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ROMANIAN BUSINESS LAW*

1. INTRODUCTION

Romania joined the European Union on January 1, 2007. Even prior to 2007, efforts were made to align the Romanian legislation to the European Union Directives and standards. The European Union Regulations are applicable in Romania as of the accession date. In case of conflicts between an European Directive or Regulation, and a Romanian law, the European Directive or Regulation will prevail.

The briefs on **Romanian Business Law** presented below provide concise information on selected business law topics.

Rather than an academic presentation of the Romanian legislation, the aim is to offer pragmatic orientation in a straightforward manner on doing business in Romania in the areas under review. Needless to say that in order to tailor the best solution for the proposed investment or transaction we recommend taking legal and tax advice from a local lawyer.

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3. CORPORATE VEHICLES

The relevant **Romanian corporate laws and regulations** are:

- ✓ Company Law no. 31 of 1990 as amended
- ✓ Law no. 26 of 1990 regarding the Trade Registry
- ✓ Methodological Norms no. 608/773 of 1998 regarding the Trade Registry
- ✓ Decree-Law no. 122 of 1990 regarding the Authorization and Operations of the Representative Offices of Foreign Companies

The following vehicles are regulated under Romanian law:

1. the joint stock company;
2. the limited liability company;
3. general partnership;
4. limited liability partnership;
5. Representative Office.

Also, a person carrying out personally a particular trade may register with the tax authority as a Registered Physical Person.

The legal vehicles mostly used by the investors in Romania are the limited liability company (LLC), joint stock company (JSC), and the Representative Office.

The LLC is the favorite vehicle used by foreign investors.

The JSC is seldom chosen by foreign investors as an initial investment vehicle. However, in many cases foreign investors are acquiring participations in Romanian companies which were initially incorporated as joint stock companies.

The Representative Offices can be used only for advertising, marketing, and liaison purposes.

The Trade Registry is the authority of registration of the Romanian companies. Any third party may obtain upon request certified copies of the corporate records of a Romanian company which are on file at the Trade Registry.

Below you will find a comparative presentation of the above legal vehicles used by foreign investors in Romania. We will address below such issues as legal status, object of activity, approvals for registration, taxation and financial reporting, and differences between an LLC, and a JSC.

Legal status

i. Representative Office: it is not a legal person - it is a mere extension of the parent company;

ii. Branch: it is not a legal person - it is a mere extension of the parent company;

iii. LLC - it is a Romanian legal person;

iv. JSC - it is a Romanian legal person.

Object of activity

a. Representative Office

The object of activity of the Representative Office is limited to the promotion and marketing operations conducted in the name of the parent company.

A Representative Office of a foreign company can represent in Romania one or more foreign companies.

The Representative Office is allowed to derive income only in the form of fees for the services rendered received from abroad from the foreign companies it represents in Romania. Therefore, the Representative Office cannot receive fees from Romanian legal entities or natural persons.

b. Branch

The object of activity of a branch cannot go beyond the scope of activities provided for in the By-laws of the parent company.

c. LLC and JSC

The object of activity of an LLC or JSC is not restricted to that of its foreign parent company.

The object of activity must be described in the Constitutive Act of the company filed with the Trade Registry.

Approvals for registration

a. Representative Office

A permit for the establishment of a Representative Office must be obtained from the Ministry of Small and Medium Enterprises. The annual authorization fee is of US$ 1,200. The permit is renewable annually.

The Representative Office must also register with the Chamber of Trade and Industry and with the tax authority.

The completion of the registration procedure would take about 30 days from the date of the filing the application.

b. Branch

The branch must be registered with the Trade Registry and with the fiscal authority.

c. LLC and JSC

An LLC or a JSC must be registered with the Trade Registry and with the tax authority.

According to the law the registration procedure would take approximately 7 – 9 days from date of the filing of the application. However, occasionally due to the backlog the registration process can take longer.

There are no restrictions on the number or nature of directors of a JSC or an LLC.

There are no mandatory employee rights of representation in the management structures of a JSC or LLC.

Differences between a LLC and a JSC

The liability of the shareholders of a LLC or a JSC is limited to their investments in the company, i.e. to their shares.

However, as noted below there are some significant differences between a joint stock company and a limited liability company.

a. LLC

An LLC can have as few as one shareholder but the number of the shareholders cannot exceed fifty.

It cannot be set up by public subscription.

The share capital of an LLC cannot be lower than 200 Lei, and must be divided into equal shares which must have a value of no less than 10 Lei. The shares of an LLC are not negotiable instruments.

Each share gives the right to one vote in the general meeting of the shareholders.

The shares can be transferred between the shareholders. The transfer to outsiders is allowed only if approved by shareholders representing at least three fourths (3/4) of the registered share capital.

An LLC cannot issue bonds.

The general meetings of the shareholders must convene at least once a year or whenever it is necessary.

The law does not distinguish between an ordinary and an extraordinary general meeting. The general meeting decides by a vote representing the absolute majority of the shareholders and shares, if the Constitutive Act does not provide otherwise.

The vote of all shareholders is required for the amendment of the Constitutive Act, if the Constitutive Act does not provide otherwise.

The LLC is managed by one or more Administrators, who may be or not shareholders. Initially, the Administrators must be appointed by the Constitutive Act.

The appointment of statutory auditors is not required if the number of shareholders is less than 15.

b. JSC

A JSC must have at least two (2) shareholders.

It may be established by private subscription or by public subscription.

The minimum share capital is 90,000 Lei.

Shares can be issued in the bearer form or in nominative form. The nominative shares can be converted into bearer shares. The nominative shares may be issued in a material form (on paper support) or in a dematerialized from (by electronic account recording). In the case of the nominative shares issued in a material form, individual or cumulative share certificates can be issued.

The nominal (par) value of a share cannot be less than 0.1 Lei.

Preferred shares may be issued. Such shares confer the following rights:

i. the right to a priority dividend; and

ii. the rights recognized to the owners of common shares, except for the right to vote at the general meeting of the shareholders.

The preferred shares cannot be in excess of one fourth of the share capital and must have the same nominal value as the common shares. The preferred shares and the common shares can be converted from one class to another if approved by a decision of the general meeting of the shareholders.

The law does not impose any restrictions regarding the transfer of shares in a JSC. Nevertheless, certain restrictions, e.g. right of first refusal, can be provided by the shareholders in the documents of incorporation of the company.

A JSC may buy back up to 10% of its own shares. The voting rights and the rights to dividends are suspended during the period in which the shares are held by the company.

A JSC may raise capital by issuing bonds.

The contributions to the share capital can be in cash and in-kind. The contributions in cash are mandatory but the law does not indicate a minimum amount. At least 30% of the share capital subscribed by each shareholder must be paid upon the formation of the company, and the remaining 70% within a period of twelve months in the case of cash contributions, and two years in the case of in-kind contributions.

The share capital can be increased either by the issuance of new shares or by the increase of the nominal value of the existing shares against the payment of new contributions in cash or in-kind.

In the case of an increase in the share capital the existing shareholders have a preemption right to subscribe the newly issued shares *pro rata* to their shareholding in the company.

The general meetings of the shareholders can be ordinary and extraordinary.

An ordinary general meeting of the shareholders of the company must be called at least once a year, within a maximum of five months from the end of the fiscal year.

In order to have valid proceedings for an ordinary meeting the presence of the shareholders representing at least a quarter of the voting rights is required. Resolutions are valid if taken by the votes of the shareholders holding the majority of the voting rights present at the meeting. The Constitutive Act of the company may provide higher quorum and voting majorities for the ordinary meeting.

The call notice may provide the date and the time for a second meeting, in case that the quorum for the first meeting is not met.

In order to have valid proceedings for an extraordinary meeting the presence of the shareholders representing at least a quarter of the voting rights is required. If this quorum is not met, at the following meetings the quorum required is of one fifth of the voting rights. Resolutions are valid if taken by the votes of the shareholders holding the majority of the voting rights present at the meeting. The Constitutive Act of the company may provide higher quorum and voting majorities for the extraordinary meetings.

The law provides for two types of management structures that can be used in a JSC: the Administrator - based system, and the dual system.

a. The Administrator - based system

The JSC is managed by a Council of Administration although it is possible to have only one Administrator. The Council of Administration is elected by the General Meeting of the Shareholders. The President of the Council of Administration can also be the General Manager of the company. The Council of Administrators meets whenever it is necessary but at least once a month.

The performance of the operations of the company can be delegated to one or several executive managers, who are employees of the company and cannot be members of the Council of Administrators.

b. The dual system

The JSC is managed by a Board of Directors, which is appointed by a Supervisory Board.

The shareholders appoint the Supervisory Board. At the time of the registration of the company the members of the Supervisory Board must be named by the Constitutive Act.

The Supervisory Board should have a minimum of 3 and a maximum of 11 members. They may be revoked by a majority vote of 2/3 of the shareholders attending the General Meeting of the Shareholders.

The members of the Supervisory Board cannot be at the same time employees of the company.

The members of the Supervisory Board can be either natural or legal persons.

The Supervisory Board has the following attributions:

(i) it exercises the permanent control of the management of the company by the Board of Directors;

(ii) it appoints and revokes the members of the Board of Directors;

(iii) it verifies the conformity of the management of the company with the law, the Constitutive Act, and with the decisions of the General Meeting;

(iv) it submits an activity report at least once a year to the General Meeting of the Shareholders.

The establishment of an audit committee within the Supervisory Board is mandatory in the case of the joint stock companies, which have the legal obligation to have their annual balance sheet audited.

The Board of Directors exercises its duties under the supervision of the Supervisory Board.

The management of the company shall be ensured exclusively by the Board of Directors which must take all necessary actions for the achievement of the scope of activity, except for those reserved to the General Meeting of the Shareholders, and to the Supervisory Board.

The Constitutive Act may provide for certain actions to be taken by the Board of Directors only with the approval of the Supervisory Board. In case the Supervisory Board does not give its consent in respect thereof, the Board of Directors may request the approval of the General Meeting of the Shareholders, approval which must be granted by the vote of 3/4 of the attending shareholders.

