum number of days of annual leave, setting a maximum number of working hours).

## 5. Secondment

The place of work can be modified unilaterally by the employer by delegation or secondment of the employee to a workplace other than the one stipulated in the individual employment contract. During delegation or secondment, the employee retains his/her position/ranking and all the other rights provided in the individual employment contract.

Secondment involves a temporary change of the workplace of an employee, ordered by the employer, to another employer for the purpose of carrying out works in its interest. Exceptionally, by secondment, the type of work may change but only with the written consent of the employee.

- Particularities: secondment may be ordered for a period of up to one year. Exceptionally, such duration may be extended for objective reasons requiring the presence of the employee at the employer to whom the secondment was ordered, with the agreement of both parties, every 6 months. Employees may refuse to postpone their employer's assignment only by exception, for justified reasons.
- Employee's rights and protection: the employee is entitled to the payment of transport and accommodation expenses, as well as to a secondment allowance, under the conditions laid down by law or by the applicable collective employment contract. Employee's rights shall be granted by the employer to whom the secondment was made. During secondment, the employee shall enjoy the most favourable rights, either from the rights of the employer who has ordered secondment or the one to whom he/she is seconded. The employer that ordered secondment shall take all necessary measures to ensure that the

other employer fully and timely fulfils all obligations towards the seconded employee. In case of non-compliance with the obligations toward the employee, such obligations shall be fulfilled by the employer that ordered secondment. If discrepancy between the two employers exists or none of them fulfils their obligations towards the employee, entitles the latter to return to the original workplace/turn against any of the two employers and demand the forced performance of unfulfilled obligations.

## 6. Administrative requirements, incl. healthy and safety working conditions, personal data protection, etc.

- ☐ Healthy and safety working conditions: employers have the duty to ensure the safety and health of employees in all aspects of work. If an employer makes use of outside persons or services, employer's liability shall not be removed. Measures relating to safety and health at work may in no case result in financial obligations for employees. Employers have the obligation to organize employees' training in the field of safety and health at work. The training shall be carried out periodically, by specific modalities established by agreement between the employer and the labour safety and health committee and his trade union or, as the case may be, representatives of the employees.
- ☐ Personal data protection: employees have the right and employers have the correlative obligation to observe personal data protection regarding employees. Certain data is prohibited for processing; however, if such processing is necessary in view of the performance of the liabilities, or of the specific rights, of the data controller in the field of labour, under the observance of the guarantees provided for by law. A possible disclosure to a third party of the processed data may take place only if the data controller is legally required to do so, or if the data subject has expressly agreed to the disclosure.
- ☐ Social security: Employer contributions vary depending on work conditions, namely: (i) 26.3% for normal working conditions - of which 10.5% is due by the employee and 15.8% by the employer; (ii) 31.3% for hard working conditions - of which 10.5% is due by the employee and 20.8% by the employer; (iii) 36.3% for special working conditions - of which 10.5% is due by the employee and 25.8% by the employer. For certain categories of insured persons who are not qualified as employees, the value of the gross insured income is capped at five times the average gross salary used to ground the state social insurance budget and cannot be less than 35% of the average gross salary. Other contributions shall also be paid, in accordance with the law (e.g. to the health social security fund, to the unemployment security budget, to the Salaries Guarantee Fund).

*CHAPTER 4 – Doing Business in Specific Fields*

## *Section 1 – Agriculture*

The Romanian agricultural economy and rural development has known a great change once Romania started to make the first steps towards the integration into the European Union. Thus, Romania had to adopt quickly and fully the Common Agricultural Policy. The successful European model of agriculture implemented by the Common Agricultural Policy is based on competitiveness, market-orientation and fulfils simultaneously other public functions, such as protecting the environment providing more convenient residential settlements for the rural population and the integration of agriculture with the environment and forestry.

Although Romania is still in the process of lining up with the authentic European agricultural model, Romania has great potential of regain its title as "Europe's granary", as it once was called, due to its geographical particularities that enrich its agricultural potential.

In this regard, please be reminded that Romania is situated in the South-Eastern part of Europe, at the crossroad of the main axes of communications North-South and East-West. Its total area of 238,391 km2 comprises:

- 61.3% agricultural land - approx 14.6 mil. ha, of which 64.2% arable land, 32.9 % meadows and natural grasslands and 2.7% plantations of trees and vineyard;
- 28.3% forests and other forestry vegetation lands;
- 10.4% the built area of the localities, waters, roads, railways and unproductive lands.

Thus, it may be held that Romania has all data to become a leading EU state in the field of agricultural economy, for which reason the main focus of the Government is fast development, by drafting and implementation of programs for this purpose.

### 1. Relevant Legislation

Markets

- Regulation No. (EC) No 1234/2007 establishing a common organization of agricultural markets and on specific provisions for certain agricultural products;
- Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of agricultural markets.

Financial Support

- ☐ Order No. 694/2008 on the conditions for the recognition of producer organizations and producer groups previously recognized in the fruit and vegetables sector, and how to access their financial support;
- ☐ Government Decision No. 1078/2008 on the granting of financial support to producer groups previously recognized and to producer organizations in the fruit and vegetables sector;
- ☐ Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of agricultural markets and repealing Regulations (EEC) 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No 1234/2007;
- ☐ Law No. 37/2015 on the classification of farms and agricultural holdings.

Organic Farming

- ☐ Order No. 219/2007 to approve the Rules of Registration of Operators in organic farming ("Order No. 219/2007");
- ☐ Regulation (EC) No. 710/2009 of 5 August 2009 amending Regulation (EC) No 889/2008 laying down detailed rules for the application of Council Regulation (EC) No 834/2007 regarding the establishment of detailed rules for organic production of aquaculture animals and seaweed;
- ☐ Order No. 181/2012 approving the rules for the organization of the inspection and certification system in organic farming;
- ☐ Order No. 1253/2013 for the approval of rules on the registration of operators in organic farming;
- ☐ Order No. 895/2016 for the approval of the rules on the organization of the inspection and certification system, the approval of inspection and certification bodies/inspection and control bodies for the control organisms in organic farming.

## 2. Farmers

Farmers in Romania are organized in professional organizations and employers' trusts, for the purposes of protecting and promoting their rights and economic interests, as well as for easing the dialogue with Romanian authorities specialized in the fields of agriculture, consumer protection, etc.

Farms and agricultural holdings may have one or more owners and may be private or associate and their legal form complies with the provisions of the legislation in force. Depending on the general type of agricultural activity, holdings shall be classified as follows:

- ☐ specialized holdings – farms specialized in field crops/ horticultural holdings/ holdings specialized in permanent crops;

- specialized holdings - animal production (grazing and granivory livestock);
- mixed holdings - mixed crops holdings; mixed breeding farms; mixed crop and livestock holdings; unclassified holdings.

Given their economic dimension, farms and agricultural holdings are classified as follows:

- subsistence farm - agricultural holding with economic size below 1,999 Total Standard Production;
- semi-subsistence farm - agricultural holding with an economic size of 2,000-7,999 Total Standard Production. These farms can process from their own products traditional products, observing the legal provisions in force;
- small farm - agricultural holding with economic size between 8,000-11,999 Total Standard Production;
- medium size farm - agricultural holding with economic size between 12,000-250,000 Total Standard Production;
- large farm - agricultural holding with an economic size of more than 250,000 Total Standard Production.

Note should be made that small/medium size/large size farms and agricultural holdings represent forms of combining agricultural land and may also have their own processing units, in compliance with the legal provisions in force.