A person cannot be member of the Supervisory Board, and of the Board of Directors at the same time.

The Board of Directors must submit to the Supervisory Board, at least once every three months, a report regarding the management of the company and possible developments. The Board of Directors also must report to the Supervisory Board any information regarding the events, which may have a significant impact on the company's operations.

A JSC must have three statutory auditors and one substitute auditor.

If certain conditions are met a JSC may use the European Accounting Standards. In such case the JSC must have one internal auditor and one outside auditor.

Liability of Administrators/Directors

The Administrators of a JSC or LLC are jointly liable towards the company for failing to take actions required by law in order to obtain payments from the shareholders which have not paid in full the subscription price for their shares, for the legality of paid dividends, for the maintenance and safekeeping of books and records of the company required by law, for the execution of the decisions of the general meeting of the shareholders and for the strict compliance with the obligations imposed by law and the Constitutive Act of the company.

Also, the Administrators and/or Directors acting in breach of their duties are liable for the respective damages caused to the company.

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4. PROJECT FINANCE

The relevant **Romanian project finance law and regulation** are:

- ✓ Civil Code of 2011 as amended
- ✓ Government Decision no. 802 of 1999 approving the Regulation for the Organization and Operation of the Electronic Archive of Security Interests in Movables

Types of transactions

Project finance transactions involve a Credit Facility Agreement, and related Security Agreements, such like Agreement for Mortgage of Shares *(contract de ipoteca mobiliara asupra actiunilor)*, Mortgage Agreement, Security Agreement on the Universality of Movable Property of the pledgor, Security Agreement over Equipment and Machinery, Security Agreement over Receivables, Security Agreement over Accounts, Security Agreement over Intellectual Property Rights, and Guarantee Agreement.

According to recent practice, the pledge of insurances is achieved via Security Agreement on the Universality of Movable Property of the pledgor.

The Security Agreement on the Universality of Movable Property of the pledgor operates similar to a floating charge under English law, i.e. covers both the movables owned by the pledgor on the effective date, as well as future movable assets acquired by the pledgor.

Other agreements such like Escrow Agreement, or Mandate Agreement in the case of bank syndicates, are also signed by the parties.

The Credit Facility Agreement usually provides that it is governed by English law, and English courts have exclusive jurisdiction. However, it is further provided that the Finance Party, or Secured Party are allowed to take concurrent proceedings in any other courts, and any number of jurisdictions.

Under Civil Code, the Security Agreements involving shares, and real estate must be governed by Romanian law. Further, all disputes regarding real estate must be heard by the court which has jurisdiction at the location of the real estate in question.

Legal advice

The local counsel is usually required to review the draft Credit Facility Agreement, the Escrow Agreement, if that is the case, and the Mandate Agreement drafted by the lead counsel of the bank, or of the bank syndicate. The scope of the review is compliance with Romanian law, and the appropriate relation between the Credit Facility Agreement and the security agreements regarding the borrower's assets based in Romania.

Further, by case the local counsel may be required to carry out a due diligence review regarding the status of the Romanian assets. Usually, in case of movables, i.e. pledges of shares, equipment and machinery, accounts, insurances, intellectual property rights, and mortgages, the due diligence research consists of a review of the database of the Electronic Archive of Security Interests in Movables ("Electronic Archive").

In the case of real estate, the due diligence research consists of a review of the property certificate issued by the Property Registry. In order to obtain such property certificate, the mortgagor must provide the survey no. of the property.

Further, the local counsel is required to draft or review the security agreements related to the transaction, draft the corporate approvals regarding for pledging or mortgaging the Romanian assets as security, register the security agreements with the Electronic Archive, and issue a Legal Opinion for the benefit of the Lender.

Pledge of shares of a limited liability company

The shares of the Romanian joint stock companies are freely tradable. The preemption rights regarding the transfer of the shares in a joint stock company do not represent an obstacle in case of enforcement of a Share Pledge Agreement.

However, in many instances the Romanian subsidiaries of the multinational companies are registered in Romania as limited liability companies with one or two shareholders. The Romanian Company Law provides that the transfer of the shares of a limited liability company must be approved by the vote of 3/4 of the shareholders. From a procedural point of view that means that in case of enforcement of a pledge of shares in a limited liability company, a decision of the General Meeting of the Shareholders of the limited liability company approving the transfer of the pledged shares to the pledgee is required.

In order to avoid the risk of refusal by the shareholders of the limited liability company to approve the transfer of the pledged shares to the pledgee it is recommended to request the pledgor to submit at the time of the signing of the Share Pledge Agreement, a decision of the sole shareholder or of the General Meeting of the Shareholders which specifically approved the transfer of the pledged shares to the pledgee in case of default.

Electronic Archive

The Electronic Archive is an electronic database organized and functioning under the authority and supervision of the Ministry of Justice. The Electronic Archive is the authority of registration for the security interests in movable property, i.e. pledges. By registration with the Electronic Archive the security interests are placed on public record.

The registration of the pledges with the Electronic Archive is processed by authorized operators. The interested parties file their applications in respect of the registration, amendment, or de-registration of the pledges with such authorized operators.

The priority ranking of the pledges is established function of the date of registration. The security interest registered earlier in time has a superior ranking over a subsequently registered security interest.

Legal Opinion

The Legal Opinion must list the documents reviewed and drafted by the local counsel, and must opine on the capacity of the signatories, compliance with Romanian law, validity of the corporate approvals, fulfillment of the execution formalities, and on any other specific issues as required by the client.

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5. ENERGY

5.1 ENERGY TRADING

The relevant **Romanian energy laws and regulations** in the sector of energy trading are:

- ✓ Commercial Code of Wholesale Electricity Market of 2004
- ✓ Government Decision no. 540 of 2004 regarding the Approval of the Regulation for Granting the Licenses and Permits in the Electricity Field, as amended ("License Regulation")
- ✓ Government Decision no. 1007 of 2004 Approving the Regulation for the Supply of Energy to Consumers
- ✓ Law no. 231 of 2006 for ratification of the Energy Community Treaty, signed at Athens, on October 25, 2005
- ✓ Order no. 35 of 2006 of the Romanian Energy Regulatory Authority Approving the Methodology Regarding the Monitoring of the Wholesale Electricity Market for the Purpose of Assessment of the Competition on the Market and Preventing the Abuse of Dominant Position
- ✓ Electricity Law no. 13 of 2007 as amended
- ✓ Government Decision no. 553 of 2007 regarding the Amendment and Supplementing of the Regulations on issuance of the Licenses and Authorisations in the Electricity Sector approved by Government Decision no. 540 of 2004 ("Decision 553")
- ✓ Procedure regarding the Settlement of the Transactions of Day-Ahead Market ("DAM"), approved by the Approval Notice no. 18 of 2008 issued by the Romanian Energy Regulatory Authority
- ✓ Procedure regarding the Procedure for the Registration of the DAM Participants, approved by the Approval Notice no. 19 of 2008 issued by the Romanian Energy Regulatory Authority
- ✓ Order of the Romanian Energy Regulatory Authority no. 59 of 2008 re the Financial Reporting Procedure
- ✓ Order no. 119 of 2008 of the Romanian Energy Regulatory Authority Regarding Offering Rules on the Balancing Market
- ✓ Order no. 53 of 2011 of the Romanian Energy Regulatory Authority Regarding the Establishing of the Deadline for Sending the Offers on the Trading Day Preceding the Delivery Day, on the electricity Day-Ahead Market

This is a summary of the requirements for access to the Romanian electricity trading market.

I. The electricity trading market

The Romanian electricity trading market is structured as follows:

1. The Wholesale Electricity Market includes the following specific markets:

a. the Centralized Market for Bilateral Contracts ("CMBC"), with the following subdivisions:

   (i) the Centralized Market for Bilateral Contracts awarded by Public Auction ("CMBC Auction");

   (ii) the Centralized Market for Bilateral Contracts with Continuous Negotiation (Forward) ("CMBC Forward") (there are physical transactions with forward delivery).

b. the Day-Ahead Market ("DAM");

c. the Balancing Market ("BM");

d. the Ancillary Services Market, on which the transmission system operator ("TSO") and the distribution operators purchase primary and secondary reserves, voltage and reactive power control, other ancillary services regulated by the Grid Code, and electricity for covering the network losses.

e. The Intra-Day Market ("IDM").

2. There are also centralized markets for transfer capacities and green certificates, as follows:

a. the Market for Allocation of the Available Transfer Capacities, for the allocation of available transfer capacities for interconnection with the national grids of the neighbouring countries.

b. the Green Certificates Market ("GCM").

The wholesale electricity market is regulated by the Commercial Code of Wholesale Electricity Market of 2004 and by a series of other rules, regulations and procedures issues by the national regulatory authority, i.e. Romanian Energy Regulatory Authority ("RERA"), the TSO, i.e. C.N. Transelectrica S.A. ("Transelectrica"), and the market operator. The majority shareholder of Transelectrica is the State.

The market operator is OPERATORUL PIETEI DE ENERGIE ELECTRICA OPCOM S.A. ("OPCOM"), a company owned by Transelectrica.

3. The Retail Energy Market (delivery to end-users/consumers).

II. Requirements for the issuance of the electricity trading license

In order to carry out physical power transactions on the Romanian electricity market it is necessary to obtain an electricity trading license.

The applicant must indicate in the application the type of activities which will be conducted under the license, i.e. trading, or delivery to consumers, or both.

1. Local presence

According to the License Regulation, a foreign company must establish a physical presence in Romania in the form of a subsidiary, or a branch in order to obtain an electricity trading license from RERA. The registration of a representative office of the foreign entity is also an alternative, but it can be less efficient in case of certain trading models, due to certain regulatory requirements re power trading on the Romanian market.

The License Regulation also provides that a foreign legal person may carry out electricity trading without obtaining a license from RERA, if the following requirements are cumulatively met:

(i) the foreign legal person holds an electricity trading license granted in such other state; and

(ii) there is an agreement between Romania and the state were the legal person is registered as a license owner for the mutual recognition of the validity of the electricity trading licenses granted by each of the said states - currently, there is no such agreement signed between Romania and any foreign state.