## 3. Production

### 3.1 Fruit and Vegetable Sector

At present, there are 24 producer organizations in the fruit and vegetable sector that were set up at the producers' initiative to take advantage of the common market organization.

- Financial support from European Union funds

Producer organizations receive financial support to finance operational programs from the European Union on the one hand and from producers and producers' organizations on the other hand, such programs having a minimum duration of 3 years and a maximum of 5 years.

European Union financial support to producer organizations shall be equal to the amount of the financial contributions of the members or producer organization actually paid but limited to 50% of the actual costs incurred by the producer organization under the approved operational program. Note should be made that EU financial support is limited to 4.1% of the value of marketed production by each producer organization. The percentage may be increased to 4.6% of the value of marketed production, provided that the amount exceeding 4.1% of the value of marketed production targets the crisis prevention and management measures.

☐ Financial support from national funds

- o National Transitional Aid - granted in the field of vegetation, within the limits of annual budgetary provisions allocated to the Ministry of Agriculture and Rural Development;
- o State aid for diesel used in agriculture - the maximum quantities of diesel purchased and used in the fruit sector for which financial support is granted are:

- vegetables grown in the field - 148 litres/ha;
- foods in protected areas -75 litres/ha;
- green and yellow melons - 150 litres/ha;
- mushrooms - 80 litres/ton;
- orchards - 130 litres/ha;
- strawberries, other fruit shrubs - 65 litres/ha.

### 3.2 Viticulture/Enology

Probably the most famous agriculture-linked production sector in Romania, especially due to its abundant and high-quality products, is the wine sector. Romanian wines are worldwide known as award-winning products and highly demanded as they are preferred by celebrities such as the members of the British Royal Family.

In terms of financial support, under the National Support Program of Romania in the wine sector for 2014 - 2018, Romania has chosen to finance, depending on the specificity of native viticulture, 5 support measures:

☐ promotion of wines through the promotion of wines produced in the Union consisting of information measures in the Member States with a view to informing consumers about moderate wine consumption and the scheme of designations of origin and geographical indications and the sub-measure promotion in third countries with a view to improving the competitiveness of wines with a registered designation of origin, geographical indication or wine for which the vine variety is indicated;

☐ restructuring and conversion of vineyards;

☐ harvest insurance;

☐ investments;

☐ distillation of by-products.

Because of the special impact of the National Support Program 2009 - 2013 on the wine sector, which absorbed 100% of the funds of the European Agricultural Guarantee Fund made available by the European Commission through Regulation

(EU) No. 1308/2013, Romania benefits from a EUR 47.7 million per year-financial allocation for the wine sector.

### 3.3 Field crops

Field crops include the following categories of products: cereals (i.e. wheat, corn, barley, rice), technical plants (i.e. sunflower, colza for oil, sugar beet, flax and hemp cultures for fiber, tobacco and hops, soy), medicinal and aromatic herbs/plants.

Financial support granted by the Romanian State in the field crops sector is generally the following:

- ☐ direct payment schemes:
  - o single area payment scheme;
  - o redistributive payment;
  - o payment for agricultural practices beneficial to the climate and the environment;
  - o payment for young farmers;
  - o simplified scheme for small farmers.
- ☐ national transitional aid;
- ☐ state aid for diesel fuel used in agriculture.

### 3.4 Animal husbandry

Romania is well-known for traditional animal husbandry in rural locations. Generally, cattle, swine, sheep and goats, horses, backyard birds are reared in Romania for both import and export. Unfortunately, traditionally reared animals are still intended for household consumption and the greatest part of animals is reared industrially.

However, as the demand for traditional products is growing fast and more European Union and Romanian citizens are focused on the quality of products, local farming continues to improve and spread, thus trading animal-origin products from traditionally grown animals ensures employment stability in rural locations.

- ☐ Cattle, sheep and goats - specific to the mountain area, it is a sustainable and prosperous activity, given its diversity of productions, the low energy consumption and the nature of the feed they harvest, being a sustainable and prosperous activity;
- ☐ Swine - important for the consumption of the entire population. The level of consumption of pork per capita is in direct correlation with meat production and the purchasing power of the consumer;

- Birds - in an intensive industrial system represents an activity that ensures the need for meat and eggs for the urban population, thus providing products accessible to the entire population. It is the main user of fodder feed concentrates grown for animal protein conversion.

### 3.5 Floriculture

In Romania, growing flowers is largely spread and performed. The highest flower harvests are obtained mainly in the following counties: Ilfov, Alba, Dambovita, Maramures, Prahova, Mures, Dolj, Giurgiu, Calaraşi, Satu Mare, Bacau, Iasi.

In this field of flower harvesting, Romania grants financial support in the following forms:

- direct payment schemes:
  - single area payment scheme;
  - redistributive payment;
  - payment for agricultural practices beneficial to the climate and the environment;
  - payment for young farmers;
  - simplified scheme for small farmers;
- national transitional aid - shall be granted in the field of vegetation, within the limits of the annual budgetary provisions allocated to the Ministry of Agriculture and Rural Development;
- state aid for diesel fuel used in agriculture - the maximum quantity of diesel purchased and used in the floriculture sector for which financial support is granted is 100 litres/ha.

## *Section 2 – Tourism*

One of the areas of law that has known great dynamism over the past years concerns tourism, as a fast-growing appetite for tourism in Romania has been grasping both Romanian and foreign business-oriented entities. This trend has developed especially after Romania became an European Union member state, which widened the possibilities for Romania to be attractive to European Union citizens regarding customs and quality standards of services. Additionally, the territory of Romania includes 5 bio-geographical regions (steppe, Black Sea, Pannonia, continental and alpine) of the 11 European bio-geographical regions, fact that enhances Romania's attractiveness to tourists.

Hence, the Government, with the Parliament's support, has adopted, modified or supplemented numerous enactments to comply with European rules and standards

that are mostly focused on conferring greater protection to tourists, and make service providers and suppliers more aware of their responsibilities. It has even been expressly regulated that tourism is a priority area of Romanian economy.

**1. Relevant Legislation**

*Control and Authorization for Tourism*

- ☐ Order No. 58/1998 regarding the organization and development of tourism activity in Romania;
- ☐ Government Ordinance No. 107/1999 republished regarding the activity of marketing the packages of tourist services;
- ☐ Order No. 235/2001 on the insurance of tourists in the event of insolvency or bankruptcy of the travel agency with subsequent modifications and completions;
- ☐ Order of the Minister of Transport, Constructions and Tourism No. 516/2005 for the approval of the framework contract for the marketing of the tourist services packages;
- ☐ Order No. 990/2009 for the amendment of some normative acts in the field of tourism in order to implement the Government Emergency Ordinance No. 49/2009 on the freedom of establishment of service providers and the freedom to provide services in Romania;
- ☐ Government Decision No. 121/2013 on the issuance of classification certificates, licenses and travel certificates;
- ☐ Order of the President of the National Authority for Tourism No. 65/2013 for the approval of the methodological norms regarding the issuance of certificates for the classification of the tourist accommodation structures with functions of accommodation and public catering, of the licenses and the tourism certificates;
- ☐ Order No. 221/2015 on the modification of the methodological norms approved by the Order No. 65/2013.

*Touristic infrastructure*

- ☐ Law No. 526/2003 for the approval of the National Tourism Development Program "Skiing in Romania";
- ☐ Government Decision No. 120/2010 on the list of tourism investment programs and projects and sources of financing of technical documentation and of the execution of tourism investment programs and objectives, as well as for the approval of the eligibility criteria of the programs and projects of tourism investment in tourism;
- ☐ Government Decision No. 1220/2011 amending the Government Decision No. 120/2010 regarding the approval of the List of tourism investment programs

and projects and the sources of financing of technical documentation and of the execution of tourism investment programs and objectives, as well as for the approval of eligibility criteria for investment programs and projects in tourism.

*Tourism Promotion*

- ☐ Government Decision 20/2012 on the approval of the Multiannual Tourism Marketing and Promotion Program and the Multiannual Program for the Development of Tourist Destinations, Forms and Products;
- ☐ Order No. 175/2016 amending the Annex to Order No. 1390/2015 approving the list of international tourism exhibitions at which the National Authority for Tourism participates in 2016;

Tourism Development

- ☐ Order No. 132/2013 on the approval of the establishment of Territorial Representations and Tourist Promotion Units;
- ☐ Order No. 500/2014 regarding the amendment of the Order of the Deputy Minister for Small and Medium Enterprises, Business and Tourism Environment No. 132/2013 regarding the approval of the establishment of the Territorial Representations and Tourist Promotion Units;
- ☐ Order No. 263/2015 for the approval of the Internal Procedural Norms for the award of contracts for the rental of immovable property or parts of it for the activity of the tourist promotion and tourist information offices from abroad within the National Authority for Tourism.

*Holiday vouchers*

- ☐ Emergency Ordinance No. 8/2009 on the granting of holiday vouchers.

## 2. Coffee shop, Restaurant, Hotel, Camping

### 2.1. Authorization/classification certificate

Order of the President of the National Authority for Tourism No. 65/2013 for the approval of the methodological norms regarding the issuance of certificates for the classification of the tourist accommodation structures with functions of accommodation and public catering, of the licenses and the tourism certificates lays down a series of rules applying to tourist reception facilities with functions of accommodation and public catering. Thus, such facilities are classified on stars (e.g. hotels) or daisies (e.g. tourism and agritourism pensions), depending on construction features, facilities and the quality of services they offer, under the conditions and mandatory minimum and additional criteria provided thereof. The classification of tourist reception facilities aims primarily at the protection of tourists, being a codified form of a synthetic presentation of the level of comfort and of offer of services.

☐ Issuance: The National Authority for Tourism issues classification certificates allowing economic operators to carry out their activity in the field of accommodation and public catering. For the issuance of such a certificate, one shall file with the National Authority for Tourism the following documents:

a) Standard application form (i.e. Appendix No. 3 to the methodological norms set forth by Order No. 65/2013);

b) Certificate of validation (extended form) issued by the Trade Registry regarding the activities authorized to be carried out at the business unit and the corresponding CAEN code/codes;

c) Standard form on the classification of accommodation spaces by categories and types, according to Appendix No. 4 to Order No. 65/2013;

d) Standard form on framing and organization of spaces in the TRFs with functions of public catering, according to the Appendix No. 5 to Order No. 65/2013;

e) Employment contracts proof of registration (REVISAL extract on the minimum personnel needed to ensure the functioning of tourist reception facilities (operative management, chief accommodation reception and/or production and serving manager for public catering establishments, as the case may be) and the documents proving the professional training of each, according to Appendix No. 7 to Order No. 65/2013;

f) Copy of the specialized opinion issued by National Authority for Tourism under the applicable legal provisions on endorsement of urban planning documentation regarding tourist areas and resorts and technical documentation regarding construction in the field of tourism. The opinion shall mention the category in which the tourist reception facilities can be included, subject to objective and other criteria for classification on stars and categories of tourist structures, that constitutes a prerequisite to the granting of the category.

Similar documents shall be filed in case of applying for:

- reclassifying the unit to another type of classification structure and/or class;
- changing the holder of the classification certificate. The former holder is obliged to notify the National Authority for Tourism upon ceasing the activity;
- changing the name of the tourist reception facility;
- duplicate of the classification certificate/appendix;
- amendment of an appendix sheet.

☐ Procedure: The National Authority for Tourism shall issue the classification certificate according to the following general timeline:

- as soon as possible but not more than 30 calendar days of the submission date, the request of the applicant shall be analysed and solved by the National Authority for Tourism;
- within 5 working days of the submission date, the National Authority for Tourism shall notify the applicant in case of incomplete documentation regarding further necessary documents, as well as of the consequences for the 30-day term provided above;
- if, within 6 months from the date of the National Authority for Tourism notification, the supplementary documentation referred to above is not completed, the procedure shall be closed;
- if the National Authority for Tourism deems to be necessary, it may require the applicant to provide additional supporting documents or it may even make on-the-spot checks by its specialized personnel on whether the conditions and criteria fulfilled for the issuance of the certificate;
- after completing the checking procedure, the National Authority for Tourism drafts a classification note;
- within 15 days as of the date of the classification note, the National Authority for Tourism issues the classification certificate or, as the case may be, a notification to the applicant if the classification conditions are not fulfilled within the time limits.
- The holder is obliged and bears sole responsibility to take possession of the provisional operating authorization and/or the original classification certificate, which shall be issued only upon its request.

☐ Withdrawal and revert: the classification certificate may be withdrawn by the specialized personnel of the National Authority for Tourism if the holder fails to:

- complies with the holder’s obligation to ensure the functioning of the category and/or type of tourist reception facility mentioned in the classification certificate;
- observes the legal provisions in force regarding the performance of the activity in the tourist reception facility.

However, the National Authority for Tourism may decide not to withdraw the classification certificate, but to order the holder to remedy the deficiencies as soon as possible. The term is valued according to the complexity of deficiencies' remedy and cannot be longer than 90 calendar days.

If remedy fails to be accomplished, the classification certificate accompanied by the annex sheet shall be withdrawn through the control act, and the re-establishment of the tourist reception facility in the type and/or class actually performed shall be decided. On the basis of the minutes accompanied by the classification certificate and/or its original annex sheet, the new classification certificate and/or the annex sheet is issued for the type and/or class of classification specified in the minutes.

Upon holder's request, the classification certificate may be retrieved in case of remedy of deficiencies after the withdrawal of the certificate. Before reverting the classification certificate, the specialized personnel within the National Authority for Tourism shall make a final check on the remedy of all deficiencies.

- Cancellation: if the activity regarding the tourist reception facility ceases, the holder of the classification certificate shall request cancellation of the certificate. Such request is mandatory for the holder.

## 2.2. General Conditions of Functioning for Tourist Reception Facilities

The owner and/or manager of a tourist reception facility bears the following responsibilities:

(i) to ensure good maintenance and functionality of the equipment during the entire functioning period including the arrangement and maintenance of green spaces, recreational areas, environmental landscapes and other external facilities (annexes) under administration, ownership, concession, rental, commodity or other where applicable, as an integral part of the tourist reception facility;

(ii) to display at the reception or in the reception hall the maximum reception rates;

(iii) to permanently provide hot and cold water to the sanitary groups;

(iv) to ensure a minimum temperature of 21 degrees C in occupied accommodation, in service spaces and in common areas, and for the tourist reception facility where the air conditioning is mandatory, a maximum temperature of 25 degrees C;

(v) to provide qualified personnel. Serving staff in the tourist reception facility shall wear specific clothing set by the economic operator, differentiated according to the conditions of the activity and a badge comprising at least the first name and function, and the rest of the personnel will wear the work equipment specific to the activity;

(vi) to ensure the necessary conditions so that tourists are not disturbed by the noise generated by the technical installations of the building or by other pollution factors;

(vii) to provide accommodation with direct natural light and ventilation;

(viii) not to place accommodation in the basement of buildings;

(ix) to expose visibly, outside the building: the name, type and symbols of the classification category of the tourist accommodation structure;