2. Minimum capitalisation requirements

The funds of the branch or subsidiary which applies for an electricity trading license together with funds available from credit facilities must be of at least EUR 500,000. Such funds must be maintained for the entire duration of the license.

3. Employee requirements

There is no statutory requirement for having employees with local language capability.

However, given the day-to-day activity, and the fact that not all the operational procedures to be followed for trading on the market are available in English, the officials of the market operator, and of the transmission system operator usually recommend the licensee to have a contact person involved in the trading activity (balancing, interconnection capacities, transit, import, export, trading on the wholesale electricity market platform) with Romanian language capability.

The regulatory authority requests the submission of the CVs of the manager of the applicant (of the manager of the branch, in case of setting-up a branch), of the manager of the electricity trading department, and of the persons who will perform the trading operations on the market.

III. Access to the Romanian power grid

1. Agreements to be signed with Transelectrica, i.e. the operator of the national electricity transmission system:

(i) Metering and Aggregation Agreement – to be signed with the branch of Transelectrica which is in charge with the metering of the electricity and aggregation of the metered values.

(ii) Balancing Agreement – to be signed with the branch of Transelectrica which is the operator of the balancing market (if the license owner wants to register as a balancing responsible party).

(iii) Agreement for Allocation of Available Transfer Capacities– to be concluded with Transelectrica; allows participation in the auctions for cross border capacity on the interconnection lines.

(iv) Import Agreement – to be concluded with Transelectrica; concerns the transmission services to be rendered by Transelectrica which will allow the licensee to import energy and sell it to the other traders or on the day-ahead market.

(v) Export Agreement – to be concluded with Transelectrica; concerns the transmission services to be rendered by Transelectrica which will allow the licensee to buy energy from the other traders/producers or from day ahead market and export it.

(vi) Transit Agreement – to be concluded with Transelectrica; concerns the transmission services to be rendered by Transelectrica which will allow transiting electricity through the Romanian grid.

(vii) Transmission Agreement – to be concluded with Transelectrica; concerns the services to be rendered by Transelectrica which will allow the licensee to buy energy directly from the producers and sell this energy directly to the end users in Romania.

2. Agreements to be signed with OPCOM:

(i) Protocol of Accession to the Wholesale Market – is the framework agreement to be signed with OPCOM re participation on the wholesale electricity market operated by OPCOM.

(ii) Participation Agreement to DAM – is the agreement for the participation on the DAM.

(iii) Mandate Agreement for Direct Debit - is an agreement to be signed between the participant to the DAM and its bank (from a list of the Romanian banks agreed by OPCOM) regarding the direct debit scheme concerning the payments to be ordered from the account of the participant to DAM which submits electricity purchase offers on the DAM.

(iv) Participation Agreement to the CMBC Auction – is the agreement to be concluded between the participant and OPCOM re participation re this segment of the wholesale market.

(v) Participation Agreement to the CMBC Forward – is the contract to be signed between the participant and OPCOM re participation on this segment of the market.

(vi) Gratuitous Use Agreements re connecting devices re DAM and CMBC Forward.

IV. Reporting requirements in Romania

1. Transaction reporting to RERA

There are transaction reporting requirements to the Romanian regulator, i.e. RERA. Some of the transaction reporting requirements are also included in the License Conditions attached to the electricity trading license. Other transaction reporting requirements are provided by different rules and regulations.

The transaction reporting requirements are regulated by the Methodology Regarding the Monitoring of the Wholesale Electricity Market for the Purpose of Assessment of the Competition on the Market and Preventing the Abuse of Dominant Position which was approved by Order no. 35 of 2006 issued by RERA.

Such transaction reports must be sent to RERA, in a template format, until the 25th day of the month following the month which is subject to reporting.

2. Other obligations of reporting to RERA

The License Conditions further provide for other reporting requirements such like:

(i) the annual activity report - whereby it presents technical data and information with respect to the activity performed within the sector of electricity;

(ii) the annual financial report - whereby it presents the performance of the obligations undertook under the license, with respect to financial and accounting records;

(iii) the financial statements at June 30;

(iv) transfer of shares and/or assets of the license owner;

(v) changes regarding the share capital of the license owner.

Also, there are special procedures issued by RERA regarding the execution and submitting of the annual activity report, and of the annual financial report.

As of January 2012, RERA issued 190 electricity trading licenses according to the information provided on RERA's website. That shows that the Romanian electricity trading market is indeed the key regional market in the Balkans area.

V. Guarantee requested to the participants in view of registration with the Romanian balancing market

The steps to be carried out in view of the registration as Balancing Responsible Party (**"BRP"**) with the balancing market operator (**"OPE"**), i.e. a branch of Transelectrica, are the following:

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1. Obtaining the electricity trading license.

2 Allocation of the ENTSO ("European Networks of Transmission System Operators") Identification Code (**"EIC Code"**).

If the applicant already has an EIC code, or uses an EIC Code of another entity from the same group of companies, such code can be also used in order to register as BRP in Romania. This EIC Code will have to be mentioned in all documents when requested during the procedures re the registration with OPE, and with the Metering Operator (**"OMEPA"**).

3. Filling in the application for the registration.

4. Submitting the above mentioned application with OPE, together with the following documentation attached:

(i) Copies of the licenses for all the parties for which the BRP will undertake the balancing responsibility.

(ii) The delegation of balancing responsibility for all the market participants for which the BRP undertakes the balancing responsibility.

(iii) Signature samples of the representatives of the BRP. It is not necessary that all the representatives submit signature samples, but only those ones effectively involved in the electricity trading activity, e.g. in relation with the electricity market authorities, for signing the balancing agreements, for signing the invoices, etc.

(iv) Declaration regarding the initiation of the procedures for the closing of the Metering/Aggregation Agreement with the metering operator, i.e. OMEPA, a branch of Transelectrica.

(v) Contact and availability details of the representatives of the BRP

For the license holders which carry out only electricity trading activities, some of the data mentioned in the standard application for registration as BRP will not be requested.

OPE is always requesting that the contemplated date on which the applicant may be effectively registered as a BRP must be the first day of a month.

Usually, OPE also requests that the application for the registration as BRP, together with the supporting documentation, is filed with OPE with at least 3 weeks prior to the contemplated date mentioned above.

5. Filing of the Financial Guarantee for registration as BRP

The filing of such guarantee was initially provided in the draft of the Balancing Agreement, but was not requested in practice until 2009. Eventually, Transelectrica, in its capacity as TSO, finalized the Operational Procedure for filing of such financial guarantees by the BRPs.

The procedure was approved by RERA, i.e. the regulatory authority.

The procedure is was initially effective in respect of the new participants which wanted to register with the balancing market. OPE requested the new license owners which want to register as BRP to provide the above-mentioned financial guarantee.

The amount of the financial guarantee to be filed in view of registration as BRP is of Lei 100,000.

After the applicant will file the application for registration as BRP, together with the supporting documentation, the officials of OPE will reply, and will officially request the filing of the financial guarantee.

As per the request of OPE, the bank letter of guarantee must be granted a Romanian bank. OPE does have, however, several preferred Romanian banks for the issuance of the said bank letter of guarantee.

The amount of the guarantee for the already registered BRPs will be calculated by OPE according to the provisions of the Operational Procedure, and will be communicated to the respective BRPs.

The guarantee must be renewed each year.

6. Signing and sending to Transelectrica two copies of the Balancing Agreement, together with the addendums and annexes thereof.

Notes:

1. In view of the registration as BRP, the closing of the Metering/Aggregation Agreement with OMEPA, i.e. the metering operator, also a branch of Transelectrica, is also requested.

There is a standard metering and aggregation agreement, which must be signed and returned to OMEPA, together with its Annexes. For electricity supply activity which does not concern the supply to end users household consumers, the Annexes will mainly include contact details of the license owner.

The documentation regarding the registration with OMEPA must be filed with at least 15 working days in advance of the contemplated date for the entering into force of the metering and aggregation agreement.

2. In addition to the above, in order to obtain the full access to the grid and carry out electricity trading, the following contracts have to be signed with the operator of the national transmission system, i.e. Transelectrica, depending on the electricity trading activities which will be carried out by the respective participant to the market:

(i) transit agreement, agreement regarding the transmission services for export of electricity (export agreement);

(ii) agreement regarding the transmission services for import of electricity (import agreement);

(iii) transmission agreement (in case of deliveries of electricity to end consumers);

(iv) agreement for the allocation of available transfer capacity (cross-border).

3. *An owner of an electricity trading license which intends to carry out power export operations, must also conclude with Transelectrica the Framework Agreement between the Administrator of the Support Scheme and the Contribution Payer for the collection of the contribution for high efficiency cogeneration.*

5.2 WIND POWER LAWS

The main **Romanian renewable energy laws and regulations** in the sector of wind power are:

- ✓ Law no. 50 of 1991 Regarding the Authorization of Execution of Construction Works ("the Construction Law")
- ✓ Emergency Government Ordinance no. 54 of 2006 Regarding the Legal Regime of the Concession Agreements of Public Assets ("EGO no. 54")
- ✓ Law no. 13 of 2007 ("Electricity Law")
- ✓ Law no. 220 of 2008 Regarding the Establishing of the Promotion System of the Production of Energy from Renewable Energy Sources, as further amended ("Law no. 220")
- ✓ Government Decision no. 540 of 2004 for the Approval of the Regulations for Granting of Authorizations and Licences in the Electricity Sector, as further amended ("GD no. 540")
- ✓ Order no. 23 of 2004 Regarding the Procedure for the Surveillance of the Issuance of Origin Guarantees for the Electricity resulting from Renewable Energy Sources
- ✓ Government Decision no. 90 of 2008 for the Approval of the Regulation Regarding the Connection of Users to Electricity Grids of Local Interest
- ✓ Government Decision no. 1232 of 2011 Regarding the Approval of the Regulation for the Issuance and Follow-Up of the Guarantee of the Origin of Electricity Produced from Renewable Energy Sources
- ✓ Order no. 43 of 2011 for the Approval of the Regulation for the Issuance of the Green Certificates ("Order no. 43")
- ✓ Order no. 44 of 2011 Regarding the Approval of the Regulation Regarding the Organization and Operation of the Green Certificates Market ("Order no. 44")

I. Access to land

Concession/Lease/Acquisition of the Land

The land on which a wind farm can be developed can be procured by concluding agreements for concession, joint-venture agreements, or sale and purchase agreements with local authorities, i.e. Local Councils, or County Councils, or with private entities, i.e. individuals or legal persons.

The land owned by a local authority, e.g. commune, city, or county authorities , may be part of the public domain, or part of the private domain of the said authority.

A. Land of the public domain

In the case of the land of the public domain, the local authority is entitled to decide whether it will award a concession, or will conclude a lease contract based on the provisions of the EGO no. 54.

The land which is part to the public domain cannot be sold.

1. Concession Agreement

The Concession Agreement of Public Assets ("Concession Agreement") is the contract concluded in written form whereby a public authority, referred to as provider of the concession, acting on its own risk and responsibility, assigns for a determined period of time, to a person, hereinafter referred to as a concessionaire, the right and obligation of exploitation of a public asset in exchange for a royalty.

The Concession Agreement is concluded according to the Romanian law, for a duration which shall not exceed 49 years, starting from its signing date.

The Concession Agreement can be awarded by:

(i) a tender; or

(ii) direct negotiation – a procedure whereby the local authority negotiates the contractual provisions, including the royalty, with one or several parties interested in the procedure for the award of the Concession Agreement.

The bidder has the obligation to prepare the offer according to the provisions of the tender documentation.

The local authority has the obligation to award the Concession Agreement by a tender procedure attended by at least three bidders. If two successive tender rounds are attended by less than three bidders, the local authority has the right to initiate direct negotiations with the interested party or parties.

The Concession Agreement must be approved by a decision of the relevant local authority.

2. Joint-Venture Agreement

There are no express tender requirements regarding the Joint-Venture Agreements. Therefore, the local authority may enter into direct negotiation with the interested party regarding such agreement.

The Joint-Venture Agreement must be approved by a Decision of the relevant local authority.

B. Land of the private domain

The land which is part of the private domain of the local authority can be leased, or sold based on the decision of the respective local authority.

C. Land owned by private entities

The land owned by the private entities can be acquired as follows:

(i) by signing a sale-purchase agreement before a Romanian notary;

(ii) by concluding a lease contract;

(iii) by concluding a joint–venture agreement; or

(iv) by concluding any other forms of cooperation.

II. Permits

The number of permits and authorizations necessary to be obtained varies subject to the location of the land where the wind farm will be developed.

A. Authorization of the incorporation, i.e. the registration of a special purpose vehicle ("SPV")

The criteria and the documentation necessary in order to obtain the authorization of registration of the SPV are regulated by the GD no. 540.

The competent authority in respect of the issuance of the authorizations in the electricity sector is RERA.

The applicant must file a set of documents in respect of the issuance of the authorization of registration of the SPV unit with RERA which reviews the documentation and may request further information, or clarifications.

RERA will issue a decision in respect of granting or the refusal of granting of the authorization within 30 days from the payment of the specific tariff, and submission of the above-mentioned documentation.

The granting or the refusal to grant the authorization may be appealed before RERA within 15 days from notification in respect thereof, and further on before the Court of Appeals of Bucharest – the Administrative Litigation Section within 30 days from the receipt of the decision of RERA, or the publishing of the respective decision on RERA's website.

B. Licence for the commercial operation of electricity capacities

Further to obtaining the authorization of incorporation of the new unit, the SPV must apply with RERA for obtaining the licence for the commercial operation of the electricity resources. Such licence is obtained by submitting to RERA the documentation mentioned by GD no. 540.

Moreover, in order to be licensed as a producer of renewable energy, the applicant must submit to RERA the information regarding the production capacity, as well as the source of energy, as described in Annex 1 to the Order no. 23 of 2004 of the President of RERA on the Procedure for the Surveillance of the Issuance of Guarantees of Origin for the Electricity resulting from Renewable Energy Sources.

The conditions associated with the license will be provided in the Report issued by RERA regarding the respective license.

RERA will issue a decision in respect of granting, or refusal to grant the licence within 60 days from the payment of the specific tariff and annual contribution, and submission of the specific documentation.

C. Grid Access

This is a process that should be initiated at an early stage of the project by contacting RERA and the transmission company to which the wind farm will be connected.

The capacities of production of electricity from renewable energy sources are connected to the transmission/distribution electricity grid, to the extent in which the safety of the National Energy System is not affected.

According to RERA regulations, in addition to the Construction Authorization, and the License, the wind farm operator:

1. must obtain from the transmission system operator, i.e. Transelectrica:

(i) a Location Authorization – issued according to the Methodology Regarding the Issuance of Location Authorizations approved by the RERA Order no. 48 of 2008;

(ii) a Technical Connection Authorization – issued according to the Regulation Regarding the Connection of Users to Electricity Grids of Local Interest, approved by the Government Decision no. 90 of 2008.

2. must obtain from RERA:

A Qualification re the Electricity Priority Production – according to the Order no. 42 of 2011 regarding the Approval of the Regulation of Accreditation of the Electricity Producers from Renewable Energy Sources for the Application of the Promotion System by Green Certificates

3. must register with Transelectrica to obtain green certificates;

4. must register with OPCOM in order to sell renewable energy on the day-ahead market;

5. must register with the operator of the green certificates market, i.e. OPCOM in order to sell green certificates.

D. Construction Authorization

According to the provisions of the Construction Law, the procedure regarding the issuance of a valid Construction Authorization consists of the following steps:

(i) issuance of the Urbanism (zoning) Certificate;

(ii) issuance of the opinion of the competent environment protection authority regarding the investments which are not subject to the evaluation procedures regarding the impact on the environment;

(iii) notification of maintaining the application for a construction authorization, in case of a project for which the competent environment protection authority requires the evaluation regarding the impact on the environment;

(iv) issuance of the permits, authorizations, and of the decision of the competent environment protection authority regarding the investments whose impact on the environment was subject to review;

(v) drafting the technical documentation required for the authorization of the construction works;

(vi) filing the application together with the necessary documentation;

(vii) issuance of the Construction Authorisation.

According to the provisions of the Construction Law, the construction of the wind farm can proceed only after the issuance of a Construction Authorization, issued by the competent Municipality on the basis of the following documents:

(i) Urbanism Certificate which is issued by the Municipality and covers such issues as zoning, degree of occupancy of the land, height regime, etc, and lists of the permits that must be appended to the application for the issuance of the Construction Authorization, e.g. environment, water, fire, sanitary, etc.;

(ii) the certified copy of the proof of title over land and/or construction and, where applicable, the up to date survey plan excerpt and the up to date Property Registry excerpt, unless the law provides otherwise;

(iii) related technical documentation;
(iv) permits and authorizations, as provided by the Urbanism Certificate, the opinion of the environment protection competent authority and, where applicable, the related administrative decision; and

(v) proof of payment of the fees for the issuance of Urbanism Certificate and of the Construction Authorization.

The Municipality must issue the Construction Authorization within 30 days from the filing of the application and related documentation.

E. Environmental Permits

1. Project stage

The following permits must be obtained at the project drafting stage:

(i) Environmental Permit - in case such permit is expressly requested according to the Urbanism Certificate;

(ii) Environmental Approval for the construction of the wind farm.

The above-mentioned permit and approval are to be issued by the Territorial Environmental Protection Agency following the review of the documentation submitted by the applicant, including the technical specifications.

Depending on the activity carried out and on the number of installed turbines, and also, in case the area where the wind farm will be located is a protected natural area, the Territorial Environment Agency may request the conduct of a survey regarding the impact of such activity upon the environment.

2. Operational stage

After the issuance of the environmental permit, in order for the wind farm to become operational, the investor must obtain an Environmental Authorization which is issued by the Territorial Environmental Protection Agency.

F. The Registry of the Guarantees of Origin (the "GO Registry")

After obtaining the licence for the commercial exploitation of electricity capacities, the producer of renewable energy must register with the GO Registry in order to obtain an account. This is a condition precedent to the obtaining of the Certificates of Guarantees of Origin (the "GO Certificates") necessary for the exploitation of energy resulting from renewable sources.

The GO Certificate is an electronic document which provides an end consumer with the proof that a given electricity quantity was produced from renewable sources.

The electronic application for the issuance of the GO Certificate for the energy generated from renewable energy sources is mandatory. The producer must apply for the issuance of the GO Certificate within 30 days after the end of the period for which the GO Certificate is requested.

The GO Certificate is issued in electronic format for each electricity unit (MWh) of renewable energy produced and delivered in the electricity grid, and contains at least the following information:

(i) the date of issuance, the issuing authority, and the country of origin thereof, as well as a identification number;

(ii) the electricity source out of which the electricity was produced and the initial and the final date of the producing thereof;

(iii) the identity, location, type and capacity of the installation where the electricity was produced;

(iv) if, and the extent to which the installation benefitted of investments support;

(v) if, and the extent to which the electricity company benefitted in any other way of a national support scheme and the type of support scheme;

(vi) the date when the installation was put into operation.

Only one guarantee of origin can be issued for each electricity unit.

The GO Certificate is issued within 10 working days from the date of the filing of the complete documentation with the competent authority, and is valid for one (1) year from the date of production of electricity referred to.

III. Green Certificates Market

According to the provisions of Law no. 139 of 2010 ("Law no. 139") which amended Law no. 220 the Green Certificates are documents which certify the production of a certain quantity of energy from renewable sources.

Green Certificates are issued by the transmission system operator, according to the procedure approved by RERA through Order no. 43. All producers of energy from Renewable Energy Sources ("RES") receive a certain number of green certificates according to the quantity of electricity they provide.

The RES electricity producers may sell the Green Certificates on the GCM, which is currently regulated by Order no. 44.

The Regulation for the Organization and Operation of the GCM approved by Order no. 44 establishes:

(i) the manner of organization and operation of the GCM;

(ii) the parties involved and their responsibilities in the organization and operation of the GCM;

(iii) the manner of registration and management of the information regarding the trading of the Green Certificates;

(iv) the information necessary for the monitoring of the operation of the GCM.