(x) to expose visibly and legibly at the reception, in the hall of reception facility not having reception and in the entrance area in dining rooms, a copy of the classification certificate and its annex sheet or the provisional authorization for operation, the telephone number "HELPLINE – 0800868282" of National Authority for Tourism;

(xi) to provide actual information on the name, type, classification category and services provided in all promotional materials, according to the provisional operating authorization or the classification certificate obtained;

(xii) to keep permanently in the original structure of the concerned tourist reception facility, the provisional operating authorization or the classification certificate and its annex sheets;

(xiii) to provide a diversified range of additional services, free of charge or charged separately;

(xiv) to provide in the accommodation spaces written, aesthetically printed materials in Romanian and in at least two international languages (categories 3, 4 and 5 stars/daisies) and an international language (in categories 1 and 2 stars/daisies) including useful information for tourists, such as: instructions for using the phone, as appropriate, domestic and international tariffs for phone calls, a list of the additional services offered and the tariffs for the paid ones indicating how to request the service in the room, price list for room service, the list of prices of the products in the minibar, instructions for using TV, air-conditioning installation as appropriate, tourist information about the area or locality, any other information that may make the stay of the tourist agreeable. In 4 and 5-star hotels, the material will be presented in customized maps in each accommodation or by electronic display (via closed-circuit TV);

(xv) to ensure the maintenance of order, public peace, morality and to observe the legal norms in force regarding the safety and security of tourists in the tourist reception facility;

(xvi) to ensure the connection to the Integrated Tracking System, within 60 days of its implementation and operation;

(xvii) to display the message "Pro Natura" in the bathrooms in at least two international languages regarding the choice of each guest on the length of use of the same linen and towels;

(xviii) to hold at least one e-mail address and website showing its identification data, address and number of the classification certificate.

Please note that operative management of a tourist reception facility can only be ensured by a person holding a: tourism patent specific to the position or a graduation certificate of managerial training course in the field of tourism .

### 2.3. Notions and Particularities

For the purpose of clarification, the Romanian legislator opted to expressly define and explain the notions and differences between particular tourist reception facilities, by setting forth minimal classification requirements. For example:

*Public catering*

- Cafe-bar or cafe: a unit that combines coffee and recreational activities; (liquor, cognac, vermouth, etc.), hot and cold snacks, minutes, confectionery and pastry, ice cream, hot non-alcoholic beverages (filter coffee, shake, milk coffee. This is a subcategory of the "Bar" class that also includes the following subclasses: "Buffet-bar", "Night Bar", "Day Bar", "Club and Disco-bar", "Snack-bar".
- Restaurant: a public location that combines production and catering with a wide range of dishes, confectionery, pastry, beverages and some smoker products. This is a complex class that includes subcategories such as: "Classic Restaurant", "Specialized Restaurant", "Specific Restaurant", "Entertainment Restaurant", "Brasserie or Bistro", "Beerhouse", "Summer garden", "Terrace".

*Accommodation*

- Hotel: a structure of tourist reception arranged in buildings or in parts of buildings, which provides accommodation to tourists (rooms, studios, suites, suites, duplexes) properly equipped, provides specific services, has a reception/reception hall and, where appropriate, public catering facilities.

A different class is the "Apartment-hotel", which is an only-apartment and/or studio hotel, equipped to ensure keeping and preparation of food, as well as serving meals or having its own restaurant, with room service.

Another distinctive class of accommodation is the "Motel", which is usually a hotel unit located outside townships near intensely circulated arteries, equipped and arranged both for accommodation and food services for tourists, as well as for the safe parking of means of transport. The classification category shall be determined by the full fulfilment of the mandatory criteria set out in the applicable legal provisions.

- Camping: a tourist accommodation structure designed to accommodate tourists in tents or caravans, so arranged to allow them to park means of transport, prepare their meals and benefit from the other services specific to this type of

unit. Camping must be located in places of tourist interest protected from noise or other sources of pollution, as well as dangerous elements for the health and safety of tourists. The basic element of the campsite is the camping parcel, which is a well-defined and marked land area where it is possible to park means of transport and install the tent or caravan, while ensuring the free space necessary for the movement and rest of 4 tourists.

☐ Other classes: Hostel, Chalet, Villa and Bungalow, Pensions and Agritourism Pensions, Holiday village, Tourist stops, Apartments and rooms for rent, Sea and river vessels.

## 3. Tour Operators/Travel Agencies

### 3.1 Authorization/Travel License

Order No. 65/2013 expressly states the minimal requirements which are necessary for granting the travel license by economic operators, namely:

☐ headquarters in a good and clean building, either at the ground floor, mezzanine or 1st floor, easily accessible. Other locations may be accepted if they are located in public buildings. Tour operators that do not have direct sales activity to tourists and travel agencies operating exclusively online can operate at other levels of the building;

☐ headquarters minimum surface of 16 m2 for tour operators and 10 m2 for retail travel agencies, except for online travel agencies;

☐ own restroom for staff or with easy access;

☐ at least 50% of the staff assigned as a travel agent to be qualified as a "travel agent" certified by a certificate of graduation of a qualification course organized by an authorized professional training provider or holding a certificate of professional competence for the occupation/ "Travel Agent" qualification issued by an accredited/authorized assessment and certification body;

☐ ensuring guides possessing the travel guide certificate, if the travel agency operates tourist programs;

☐ insurance policy to ensure reimbursement of repatriation expenses and/or money paid by tourists when purchasing tourist services/packages in the event of insolvency or bankruptcy of the travel agency;

☐ firm/brand with the name of the travel agency and, if located in real estate with residential/economic activities, the application of a label or a board on the entrance to a building with the name of the travel agency;

☐ suitable furniture;

☐ means of communication: computer, fax services, telephone, internet access;

☐ website/web page;

- ☐ providing with the following information on the travel agency's website/web page: identification data, a copy of the document attesting the professional capacity of the person providing the operative management of the travel agency, a copy of the travel license granted to the travel agency, a copy of the insurance policy within its validity period;
- ☐ location to be used exclusively for tourism activity. Other activities such as currency exchange, photocopying, souvenir sales, travel books, guides, maps are accepted as far as the surface allows;
- ☐ a full-time individual employment contract registered in the employees' records, concluded with the manager of the travel agency;
- ☐ trade name that does not create name confusion with travel agencies already on the market, except for the situations provided by the legislation in force (e.g. franchise contract, name protection acquired by registration with the competent body).

The travel license is issued upon request from the economic operator based on full documentation.

- ☐ Exception from the travel license prerequisite: economic operators established in one of the EU Member States or the European Economic Area which are authorized to carry out the specific activity of travel agencies in the Member State of origin, the grant of a travel license is not required if the services performed are those specific to cross-border tourism agencies.
- ☐ Procedure: the procedure for the grant of the travel license is similar to the one for the issuance of the classification certificate.
- ☐ Withdrawal and recommencement of the activity: the travel license and its appendix shall be withdrawn in if the holder:
  - o offers, sells services/packages of tourist services without observing the legal regulations in force;
  - o conveys the license and/or its appendix for the purpose of using by another economic operator.

In case of withdrawal, the economic operator shall not carry out activities specific to tourism agencies. The measure also applies to the business units belonging to the travel agency, if they exist.

After 2 years as of withdrawal, the economic operator may request the recommencement of the activity, by applying for a new license. If the specialized personnel find that the travel agency no longer operates at the headquarters for which the travel license or an appendix to the travel license was granted and the holder did not request permanent cessation of the activity at that headquarters, the travel license/the travel license appendix shall be withdrawn ex officio after 15 days as of the notification to the holder.