The GCM is a competitive market, separated from the electricity market in which Green Certificates related to electricity from renewable electricity sources are traded.

GCM has two components:

(i) the Centralized Green Certificates Market;

(ii) the Bilateral Contracts Green Certificates Market.

The following are involved in the trading system of the Green Certificates:

(i) the market participants trading Green Certificates: the electricity producers from electricity renewable sources and the electricity suppliers;

(ii) the green certificates operator, as administrator of GCM: OPCOM.

The trading of the Green Certificates is not conditioned by the trading of the electricity related thereof.

During its validity period the Green Certificate may be the object of several successive transactions, and will be registered in the account of the purchaser which will use it in the end, in order to prove the fulfilment of the obligation regarding the acquisition quota of Green Certificates. The above-mentioned quota is determined each year, by March 1, by RERA. It refers to the quota of green certificates which must be acquired during a year by (1) the electricity suppliers in relation to the electricity provided to end consumers, or used by themselves, and (1) by the electricity producers in relation to the electricity produced and delivered directly to end consumers.

6. OIL AND GAS

The relevant **Romanian oil and gas laws and regulations** are:

- ✓ Petroleum Law no. 238 of 2004 ("Petroleum Law")
- ✓ Methodological Norms for the Application of Petroleum Law ("Norms")
- ✓ Technical instructions, and other regulations issued by the National Agency for Mineral Resources
- ✓ Gas Law no. 351 of 2004 ("Gas Law")
- ✓ Natural Gas Permitting and Licensing Regulations
- ✓ Natural Gas Network Code, and other regulations issued by the National Energy Regulatory Authority (Gas Regulatory Authority")

Romania was one of the pioneering countries in the oil and gas sector. The recent commercial discoveries gave an impetus to investment in this sector. The legal framework of the petroleum industry is comprehensive and continues to be updated in line with the relevant European Directives and Regulations and international practice.

Regulatory Authorities

National Agency for Mineral Resources ("NAMR")

NAMR has the following attributions:

a. it acts not only as a regulatory authority, but it is also a party to the concession agreements;

b. it manages the petroleum resources which are the property of the State;

c. it is in charge of the storage and management of petroleum data and information, and the upkeep of the Petroleum Books for the petroleum blocks;

d. it has the power to issue mandatory norms, rules, and technical instructions for the application of the Petroleum Law;

e. it approves the work programs, drilling of exploration wells, well conservation and abandonment, re-entry, field commerciality, development plans, annual production plans, and assignments;

f. it certifies the technical competence of individuals or legal entities conducting petroleum operations, including operators under concession agreements;

g. it verifies compliance with laws and regulations.

NAMR may apply fines for failure to comply with the laws and regulations.

National Energy Regulatory Authority ("NERA")

NERA regulates licensing and permitting for gas related activities.

In relation to the surface, storage, transmission, transit, dispatching, and distribution facilities, NERA issues the following permits:

a. facility set up permit;

b. facility operation permit; and

c. facility alteration permit.

NERA also issues the following licenses:

a. natural gas supply license;

b. natural gas transmission license;

c. natural gas storage license;

d. natural gas dispatching license;

e. natural gas distribution license; and

f. natural gas transit license.

Ownership of petroleum resources

The definition of petroleum provided by Romanian Petroleum Law includes crude oil, condensate, and gas.

The title holder is defined as a party to petroleum agreement with the competent authority, i.e. NAMR.

The Petroleum Law provides that the underground petroleum resources are public property of the State.

The concession owners have the right to dispose of the oil and gas produced in the perimeters under concession.

Therefore, a question arose with regard to the transfer of petroleum resources to the title holders. The law is silent on this issue. This issue is resolved by including in the agreements clauses which provide that the transfer of the petroleum resources to the title holders takes place at well head.

NAMR is in charge of the management of the petroleum resources.

All data and information regarding petroleum resources are considered as the property of the State. The companies carrying out petroleum operations may use the relevant data and

information for the duration of their operations. The transfer to third parties of data and information regarding petroleum resources must be approved by NAMR.

The works for the development and exploitation of the petroleum resources may be carried out only in relation to reserves confirmed by NAMR. The documentation for the calculation of the reserves must be prepared by the title holder in accordance with the technical norms issued by NAMR.

Petroleum concession

The petroleum concession is the legal vehicle for the access of investors to petroleum resources.

The initial term of the concession may be of up to 30 years, and it may be extended for a period of up to 15 years.

The concessions for the exploration and production of petroleum resources are awarded through competitive tenders organized by NAMR.

A foreign company which was awarded a concession has the obligation to set up a branch or a subsidiary in Romania within 90 days from the effective date of the petroleum agreement.

The interested parties may initiate the concession award process. It is worth noting that an interested party may apply for non-exclusive exploration permit for a term of up to three years. As mentioned above, if the findings are satisfactory the respective party may initiate the concession award process.

The winning bidder will sign a concession agreement with NAMR. The concession agreement must be further approved by the Government and comes into effect on the date of such approval.

The title holder may assign the concession agreement with the prior approval of NAMR. The change of certain terms of the concession upon assignment may be negotiated with NAMR. In case of the restructuring of the company, which is title holder of the concession agreement, the concession will be transferred to the successor entity by an order of NAMR President.

Partial relinquishment of the concession is possible, and is governed by the concession agreement.

The concession agreement terminates upon expiration of the term of the agreement, and at the request of the title holder in case of force majeure.

Early termination at the request of the title holder is possible. The title holder will have to pay the amount representing the value of the minimum program works which were not performed, and if that is the case, the amount representing the value of the abandonment works which were not performed. Also, the title holder must submit to NAMR a certificate issued by the environmental agency which will attest the performance of the works for remediation of the damages caused to the environment. If the title holder complied with the above described obligations, and NAMR refuses to approve the termination, the title holder may take legal action in the court of competent jurisdiction.

In specific situations provided for by the Petroleum Law, NAMR may suspend the concession, or initiate the termination of the concession agreement.

Title holder's rights

Petroleum Law provides that the concessionaire has the following main rights:

a. access to and use of the land;
b. access to petroleum pipelines, harbours, terminals, and other necessary installations;

c. use of surface waters;

d. laying of the pipelines and construction of petroleum production and transportation facilities;

e. extension of the block to adjacent areas;

f. access to data re relevant petroleum operations;

g. to designate the Operator and the Operator's duties;

h. to dispose of its share of the petroleum production, including the right to export its petroleum share.

Title holder's obligations

Petroleum Law provides that the concessionaire has the following main obligations:

a. compliance with the laws, regulations, and the provisions of the petroleum agreement;

b. preparation of the technical and economic studies re the envisaged petroleum operations and submit them to NAMR;

c. reporting of all data re petroleum operations, and the controlling actions of the environment, and labour safety authorities to NAMR;

d. keeping confidential the petroleum agreement, and the data received from the Romanian authorities;

e. unitization, if required by NAMR;

f. training of Romanian personnel, and technology transfer;

g. payment of petroleum royalty.

Extension of the term of the work phases, change of work programs

NAMR must approve:

a. changes to the initial work programs, and extensions of the exploration, development, and production phases;

b. extension of the block to free adjacent areas; and

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c. change of the estimation of petroleum reserves.

In our experience NAMR was flexible regarding the above matters.

Stabilization clauses

The stability of the petroleum agreement is an important principle for the investors in the oil and gas sector. The goal is to guarantee that the terms and conditions of the petroleum agreement in effect on the date of the signing will stay the same over the life of the agreement.

The principle of the stability of the petroleum agreement is recognized by the Petroleum Law. Thus, the law provides that the terms of the petroleum agreement remain in effect for the duration of the agreement, save for the enactment of legal provisions that are more favourable to the title holder.

However, the law provides that the parties can amend the petroleum agreement by mutual agreement in case of occurrence of unforeseen circumstances.

Usually, in our experience, the petroleum agreements also include stabilization clauses.

In addition to the Petroleum Law, the Law no. 555 of 2004, regarding the Privatization of Petrom provides for the stabilization of petroleum exploration and production taxes, and of the petroleum royalties in effect in 2004, until December 31, 2014.

Petroleum Royalties

The Concession Agreement is a royalty based contract.

The Petroleum Law provides for scaled royalties based on gross production. For crude oil the royalty ranges from 3.5% to 13.5%. For natural gas the royalty ranges from 3.5% to 13%.

The royalty is payable for each commercial field. The commerciality of the field is approved by NAMR. Production is allowed solely from reserves approved by NAMR.

The reference price for the calculation of the royalty is set by NAMR. The royalty is payable quarterly.

The fiscal legislation provides for the payment of penalties in case of delay of royalty payments. A delay for more than six months is a ground of termination of the concession agreement by NAMR.

Settlement of disputes

The petroleum agreements may provide for the settlement of disputes by the local courts of law, by arbitration in Romania, or by international arbitration.

Foreign investors in general want to resort to international arbitration.

Farmout/Farmin Agreement, Joint Operating Agreement

Any assignment of a working interest in a concession must be approved by NAMR. The parties must submit a joint application which will mention the interest quotas, the corporate approvals,

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and proof that the transferee is in good standing, and has adequate financial and technical capabilities to perform the petroleum operations.

On the date of the filing of the application the transferor must have complied with the obligations assumed under the petroleum agreement. If that is not the case, the transferee must assume the obligation to be responsible for the transferor's outstanding obligations as well.

The Farmout/Farmin Agreement and related documentation such like the Joint Operating Agreement, Instrument of Transfer, Novation, etc. do not have to be submitted to NAMR.

Access to land for petroleum operations

The Petroleum Law and the Gas Law create legal easements regarding access to land needed for petroleum operations and installations in favour of the title holders.

The Petroleum Law provides that the title holder must pay an annual rent to the land owner. If the parties fail to agree on the amount of the rent the dispute must be referred to the court of competent jurisdiction. The law provides that any damages claimed by a landlord will be estimated function of the value of the affected crop, or the market value of the land.