- Cancellation: if the activity of the travel agency and/or its subsidiary/branch/representative/secondary office permanently ceases, the economic operator must request the cancellation of the tourist license and/or the annex of the tourism license at least 30 days before the final cessation of the activity.

Note: operative management of a travel agency can only be ensured by a person holding a: tourism patent specific to the position or a graduation certificate of managerial training course in the field of tourism.

## 4. Attractions

The Romanian legislator is permanently focused on promoting tourism and tourist attractions in Romania. Thus, several enactments have already been adopted, whilst attractions remain the key subject matter to future enactments in the field of tourism promotion to be adopted in Romania.

- National Authority for Tourism's promoting activity: In this regard, the National Authority for Tourism annually participates in international events and exhibitions for the purposes of promoting Romanian attractions. Thus, several specific enactments have been adopted, such as those regulating the award of contracts for the performance of services for decorating national pavilions, specialized stands or mini-exhibitions and related services in the exhibitions of tourism in which the National Authority for Tourism participates with financing from the state budget and the European Regional Development Fund (ERDF) .
- Travel guides: besides the National Authority for Tourism's continuous activity, promoting tourism in Romania is conducted through qualified tourist guides, which are paramount to travel agencies and a very popular and safe way to visit national tourist attractions. It is even compulsory that travel agencies use qualified guides, corresponding to the specific activities carried out for all the organized tourism actions. Travel guides are qualified persons that lead and guide a group of tourists or visitors, providing the necessary explanations of the places visited and ensuring that the contracted travel program is carried out in the best possible conditions.

In Romania, may become tour guides: Romanian citizens and the citizens of the European Union Member States, as well as those of the Member States of the European Economic Area, who are at least 18 years old. The citizens of the European Union Member States or the citizens of Member States of the European Economic Area may exercise the profession of travel guide in Romania if they have a tourism guide attestation issued by the Ministry of Tourism based on documents proving the professional qualifications obtained at the authorized institutions of states of origin or evidence of professional experience issued by these states.

There are three categories of travel guides used in Romania: local guides, national guides and specialized guides. Note should be made that unlawfully exercising the

travel guide profession by persons without attestation and/or the use of tour guides which do not have the attestation corresponding to the developed tourism activity by travel agencies constitute contraventions and shall be sanctioned by fines ranging from RON 600,000 (approx. EUR 155,200) to RON 1,000,000 (approx. EUR 258,800).

- Beach use: the use of beaches for tourism purposes is made by economic operators that have concluded a lease agreement with the "Romanian Waters" National Administration, under the terms of the law, holding also a tourist authorization for the beach sectors/subsectors subject to the lease agreement. Very strict regulations have been adopted in respect of the use of the Black Sea beaches to preserve them appropriately and to provide adequate protection for tourists.

## *Section 3 - IT & ICT Services*

Information Technology and Information and Communication Technologies (hereinafter "IT & ICT") are a key-sector in the economy of every EU Member State, by facilitating trade with the advantage of saving time and money, as well as communication and business development, Romania being no exception to this rule. In the process of harmonisation of the national legal framework with the acquis communautaire and taking into account the liberalisation of the Romanian communications market from 1 January 2003, the current legal framework which is in force in Romania is fully compliant with European Union Directives on telecommunication services, and consequently, creates more rights for consumers in their relationship with telecommunication service providers. As a result of the old and new regulatory framework, the Romanian electronic communications market has developed at an accelerated pace, becoming one of the most attractive fields for foreign investors.

Moreover, as part of the European Union, Romania had to align its legal framework to the European Union rules on e-commerce, relying on the existing European Union regulations in this field. This specific part of the IT & ICT services sector is constantly changing as the European Commission is currently working on enactments aiming to set forth rules for impeding geo-blocking practices in the course of e-commerce.

### 1. Relevant Legislation

*Electronic Communication*

- Government Emergency Ordinance No. 22/2009 on the establishment of the National Authority for Management and Regulation in Communications, approved by Law. No. 113/2010;

- ☐ Government Emergency Ordinance No. 111/2011 on electronic communications;
- ☐ Law No. 154/2012 regarding the electronic communication infrastructure regime;
- ☐ ANCOM Decision No. 987/2012 on the general authorization regime for the provision of networks and electronic communication services;
- ☐ Government Decision No. 548/2013 on the organization and functioning of the Ministry of Communications and Information Society.

*E-commerce*

- ☐ EU Directive No. 99/93 on electronic signatures;
- ☐ EU Directive No. 2000/31 on E-commerce;
- ☐ Law No. 455/2001 on electronic signature;
- ☐ Law No. 365/2002 on E-commerce;
- ☐ EU Directive No. 2011/31 on consumers' rights;
- ☐ Government Emergency Ordinance No. 34/2014 on consumers' rights in agreements concluded with professionals, and for the modification and completion of different regulations.

## 2. Electronic Communications Sector

### 2.1. Competent Authorities

- ☐ The Regulatory Authority - ANCOM was established as an independent public authority subordinated to the Parliament, entirely financed from its own revenues and tasked with putting into operation the national policy in the electronic communications, audio-visual communications and postal services fields, including by regulating the market and by technical regulation in these fields. ANCOM may request, in writing and for grounded reasons, from services providers any information which is necessary for the exercise of its prerogatives. Under a general authorisation, service providers must pay an annual monitoring tariff, which represents a certain percentage, calculated in accordance with the law, of the service provider's annual turnover in the year previous to that for which it is due.
- ☐ Ministry of Communications and Information Society - Apart from ANCOM, certain regulatory powers are exercised by the Ministry of Communications and Information Society which is acting as a specialized body of the central public administration in the field of, inter alia, communications and information technology.

## 2.2. General Authorization Regime and Licenses

- General authorization regime: electronic communications network and service provision is performed under a general authorization regime, which is issued by ANCOM upon notification. ANCOM establishes and updates the standard form of such notification, comprised of the information any person intending to provide electronic communications networks or services is bound to communicate in order to benefit from a general authorization.

A person complying with the notification procedure within the term and under the conditions stipulated by the law is deemed as authorized to provide the types of networks or services indicated in the notification, and will have all the rights and obligations stipulated in the general authorization. ANCOM may change the general authorization, by observing objectivity and proportionality principles, only after undergoing a consultation procedure, and only if such a decision is necessary under an international treaty to which Romania is party, or if the circumstances in which the general authorization was issued have changed.

Individuals or legal entities authorized to operate public electronic communications networks or provide electronic communications services have the following rights:

- Provision of electronic communications networks - providers of public electronic communications networks have the right to make their network available only to a third party that is authorised to provide electronic communications networks or services, or to a third party authorised according to specific legislation in the audio-visual field.
- Provision of electronic communications services – a provider of publicly available electronic communications services may use a network of a third provider of public electronic communications networks, upon the approval of such third provider, with such provider's consent and if the respective network allows, from a technical point of view, the provision of the electronic communications service;
- Access right to properties - a provider of electronic communications networks may install, maintain, replace, or move any element of the network, including stands and other facilities necessary for their support, as well as terminal points used for the provision of electronic communications services on, over, in or under buildings which are public or private property, as the case may be, in accordance with the legal provisions regulating access rights to properties.
- Access and interconnection - a provider of public electronic communications networks or of publicly available electronic communications services may negotiate and conclude access or interconnection agreements.
- Designation as a Universal Service provider - a provider of public electronic communications networks or of publicly available electronic communications services has the right to be designated to provide any services within the scope

of Universal Service over the entire national territory, or over regions of national territory.