However, the Gas Law carves out an exception in the case of easements related to gas operations. Such easements are free of any charge for the life of the gas operation on the land. In practice though, title holders agreed to pay the landlords annual rents at reasonable levels correlated with the lost crop values.

The Gas Law provides that the title holders have the following rights:

a. the right of use in relation to the necessary works for the rehabilitation of the gas production installations;

b. the right of use in relation with the normal operation and maintenance of the gas production installations;

c. the legal underground, surface, and air right of way for the installation of pipelines, power lines, or other equipments related to the gas production installations, and for the access to the location of such ancillary equipment;

d. the right to obtain the reduction or cease of activities which would endanger the gas installations, and the public safety, such like obtaining interdictions to build, to dig trenches, and to deposit materials in the protected zone, or to carry out any works which would affect the gas production installations, and the related pipelines;

e. right of access to utilities.

The statutory protection of the land easements for gas production operations was confirmed by court practice.

It is important to note that in addition to establishing a statutory easement for operations related to gas production, the law also gives the right to the concessionaire to demand the reduction of cease of activities of third parties in the vicinity of the gas installation, which could endanger the operation of the gas installations and equipment. The Gas Law spells out the interdictions to

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build, to dig trenches, and to deposit materials in the safety area, or to carry out any works which would affect the gas production installation, and the related pipelines, and equipment.

Furthermore, the Gas Law provides that the statutory easements for gas production are granted for the life of the gas production installation.

The statutory easements under discussion are free of charge.

In our opinion the Gas Law provides adequate legal basis for the statutory land easements related to gas production, and for their enforcement.

Petroleum transportation system

The National Petroleum Transportation System is public property of the State.

The systems for the transportation of oil and gas are operated by two state-owned companies, Conpet, and Transgaz respectively.

The above operators have the obligation to provide equal access to the interested parties. The Petroleum Law, and the Gas Law specify the cases in which the operators may deny access to the transportation systems. The party whose access to the transportation system was denied may file a complaint with the competent authority.

The access to the natural gas transmission system is regulated in accordance with the provisions of the EU Regulation no. 715 of 2009 regarding the Conditions of Access to the Gas Transmission Systems, and with the Romanian regulations.

The access to the NTS has three stages:

a. the inquiry to the operator of the NTS re the possibility to access the NTS in a specific area;

b. the booking by the respective applicant of capacity within the NTS;

c. the connection to the NTS.

The access to the upstream feeding pipelines is arranged in accordance with the provisions of the Romanian regulations and is granted by the respective operator of the upstream feeding pipeline.

The rules for the access to the storage facilities are provided by Romanian regulations.

The access is provided based on classes of priority, and according to the rule “first come, first serve”, within the same class of priority.

The tariffs re gas transmission services and gas storage are regulated by NERA.

Attestation and authorization of the technical competence

According to NAMR Order no. 122 of 2006, the companies and the professionals working in the oil and gas sector must obtain certificates of attestation of the technical competence. The certificates are issued by a Commission of Attestation set up by an order issued by NAMR. The above Order lists the documents which must be appended to the application for the issuance of

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the certificate of attestation. The documentation must include, a memorandum regarding the relevant petroleum operations carried within three years prior to the submission, documents attesting the technical qualifications of the personnel, and documents regarding the financial capacity of the applicant.

According to NERA Order no. 89 of 2009, the companies and the professionals which are performing activities regarding project design, execution, and operation of installations for the production, underground storage, transportation, distribution, and utilization of natural gas must be authorized by commissions appointed by NERA. The above Order no. 89 enumerates the documents which must be appended to the application for the issuance of the certificate of attestation.

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7. MINING

The relevant **Romanian mining laws and regulations** are:

- ✓ Mining Law no. 85 of 2003 ("Mining Law"), as further amended
- ✓ Decision no. 1208 of 2003 regarding the Approval of the Norms for the Application of the Mining Law
- ✓ Order no. 197 of 2003 for the Approval of the Methodological Norms regarding the Performance of Specialized Survey Works in the Mining Extractive Sector
- ✓ Order no. 58/19 of 2004 for the Approval of the Technical Instructions regarding the Application and Follow-Up of the Measures Established in the Conformity Program, Environment Rehabilitation Plan and Technical Project, as well as the Regulation of the Operation Manner with the Financial Guarantee for the Rehabilitation of the Environment Affected by Mining Activities
- ✓ Order no. 144 of 2005 regarding the Approval of the Framework Template of the Minutes regarding the Ascertainment and Sanctioning of Contraventions in the Sector of Performance of Mining Activities
- ✓ Order no. 122 of 2006 regarding the Approval of the Methodology for Attesting the Technical Competence of the Legal Entities who Draft Documentations and/or Perform Geological Research Works, Works regarding the Exploitation of Petroleum and Mineral Resources and Preparation of Expert Reports, as well as of Natural Entities who Draft Documentations and/or Perform Geological Research Works and Preparation of Expert Reports;
- ✓ Order no. 94 of 2009 for the Approval of the Technical Instructions regarding the Issuance of Production Permits
- ✓ Order no. 198 of 2009 regarding the Method of Registration, Reporting, Calculation and Payment of the Tax on Mining Activity and Mining Royalty
- ✓ Order no. 138 of 2010 regarding the Approval of the tariffs charged for the documents issued by the National Agency for Mineral Resources in the mining sector

Ownership of minerals

According to the Mining Law, the Romanian State has exclusive public property rights over the mineral resources located on the territory and in the subsoil of the country.

Although the Romanian State is the exclusive owner of the mineral resources located on the territory of the country, the mining license owner has the right to dispose of the of mineral resources mined under the license.

Procedure for the issuance of the mining permit and license

Pursuant to the Mining Law, permit/licenses are granted for coal, ferrous and non ferrous minerals, aluminum minerals and aluminiferous rocks, noble, radioactive, rare and dispersed metals minerals, haloid salts, non metallic useful substances, useful rocks, precious and semiprecious stones, peat, mud and therapeutically peat, bituminous rocks, non-combustible gas, geothermal waters, gas associated to them, natural mineral waters (gaseous and non-gaseous), mineral therapeutically waters, as well as mining residues from barren dumps and tailing ponds, underground drinkable and industrial waters.

The National Agency for Mineral Resources ("NAMR") is the authority in charge of granting the permits and licenses. Under Romanian law, NAMR plays a dual role. On one hand, it is the main regulatory authority in the mining sector. On the other hand, it represents the State as a party to the concession agreements for mining licenses.

The Prospecting Permit is granted by NAMR within 30 days as of the fulfillment by the applicant of the conditions included in the technical instructions of NAMR.

NAMR, or the interested Romanian of foreign company may initiate the process for the award of a concession of exploration and/or exploitation activities.

The Exploration and Exploitation Licenses are granted to the winners of the tenders organized by NAMR. The list of exploration and/or exploitation blocks which will be the object of the tender is decided upon by NAMR.

In order to participate to the tender, the Romanian or foreign bidder must submit their offers and documentation required by the Tender Book issued by NAMR. The documents may include the proposed exploration and/or exploitation program (which includes the annual exploration Works Programs and related expenditures), documents regarding the technical and financial capabilities of the applicant, and other documents requested by NAMR mentioned in the Tender Book.

The offers will be reviewed by a Committee within NAMR according to the general criteria provided by the Norms for the Application of the Mining Law, and by the Tender Book.

The winner of the tender will negotiate with the Committee the conditions and the clauses of the mining license, including the development program. The Exploration License enters into effect as of the date of the publication of the Order of NAMR re the approval thereof in the Official Monitor, while the Exploitation License enters into effect as of the date of the publication in the Official Monitor of the Government Decision approving the issuance of the Exploitation License.

The Exploitation License is granted by NAMR directly to the owner of an exploration license within 90 days as of the submission to NAMR of the final exploration report for any discovered mineral resources.

The title holders of mining licenses/permits are obliged to register with the Territorial Inspection Department for the Mineral Resources of the NAMR.

Grant of mining permits and licenses

The mining activities may be carried out by Romanian, or foreign companies, which are registered according to the law, and are specialized and certified for performing mining operations.

The foreign companies may be granted mining permits and licenses. However, according to the Mining Law, within ninety (90) days as of the date when the license entered into effect, the foreign company, which obtained the right to perform mining activities, must set up and maintain a subsidiary in Romania for the whole duration of the concession.

Type and duration of mining permits and licenses

Pursuant to the Mining Law and the Norms for the Application of the Mining Law, the following mining permit and licenses may be granted by NAMR:

(i) Prospecting Permit

The Prospecting Permit is a non-exclusive permit which covers, among others, assessment and interpretation studies of pre-existent information, and works of geological classification, geochemistry, magnetometry, radiometry, electrometric analysis, seismometry, open-air excavation, laboratory analysis.

The Prospecting Permit is issued for a period of up to three (3) years, without the possibility to be extended.

(ii) Exploration License

The Exploration License is an exclusive license that covers specific studies and works which are necessary for the identification of the deposits of mineral resources/reserves, quantity and quality evaluation, and technical and economic conditions for the purpose of development.

The Exploration License is issued for a period of maximum five (5) years, and may be extended for a period of maximum three (3) years.

(iii) Exploitation License

The Exploitation License is an exclusive license that covers the works which are necessary for the opening of mines and open pits, i.e. construction and assembly of the plant, equipment and other specific installations, which are necessary for the extraction, processing, transportation and temporary storage of the mining products, tailings and residual products, outside and/or underground works for the extraction of the mineral resources/reserves and their processing and delivery, as well as the research works for the increase of the knowledge regarding the respective mineral resources/reserves.

The Exploration License is issued for a period of maximum twenty (20) years, and may be extended for consecutive periods of maximum five (5) years each.

Main obligations under mining permit/license

The obligations of the owner of the mining permit/license are provided by the license granted by NAMR, and are supplemented with the general obligations provided by the Mining Law.

The owner of the mining permit/license has the following main obligations:

(i) to comply with the provisions of the Mining Law, the norms and the instructions issued for the application thereof and with the provisions of the license/permit;

(ii) to prepare the technical and economic documentation for carrying out the mining activities, and the documentation for environmental protection, in accordance with the provisions of the permit/license, and to submit such documentation for approval;

(iii) to obtain, to prepare, to keep up to date and to submit to NAMR, on the scheduled dates, all data, information, and documentation mentioned in the license/permit, concerning the mining activities carried out, and the results obtained in order to be registered with the Mining Book and the Mining Cadastre;

(iv) to keep confidential the data and information legally obtained from NAMR and the data acquired through its own operations, and to not disclose such data, except as provided in the license;

(v) to implement, on the scheduled dates, the measures issued in writing by NAMR;

(vi) to execute and finalize the environmental rehabilitation works of the perimeters affected by the mining works performed;

(vii) to carry out, upon termination of the concession, the works for the care and maintenance/closure of the mine/quarry, as the case may be, including the post-closure monitoring program.

(viii) to maintain, for the whole duration of the exploitation, the financial guarantee for environmental rehabilitation;

(ix) to pay the fees related to the mining activities and the royalties, within the terms provided in the Mining Law;

(x) to start performing mining activities within 210 days, as of the entering into effect of the license.

Transfer or assignment of mining license, using the mining license for financing purpose

The owner of a license can transfer its rights and obligations under the said license to another legal entity only subject to the prior written approval of NAMR. Any transfer carried out without the written prior approval of NAMR is void.

The Norms for the Application of the Mining Law provide the conditions which must be fulfilled by the company to which the license will be transferred, and the documents which must be submitted to NAMR for the purpose of obtaining the approval of the transfer of the license.

Also, the Mining Law provides that the license owner may ask NAMR to certify in writing the existence of the license for the purpose of obtaining bank loans in order to carry out the mining activities under the license.

Cancellation of mining permit/license

NAMR will annul the mining permit/license upon finding that:

(i) the permit/license owner does not fulfill its obligations regarding the authorization, and the date of commencement of the mining activities;

(ii) the operations are interrupted for a period of more than 60 days, without the agreement of the competent authority;

(iii) the permit/license owner uses exploitation methods or technologies other than those provided in the development plan without NAMR's approval;

(iv) the permit/license owner conducts mining activities without the annual approval of the works program;

(v) the authorization of the permit/license owner regarding the protection of the environment and/or the labor safety was cancelled;

(vi) the permit/license owner willfully provides the competent authority with false data and information regarding its mining activities, or violates the confidentiality requirements provided by the license;

(vii) the permit/license owner does not pay the taxes and royalties owed to the Romanian State within six months from the due date;

(viii) the permit/license owner fails to fulfill the conditions and the one-year term provided regarding the suspension of the license/permit as per the provisions of the Mining Law.

Easement for mining activities

According to the Mining Law, the permit/license owner has a legal easement right over the land needed for mining exploration and production operations, and over the land needed to access the respective exploration and production sites. The duration of the legal easement right is for the entire term of the mining activities.

The permit/license owner must pay an annual rent to the owners of the land for exercising its easement right, and therefore must negotiate a lease agreement with the respective land owner.

Attestation and authorization of the technical competence

According to NAMR Order no. 122 of 2006, the companies and the professionals working in the mining sector must obtain certificates of attestation of the technical competence. The certificates are issued by a Commission of Attestation set up by an order issued by NAMR. The above Order lists the documents which must be appended to the application for the issuance of the certificate of attestation. The documentation must include, a memorandum regarding the relevant mining operations carried within three years prior to the submission, documents attesting the technical qualifications of the personnel, and documents regarding the financial capacity of the applicant.

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8. PUBLIC PROCUREMENT

The relevant Romanian public procurement regulations are:

- ✓ Government Emergency Ordinance no. 34 of 2006 regarding the Award of Public Contracts, Public Works Concession Contracts and Services Concession Contracts, as further amended ("GEO no. 34")
- ✓ Law no. 337 of 2006 regarding the Approval of the GEO no. 34
- ✓ Government Decision no. 925 of 2006 approving the Methodological Norms of the Provisions regarding the Award of Public Procurement Contracts of GEO no. 34, as further amended
- ✓ Order no. 1517 of 2009 issued by the National Regulatory and Monitoring Authority for Public Procurement ("ANRMAP") Regarding the Approval of the Guide for the Implementation of the Concession Contracts for the Public Works and Services in Romania
- ✓ Order no. 107 of 2009 issued by the ANRMAP regarding the Approval of the Regulation on the Monitoring of the Award of the Public Procurement Contracts, Public Works Concession Contracts and Services Concession Contracts, as further amended
- ✓ The Regulation no. 1251 of 2011 of the European Commission Amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council in respect of their Application Thresholds for the Procedures for the Awards of Contract ("Regulation no. 1251")

Types of procedures for the award of the public procurement contracts

GEO no. 34 incorporates the main provisions of the relevant EU Directives in the public procurement area.

GEO no. 34 regulates the specific procedures to be followed for the award of the procurement contracts, as follows:

(i) Open Public Tender - takes place in a single stage and any interested provider can submit a tender;

(ii) Limited Public Tender - consists of two stages, and only the bidders selected by the contracting authority in the first stage will be invited to submit bids in the second stage;

(iii) Competitive Dialogue - any interested provider can submit a bid; the contracting authority may perform the dialogue only with the accepted candidates and only the candidates selected by the contracting authority from the accepted candidates are invited to make the final offer;

(iv) Negotiation – the contracting authority discusses and negotiates the contractual clauses, including the price, with the candidates selected from suppliers, contractors and providers; the negotiation may be with or without the publication of a participation notice;

(v) Offer Request – a simplified procedure according to which the contracting authority requests offers from several suppliers, contractors and providers;

(vi) Solution Tender – allows the contracting authority to obtain a plan or a project which was selected by a jury on a competitive basis, especially in the territorial planning, urban, and zoning sectors.

As a rule, a public procurement contract is awarded pursuant to an open or a limited public tender.

In case of contracts in the sectors of water, energy, transport, postal services or other relevant activities, as defined by GEO no. 34, as a rule, a public procurement contract is awarded pursuant to an open or limited public tender or negotiation after prior publication of a tender notice. In these sectors, the procedure of the competitive dialogue cannot be used by the contracting authorities when awarding a public procurement contract.

According to the provisions of GEO no. 34, the contracting authority is entitled to directly procure products, services or works, if the value of the acquisition does not exceed the Lei equivalent of EUR 15,000 for each acquisition. Therefore, the contracting authority must use the public procurement procedures for the awarding of a public procurement contract for any acquisition in excess of EUR 15,000.

The procedures to be used for the awarding of a public procurement contract also depend on the estimated value of the public procurement contract, i.e. the Offers Request may be used by the contracting party only in cases when the estimated value of the public procurement contract, exclusive of VAT, is less or equal to the Lei equivalent of EUR 125,000 for services or supply contracts, or EUR 4,845,000 for the construction works contracts.

The contracting authority is obliged to ensure the transparency of the public procurement process by publication of the Notices of Intent, the Participation Notices and the Award Notices according to GEO no. 34.

Notice of Intent

The contracting authority has the obligation to submit for publication a Notice of Intent when it plans to shorten the period for the submission of the bids, and if:

(i) the total estimated value of the contracts/framework agreements which are to be awarded/concluded within the following 12 (twelve) months with regard to the procurement of products of the same CPV (the “Common Procurement Vocabulary”) group, is equal to or higher than the Lei equivalent of EUR 750,000;

(ii) the total estimated value of the contracts/framework agreements which are to be awarded/concluded within the following 12 (twelve) months with regard to the procurement of services of the same CPV group is equal to or higher than the Lei equivalent of EUR 750,000;

(iii) the total estimated value of the contracts/framework agreements which are to be awarded/concluded within the following 12 (twelve) months for the procurement of works, is equal or higher than the Lei equivalent of EUR 4,845,000.

As of January 1, 2012, the Regulation no. 1251 increased the threshold mentioned under item (iii) above from EUR 4,845,000 to EUR 5,000,000.

The Notice of Intent must be published either:

(i) in the Official Journal of the European Union, and in the Electronic System of Public Procurement ("SEAP"); or

(ii) only in SEAP, provided that, before publication, a prior simplified information notice was sent to the European Commission.

Participation Notice

The contracting authority must publish a Participation Notice in the SEAP in the following cases:

(i) procedures of Open, or Limited Public Tender, Competitive Dialogue or Negotiation with the prior publication of a Participation Notice are launched in order to conclude a public procurement contract or frame-agreement; or

(ii) an electronic purchasing system is initiated, which means that the public procurement procedure is carried out electronically on SEAP and all the users registered with SEAP participate to such procedure; or

(iii) a Tender for a Solution Project is organized.

GEO no. 34, as amended by the Regulation no. 1251 provides that the Participation Notice shall be published in the Official Journal of the European Union in case the value of the contract exceeds the Lei equivalent of:

(i) EUR 130,000 for supply or services contracts granted by authorities and public institutions;

(ii) EUR 400,000 for supply or services contracts granted by public companies or other entities performing relevant activities in one of the sectors of public utility – water, energy, transports and postal services;

(iii) EUR 5,000,000 for contracts for works, and concession of public contracts.

Joint Offers

Several economic operators are entitled to associate for the purpose of submitting their joint offer, without having the obligation to officially register their association.

The contracting authority is entitled to request that the association/joint venture shall be registered only in case the joint offer is declared as winner and only if such measure represents a condition necessary for the appropriate performance of the contract.

Without any derogation from its liability with regard to the manner of performance of the future public procurement contract, the bidder may include in the technical proposal the possibility to subcontract part of the works or services covered by the tendered contract.

At the request of the contracting authority, the bidder has the obligation to specify the works or services which will be subcontracted, and the contact details of the proposed subcontractors.

Foreign bidders

The domestic and the foreign bidders are equally treated. The foreign bidders must submit the Romanian certified translation of the bidding documents.

In case that the documents to be submitted in a bid are issued or notarized in countries which did not conclude treaties with Romania for the waiving of the apostille formalities, such documents will also have to be apostilled.