- Licenses: as radio electric frequencies and numbering resources are limited, belonging to the state as public property, their use is allowed only after obtaining a license granted under such conditions which ensure their efficient use. Where technically possible, and if the risk of producing disturbing interference is reduced, ANCOM may designates certain categories of frequencies for free use, subject to the general authorization regime with respect to access and use conditions.

Licenses for the use of radio electric frequencies, as well as licenses for the use of numbering resources, are granted by ANCOM. Both licenses for the use of radio electric frequencies and licenses for the use of numbering resources are granted through an open, objective, transparent, non-discriminating and proportional procedure, within at most 6 weeks from the receipt of a request in this respect.

### 2.3. Universal Service Principle and Users Protection

The universal service principle refers to the right of every Romanian end user to benefit from services that fall within the scope of universal service at a certain quality level, irrespective of their geographical location in the country, and for accessible tariffs.

Services falling within the scope of universal service: (i) provision of access to the public telephone network, at a fixed location; (ii) directory enquiry services and the availability of subscribers' directories; (ii) access to public pay telephones. For such services, universal services providers are designated by ANCOM's decision following a public auction, or exceptionally ex officio. Secondary regulations adopted by ANCOM for the implementation of universal service within the electronic communication field establishes the conditions and procedure for the designation of universal services providers, and the mechanism of compensation of the net costs for the provision of such services.

The applicable law includes mandatory provisions for the protection of end users. Thus, contracts concluded with end users must be executed in a clear, intelligible and easy to understand form. Should the provider be allowed to unilaterally modify the contract, it must notify such an intention to the end user at least 30 days prior to operating the amendment. The end user is entitled to unilaterally withdraw from the contract, without paying the liquidated damages, in case of disagreement with the proposed amendments. The notification sent by the relevant provider should expressly specify the right of the end user to unilaterally withdraw from the contract.

## 3. E-commerce

### 3.1. Contract Conclusion Through Electronic Means

The conclusion of contracts by electronic means has to be preceded by the offeror's duty to provide the recipient with all necessary technical information for the proper conclusion of the contract.

As for contract conclusion through electronic means, unless the parties agreed otherwise, a contract is considered concluded as of the moment the acceptance, by the recipient, of the offer to contract reaches the offeror.

Similarly, a contract, which by its nature or at the request of the beneficiary implies an immediate execution of a particular service, is considered as concluded the moment the debtor starts performing its contractual obligations, unless the offeror has first requested to receive the acceptance of the offer.

### 3.2. Service Provider's Obligations/Liability

Service providers are subject to civil, criminal and administrative liability, unless otherwise provided for by law, and they are responsible for the information supplied by themselves or on their own account. Such providers are responsible for information transmitted, stored, or which they enable access to by means of (i) intermediation by simple transmission, (ii) temporary storage of the information, (iii) permanent storage of the information and (iv) instruments for searching information and connections with other web pages.

Nevertheless, a service provider is not held liable for the information transmitted, if the following conditions are cumulatively met: (i) the transmission was not initiated by the services provider; (ii) the information receiver was chosen by someone other than the service provider; (iii) the content of the transmitted message was not influenced by the service supplier. Additionally, the following new concepts are relevant on liability:

- ☐ Caching storage: an automatic, transitory and temporary storage of transmitted information, as far as this operation takes place exclusively to make the information transmission to other recipients more efficient. In certain situations, service providers are not held liable for the information transmission under such terms;
- ☐ Hosting storage: storage of information provided by a service provider, upon the request of a recipient of services. In particular circumstances, service providers shall not be held responsible for the stored information. Such circumstances shall not apply if the service receiver acts under the authority or the control of that particular service provider.

### 3.3. Distance contracts

- Definition: agreements concluded between a commercial offeror and a consumer, within a selling system, or within an organized distance service supply system, where the simultaneous physical presence of the parties is not necessary, and while exclusively using one or more distance means of communication, both until and during the execution of the agreement.
- Consumer informing: the offeror must clearly inform the consumer mostly on: (i) main features of the product or service; (ii) offeror's identity, such as its commercial name; (iii) the postal address of the offeror, telephone number, fax number and the e-mail address it frequently uses; (iv) total price of the products and services with all taxes included, or the modality for calculating the price; (v) a mention regarding the existence of a legal guarantee regarding conformity of the products; (vi) existence and conditions for any advance payment or other financial guarantees that must be paid or offered by the consumer at the offeror's request; (vii) duration of the agreement.
- Date of conclusion: the moment the consumer receives from the offeror a message confirming his order, on a durable medium, distance contracts are considered as validly concluded.
- Withdrawal rights in distance contracts: generally, consumers are entitled to withdraw from a distance contract within 14 days, without penalties or obligation to justify such decision. However, direct return expenses may be borne by the consumer. If the offeror fails to transmit to the consumer the information on the withdrawal right provided for by the law, the withdrawal term is of 12 months as of the end of the original 14-day withdrawal period.

*PART 2 – TAX*

*CHAPTER 1 – Taxes and Contributions*

Probably one of the most dynamic national legal framework, provisions regulating taxation and fiscal proceedings have known lately a major chance as of 1 January 2016, when the New Fiscal Code and the New Fiscal Procedure Code have entered into force.

In respect of amendments, the New Fiscal Code expressly provides that any changes or supplementations shall be done solely by law, entering into force at least 6 months after the publication in the Official Gazette of Romania, Part I. This amendment was necessary, especially as far as businesses are concerned, to ensure predictability of taxation and fiscal duties to be fulfilled. Furthermore, such amendments shall enter into force as of 1 January of the following year, remaining unchanged at least for that year.

Another key-amendment providing stability to the legal framework on taxes regards the adoption of changes and/or additions are adopted by ordinances, under which circumstances shorter deadlines for entry into force may be provided, but not less than 15 days from the date of publication.

## 1. Relevant legislation

- New Fiscal Code;
- New Fiscal Procedure Code;
- Customs Code;
- Government Emergency Ordinance No. 80/2013 on judicial stamp taxes;
- Law No. 117/1999 on extra-judicial stamp taxes, as amended up to date;
- Law No. 554/2004 on administrative contentious.

## 2. Taxes and contributions

Direct taxes are divided into two large groups of direct taxes are provided for by the New Fiscal Code on the criterion of the taxable subject, namely: (i) corporate income (i.e. profit tax, representative office tax, turnover tax); and (ii) income of individuals (i.e. personal tax).

### 2.1. Corporate Taxation

- ☐ Profit tax: the corporate tax rate applicable to taxable profit is 16%. The law provides an exception to this rule - taxpayers that carry out activities such as night bars, nightclubs, discotheques or casinos, including legal persons earning that income under an association agreement and for which the corporation tax

due for the such activities is less than 5% of those earnings, are required to pay a tax rate of only 5% of these earnings.

- ☐ Taxable subjects: according to Art. 13 of the New Fiscal Code, the following are subject to profit tax payments:
  - o Romanian legal entities, foreign legal entities which have their place of effective management located in Romania and legal entities headquartered in Romania incorporated, in accordance with the European legal provisions, for the taxable profit obtained from any source both in Romania and abroad;
  - o Foreign legal entities that carry out activities through one or more permanent establishments in Romania and the related income;
  - o Foreign legal entities obtaining income from a transfer of real estate located in Romania or any rights related to such real estate property. This includes the rent/transfer of the use of real estate located in Romania, income from exploitation of natural resources located in Romania and income from the sale or assignment of shares held in a Romanian legal entity, for the taxable profit related to such income;
- ☐ Tax exemptions: Amongst other, the following entities are exempted from profit tax:
  - o State's Treasury and public institutions;
  - o National Bank of Romania;
  - o Romanian Academy as well as foundations established by the Romanian Academy as sole founder, except for the economic activities carried out by them;
  - o Deposit Guarantee Fund in the banking system;
  - o Investment Compensation Fund;
  - o Private Pensions Guarantee Fund;
  - o Insurers' Guarantee Fund, constituted according to the law;
  - o Romanian legal persons paying tax on the income of micro-enterprises;
  - o Tax transparent entities with legal personality;
  - o Foundations created based on a will;
  - o Private education institutions, accredited and certified, for incomes allotted for financing higher education;
  - o Owners' associations as legal entities and associations of tenants recognized as owners' associations, except those who derive income from the exploitation of the common property, according to the law.

Additionally, as of 1 January 2017, reinvested revenue is exempted from profit tax. Thus, profit invested in technological equipment, electronic computers and peripheral

equipment, cash and cash registers, control and billing, computer programs, and the right to use software, products and/or purchased software, including of financial leasing contracts, and put into service, used for the purpose of carrying out economic activity, is exempt from tax.

Similarly, taxpayers carrying out exclusively innovation, research and development activities, as well as related activities, are exempt from profit tax in the first 10 years of activity. This tax facility shall be implemented subject to compliance with state aid rules.

- The tax result: is calculated as the difference between the income and expense accrued under the applicable accounting regulations, which excludes non-taxable income and tax deductions and adds non-deductible expenses. When determining the fiscal result, similar items of income and expenses are also taken into consideration, as well as the fiscal losses that are recovered. The positive tax result is taxable profit, and the negative tax result is a tax loss. In terms of timing, the fiscal result is calculated quarterly/yearly and cumulatively as of the beginning of the fiscal year.
- Non-taxable income: amongst other, the following types of income are deemed as non-taxable:

a) dividends received by a Romanian legal entity from another Romanian legal entity;

b) dividends received by a Romanian legal entity from a foreign legal entity subject to profit tax or a similar tax, located in a third country with which Romania has concluded a double tax treaty, provided that the Romanian legal entity receiving the dividends holds at least 10 per cent of the participation titles of the respective legal entity for at least one year ending on the date of the dividend payment;

c) the value of new shares or the amounts representing the increase of nominal value of existing shares registered as a result of incorporation of the reserves, benefits or issuance premiums by legal entities where participation titles are held;

d) income resulting from cancellation/recovery/re-invoicing of non-deductible expenses as well as from reduction or cancellation of provisions for which no deduction has been granted;

e) income representing increases resulting from revaluation of fixed assets, lands, intangible assets, as the case may be, which compensate expenses incurred with previous decreases in the same assets;

f) non-taxable incomes, expressly provided for in agreements and memoranda approved through legal enactments;

g) income obtained from the evaluation/revaluation/sale/assignment of participation titles held in a Romanian legal entity or a foreign legal entity

located in a state with which Romania has concluded a double tax treaty, provided that the taxpayer holds at least 10% of the share capital of the legal entity for at least one year ending on the date of the evaluation/revaluation/sale/assignment;

h) income resulting from the deferred profit tax determined and registered by taxpayers applying accounting regulations in compliance with the International Financial Reporting Standards;

i) income derived from liquidation of another Romanian legal entity or a foreign legal entity located in a state with which Romania has concluded a double tax treaty, provided that the taxpayer holds at least 10% of the share capital of the relevant legal entity for at least one year ending at the start of liquidation;

j) compensations received based on European Court of Human Rights rulings;

k) income registered through a permanent establishment in a foreign state, provided that the provisions of a double tax treaty concluded by Romania with the foreign state are applicable and the respective double tax treaty provides a tax exemption method to eliminate double taxation;

l) amounts received by shareholders/associates as a result of a refund of their quota of share contributions resulting in share capital decreases;

m) amounts collected, according to law, in order to fulfil funding responsibilities of waste management.

☐ Deductible expenses: for the purpose of determining the tax result, deductible expenses are considered expenditures incurred for the purpose of conducting the economic activity, including those regulated by the normative acts in force, as well as the registration fees, the contributions and the contributions due to the chambers of commerce and industry, the employers' organizations and the trade unions' organizations. Moreover, wage and salary costs are deductible expenses for the calculation of the fiscal result. However, the New Fiscal Code expressly provides for expenditure having limited deductibility.

☐ Representative office tax: Representative offices of non-resident companies are required to pay a yearly flat tax of EUR 4,000 payable in RON. The tax is payable in two equal instalments by the 25th of June and the 25th of December. When the representative office is established or closed during the fiscal year, the tax owed for the year is calculated in proportion to the number of months that the Representative Office was in existence.

☐ Turnover tax: The tax period is the calendar month, except for the case when the tax period is the calendar quarter for the taxable person that during the previous calendar year has achieved turnover from taxable and/or exempt and/or non-taxable transactions in Romania, but which give the right to deduct and did not exceed the EUR 100,000 limit, unless the taxable person made one or more intra-Community acquisitions in the previous calendar year. The taxable person that is registered during the year must declare, at the time of

registration, the turnover it intends to achieve over the remainder of the calendar year. If the estimated turnover does not exceed the EUR 100,000 limit, recalculated according to the number of months remaining by the end of the calendar year, the taxable person shall submit quarterly returns in the year of registration.

## 2.2. VAT

Value Added Tax ("VAT") is an indirect tax owed to the State budget and which is collected under the provisions of the New Fiscal Code.

- Operations subject to VAT: operations that cumulatively meet the following requirements: (i) they represent a supply of goods or services for consideration; (ii) the place of delivery of goods or supply of services is considered to be in Romania; (iii) the delivery of goods or supply of services is made by a taxable person; and (iv) the delivery of goods or supply of services results from economic activities. Certain intra-community transactions also fall under the VAT provisions if the place of the intra-community acquisition of goods is considered to be in Romania.
- Operations exempted from VAT: with credit - are those of export of goods and services related to the export of goods, international transport, as well as operations concerning the international traffic of goods; and without credit - include a range of activities, such as banking, financial, insurance, medical and social assistance education.
- VAT payers: any person performing, in an independent manner and irrespective of the location, economic activities such as: a foreign entity/individual is obliged to register for VAT purposes in Romania, where the entity/individual carrying out taxable operations if they (i) do not have their headquarters or permanent residence in the EU, such entity/individual must appoint a fiscal representative residing in Romania (ii) do not have their headquarters in Romania, but in the EU, such entity may appoint a fiscal representative residing in Romania or may register directly for VAT purposes.
- VAT rates: The standard rate of VAT is 19% and is applied to all supplies of goods and services. There are 3 reduced rates as follows:
  - 9% is applied to medicines, supply of prosthesis and accessories thereof, restaurant and catering services, potable water, etc.;
  - 5% is applied to supply of school books, newspapers, services consisting of access to castles, museums, housing supply for rehabilitation centres for minors with disabilities, homes for elderly, orphanages, etc.

In order to obtain a VAT code, a company has to draw up a file containing the mentioning statement / VAT registration form. The company shall be evaluated from

the point of view of intention and capacity of performing economical activities in the application sphere of the VAT.

The Romanian law also defines a compulsory and a voluntary registration.

The obligation for a VAT registration occurs when the total taxable turnover of a person (taxable basis of all taxable transactions) for the previous twelve months is equal or exceeds RON 220,000 lei. Please note that very soon it is possible that the Romanian legislator decides to raise the threshold to RON 300,000.

If a business entity has exceeded the above mentioned threshold in a month, it has to fill in a form and submitted in 10-days term of the end of the month when the threshold has been exceeded. In this situation, the VAT code shall be applicable from the first day of the following month in which the registration has been required.

### 2.3. Personal taxes and social securities

- Personal taxes
  - Tax subjects: (i) resident individuals; (ii) non-resident individuals conducting independent activities through a permanent establishment in Romania; (iii) non-resident individuals carrying out dependent activities in Romania; (iv) non-resident individuals for revenues other than those obtained through activities provided at points (ii) and (iii) above.
  - Tax rate: the income tax rate is 16%, except for real estate revenues and gambling revenues for which special rules apply. Also, as of 1 January 2016, dividends are subject to a 5% tax rate;
  - Revenues subject to tax: revenues from independent activities; salary revenues; revenues from transferring the use of property/rental income; revenues from investments; revenues from pensions; revenues from agricultural, forestry and fishery activities; revenues from prizes and gambling; revenues from assignment of real estate; revenues from other sources;
  - Non-residents: non-residents obtaining income from Romania are subject to tax payment. Taxable incomes result from activities performed in Romania or from operations carried out with Romanian legal entities, or with other entities authorized to operate in Romania, as well as with Romanian individuals authorized to carry out, in their own name, income-generating activities, regardless of whether the amounts are collected in Romania or abroad. Thus, the following taxation rates are applicable to non-residents: (i) 50% withholding tax on the payments made by Romanian residents for income obtained in Romania (e.g. interests, commissions, services, etc.), if the income is paid into an account from countries which do not have an information exchange agreement concluded with Romania; (ii) 1% for gambling winnings obtained in Romania, except for gambling winnings obtained from online gambling and poker festivals, which are not subject to withholding tax in

Romania; (iii) 5% for dividends obtained in Romania; (iv) 16% for any other income obtained in Romania by a non-resident.

- Social securities
  - Contributors: The following are considered as taxpayers/payers of income in the public pension system: Romanian citizens; citizens of other states or stateless persons, while having, according to the law, their domicile or residence in Romania, as well as those who do not have their domicile or residence in Romania under the conditions laid down by the applicable European social security legislation, as well as by the social security systems agreements to which Romania is a party; natural and legal persons who have the status of employers or are assimilated to them, both during the period in which natural persons who earn income from salaries or assimilated to wages carry out their activity, and during the period in which they receive holidays and social insurance indemnities health;
  - Income subject to contribution: income from wages or salaries; incomes from independent activities; unemployment benefits; health insurance indemnities;
  - Contribution rates: (i) 26.3% for normal working conditions, of which 10.5% for the individual contribution and 15.8% for the contribution due by the employer; (ii) 31.3% for special working conditions, of which 10.5% for the individual contribution and 20.8% for the contribution due by the employer; (iii) 36.3% for special conditions of work and for other working conditions, of which 10.5% for the individual contribution and 25.8% for the contribution due by the employer.

### 2.4. Other

In Romania, there are certain categories of local taxes and duties, amongst which are the following:

- ☐ buildings tax;
- ☐ land tax and duties;
- ☐ transportation means tax;
- ☐ tax for issuance of certificates, approvals, and authorisations;
- ☐ tax for contracting publicity and advertising means;
- ☐ tax on shows/performances;
- ☐ special taxes;
- ☐ judicial and extra-judicial stamp duty, notary public stamp duty;
- ☐ customs duties;
- ☐ other taxes.

*CHAPTER 2 – Administrative Procedures and Institutions*

## 1. Fiscal Procedure

As of 1 January 2016, The New Fiscal Procedure Code regulates general procedures regarding collection of budget receivables, tax audits, tax returns, tax assessment and tax jurisdiction.

- ☐ Interests payment: failure to pay budgetary liabilities when due (taxes, duties, contributions, etc.) leads to payment of interests amounting to 0.02% for each day of delay, while the delay penalties amount to 0.01% of the tax liability due, for each day of delay. Failure to correctly report the tax liability is sanctioned with a non-reporting penalty of 0.08% per day of delay is due. Where the non-reporting penalty is due, the tax authorities no longer assess the delay penalty. For tax liabilities paid after the legal deadline to the local tax authorities, delay increase of 1% per month or fraction of month delayed is due. Interest is due for the period of deferral/rescheduling of taxes, whereas delay penalties are not, provided that the debtor observes the conditions of deferral/rescheduling in full.
- ☐ Statute of limitation: 5 year-statute of limitation for collecting budgetary debts as of the year immediately following the one when the right to collect the relevant budgetary debts has arisen. However, Romanian tax authorities may assess tax liabilities during a period of 5 years (starting with the 1st of July of the year following the one related to which the tax liability is due.
- ☐ Appealing against fiscal acts: taxpayers may request by means of certain administrative and judicial procedures the reduction or cancellation of taxes, duties, custom duties, contributions to special funds, delay increases or penalties, or of other amounts established and applied, as well as of other measures imposed by the Ministry of Finances' authorised bodies, to carry out controls or taxation acts. Taxpayers deeming as incorrect or unlawful the tax established by a fiscal authority through an act of control is may resort to: (i) administrative means - appeals; (ii) judicial means – submitting a motion for legal action, depending on the body settling the preliminary complaint. The decision of such courts is subject to a second-degree appeal before the Appeal Court or the High Court of Cassation and Justice respectively. Preliminary administrative procedures must be resorted to before introducing any legal action, Non-compliance with this requirement within the statute of limitation leads to the loss of the right of appeal before competent courts.
- ☐ Payment incentives: According to the Fiscal Proceedings Code, upon debtors' well-grounded request, the competent fiscal authority may grant: (i) deferral and/or rescheduling of payment of fiscal liabilities; (ii) deferred payment, exemption or reduction of delay increases and penalties. Thus, tax authorities may approve rescheduling of payment for a maximum period of 5 years and deferral of payment for a maximum period of 6 months (but no later than the 20th of December of the year for which the approval is performed). For

granting payment incentives, the budgetary creditors will request the debtors to put up collateral.

## 2. Institutions

The central fiscal body is the National Agency for Fiscal Administration ("ANAF"), through the specialized structures responsible for the administration of the tax receivables, including the units subordinated to ANAF. There are also local tax bodies, which are specialized structures within local public administration authorities responsible for the administration of tax receivables.

- ANAF general competence: the following activities fall within ANAF general competence:
  - the administration of the fiscal receivables due from the state budget, the state social insurance budget, the budget of the National Social Health Insurance Fund and the unemployment insurance budget;
  - the management activities and other receivables due to the general consolidated budget;
  - the assistance and guidance of the taxpayer/payer on the basis of the methodological coordination of the Ministry of Public Finance;
  - the collection of budgetary receivables established in executory titles, due to the state budget, regardless of their nature, which have been sent for recovery, according to the law.
- ANAF material and territorial competence: for the administration of tax receivables and other receivables due to the budget, competence shall lie with the territorial fiscal body of the ANAF, established by an order of the President of ANAF, within whose territorial jurisdiction the fiscal domicile of the taxpayer/payer is located. For a non-resident taxpayer/payer carrying out activities on Romanian territory through one or more permanent establishments, competence lies with the central fiscal body in whose territorial jurisdiction the permanent headquarters is designated according to the Fiscal Code. For tax liabilities owed by large and medium-sized taxpayers, including their secondary offices, by order of the president of ANAF, the competence may be awarded to other tax authorities, as well as the selection criteria and the lists of taxpayers acquiring the capacity of a large taxpayer or, as the case may be, a medium taxpayer.