Submission Deadlines

GEO no. 34, as amended by the Regulation no. 1251, provides for the calculation methods of the deadlines for the submitting of the tenders for each procedure for the awarding of the public procurement contracts.

A. Thus, in the case of Open Public Tenders when the estimated value of the contract exceeds the following thresholds:

a) EUR 130,000 for services/products (the contracting authority complies with the provisions of Art. 8 (a) – (c) of GEO 34);

b) EUR 400,000 for services/products (the contracting authority complies with the provisions of Art. 8 (d), (e) of GEO 34);

c) EUR 5,000,000 for works,

as a rule, the Participation Notice must be published in the Official Journal of the European Union, 52 days prior to the deadline for the submission of the bid.

GEO no. 34 provides for certain exceptions from the above mentioned 52-day term if a Notice of Intent was published, or a Participation Notice was sent for publication in the Official Journal of the European Union.

B. In case of an Open Public Tender when the estimated value of the contract is under the thresholds mentioned above, i.e. (EUR 130,000, EUR 400,000, and respectively EUR 5,000,000), the rule is that there should be at least 20 days between the date of transmission of the Participation Notice for publication in the Official Journal of the European Union and the deadline for submitting the tenders.

However, if the award documentation is published by SEAP, the general term of 20 days is reduced by 5 days.

Selection Criteria

The contracting authority is entitled to apply qualification and selection criteria only with regard to:

(i) personal status of the candidate;

(ii) capacity to carry out his/her business activity;

(iii) economic and financial status;

(iv) technical and/or professional capacity;

(v) quality assurance standards;

(vi) standards regarding the environment protection, in certain cases mentioned by GEO no. 34.

The qualification and selection criteria mentioned by the award documentation must be those mentioned by the Notice of Intent/Participation Notice. Any amendment/supplementation of the qualification and selection criteria mentioned in these documents is a ground of annulment of the award procedure, except for the amendments caused by the decision of the National Council for Settlement of Contestations ("CNSC").

Award Notice

The contracting authority shall submit an Award Notice to be published within 48 hours at the most, further to:

(i) the completion of the tender procedure by the award of the public procurement agreement or the conclusion of the framework agreement in case of an Open Public Tender, Limited Open Public Tender, Competitive Dialogue, Negotiation with or without the Prior Publication of a Participation Notice, or an Offers Request;

(ii) the completion of the tender procedure by the award of the public procurement agreement in case of a Tender for a Solution Project;

(iii) the completion of the tender procedure by the award of a public procurement agreement in case of an electronic procurement procedure.

The Award Notice must be published in SEAP and, as the case may be, in the Official Journal of the European Union.

Conclusion of the Public Procurement Agreement

The contracting authority has the obligation to conclude the public procurement agreement with the winning bidder based on the technical and financial proposals provided in the offer.

The public procurement agreement may be concluded by the contracting authority after the expiry of the deadlines mentioned below, which are calculated as of the date of the notification of the award of the public procurement agreement:

a) 11 days in case the value of the agreement *exceeds* the RON equivalent of the following thresholds: (i) EUR 130,000 for services/products agreements in case of authorities and public institutions, (ii) EUR 400,000 for services/products agreements in case of public companies or companies operating in public utility sectors, and (iii) EUR 5,000,000 for works agreements.

b) 6 days in case the value of the contract *is less or equal* to the RON equivalent of the following thresholds: (i) EUR 130,000 for services/products agreements in case of authorities and public institutions, (ii) EUR 400,000 for agreements for services/products

in case of public companies or companies operating in public utility sectors, and (iii) EUR 5,000,000 for agreements for works.

Public procurement agreements concluded before the expiry of the above-mentioned deadlines are null and void.

According to the provisions of the Government Decision no. 219 of 2012, the contracting authority has the obligation to conclude the public procurement agreement/the framework agreement within 7 days at most as of the expiry of the above-mentioned deadlines.

The contracting authorities have to notify ANRMAP by electronic means, within 48 hours at most as of the data of conclusion of the public procurement agreement or a framework agreement.

Challenging of the award procedure

Any competing bidder, including the foreign bidders, whose rights or interests were infringed by an action of a contracting authority, is entitled to challenge the respective action by filing a complaint with the CNSC. The procedure regarding this legal remedy is provided by GEO no. 34. In case that CNSC dismisses the complaint as unfounded, the contracting authority shall retain a percentage of the participation bond calculated function of the estimated value of the tendered contract.

CNSC is a special body created to review and take decisions with regard to any challenge brought against any deed issued with regard to an award procedure. The decisions of CNSC may be challenged before the Administrative Litigation Section of the Court of Appeals competent in the jurisdiction where the contracting authority is located. The court decision is final and irrevocable.

The claims for damages caused during the awarding procedure may be filed only with the courts, according to the rules provided by GEO no. 34, or by filing a separate legal action, according to the civil procedure.

The damages caused by (1) a decision of the contracting authority, (2) or by the failure to resolve in due course, i.e. within the time provided by the applicable law an application regarding the awarding procedure, (3) or by non-compliance with public procurement legal provisions, may be granted only after the annulment, or revocation of the decision of the contracting authority, or after the exhaustion of any other remediation measures taken by the contracting authority.

If the damages are claimed in relation to the costs/expenses for preparing the bid and attending the awarding procedure, the party which claims damages must prove the non-compliance of the contracting authority with the provisions of GEO 34, and the fact that it would have had a realistic chance to be awarded the contract, which was compromised because of such non-compliance.

The claims for damages are subject to a stamp fee ranging from Lei 400 to Lei 2,200, in accordance with the value of the claim.

A contract awarded in breach of the conditions set forth under public procurement legislation may be annulled. The ascertaining of the contraventions and the application of sanctions is carried out by ANRMAP. Any person is entitled to notify ANRMAP with respect to an alleged infringement of the provisions regarding public procurement contracts and to any procedural aspect regarding the award procedure.

In case of violation of the provisions of the public procurement legislation the court may order:

(i) to limit the effects of the contract, by reducing the term for the performance of the contract; and/or

(ii) to apply a fine to the contracting authority between 2% - 15% of the value of the object of the contract, the amount of the fine being proportional to the reduction of the term for the performance of the contract if such measure was applied as well.

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9. CAPITAL MARKETS

The relevant **Romanian capital markets laws** and regulations are:

- ✓ Law no. 297 of 2004 regarding the Capital Market, as amended ("Capital Market Law");
- ✓ Emergency Government Ordinance no. 25 of 2002 regarding the approval of the Statutes of the National Securities Commission as amended;
- ✓ Regulation no. 15 of 2004 issued by the National Securities Commission ("Securities Commission") regarding the Authorization and Functioning of Investment Management Firms, Collective Investment Undertaking and Depositories;
- ✓ Regulation no. 13 of 2005 issued by the Securities Commission on the Authorization and Functioning of the Central Depository, the Clearing Houses and Central Counterparties as amended;
- ✓ Regulation no. 01 of 2006 issued by the Securities Commission on Issuers and Operations with Securities as amended;
- ✓ Regulation no. 02 of 2006 issued by the Securities Commission on Regulated Markets and Alternative Trading Systems;
- ✓ Regulation no. 14 of 2006 issued by the Securities Commission modifying Regulation no. 2 of 2006 on Regulated Markets and Alternative Trading Systems;
- ✓ Regulation no. 31 of 2006 issued by the Securities Commission amending the Securities Commission Regulations by Implementing Certain Provisions of European Directives as amended;
- ✓ Regulation no. 32 of 2006 issued by the Securities Commission on Investment Services as amended.

KEY INSTITUTIONS

National Securities Commission

The National Securities Commission („Securities Commission") established in 1994 is the regulatory authority of Romanian capital markets, Bucharest, and Sibiu.

In cases of breaches of the securities laws, the Securities Commission has the power to apply fines, and to suspend trading of the stock of the companies affected by the respective breaches.

Derivatives are effectively traded on two regulated markets, one operated by the BSE and one by the Sibiu Monetary - Financial and Commodities Exchange ("Sibex").

Bucharest Stock Exchange ("BSE")

BSE was created in 1995. This is the main stock exchange in Romania.

BSE is a joint-stock company under the supervision of the Securities Commission, being able to adopt its own set of regulations.

RASDAQ

RASDAQ was established as an electronic over-the-counter market based on negotiation between dealers similar to NASDAQ. Initially, the companies subject to the mass privatization process were listed on RASDAQ. At the end of 2005, RASDAQ and BSE merged under the BSE authority. Although united under a sole management, RASDAQ remained independent from the point of view of the traded securities, as a secondary stock exchange market of BSE. Since the merger of the two markets, several companies which were listed on RASDAQ were transferred to BSE.

Sibiu Monetary Financial and Commodities Exchange ("SIBEX")

Sibex was authorized by the Securities Commission and was set up in 2006.

Sibex launched several derivative financial instruments.

The Central Depository

The Central Depository is a legal entity established as a joint-stock company, authorized and supervised by the Securities Commission. The clearing-settlement operations are carried out through the Central Depository.

The members of the Central Depository's Board must be individually validated by the Securities Commission before exercising their mandates. The shareholders are not allowed to hold more than 5% each of the voting rights, except for the market operators which are entitled to 75% of the voting rights subject to the prior approval from the Securities Commission.

The operations carried out by the Central Depository are supervised by the Securities Commission.

Clearing Houses

The Clearing Houses are the entities responsible for ensuring the clearing and settlement of transactions with derivatives and act under the supervision of the Securities Commission. The Clearing Houses are registered as joint-stock companies and require a prior authorization issued by the Securities Commission.

The transactions carried out on SIBEX are settled through the Sibiu Clearing House, while the transactions carried out on BSE are settled through the Bucharest Clearing House.

Investors' Compensation Fund

The Investors' Compensation Fund ("Fund") is established as a joint-stock company approved by the Securities Commission. The intermediaries and the management companies whose object of activity is the management of individual investment portfolios are the shareholders of the Fund.

The intermediaries authorized to provide investment services and management companies, which manage individual investment portfolios, have to be members of the Fund. The Fund's major role is to compensate the investors in case that the Fund members fail to reimburse the

money or the financial instruments held on their behalf. The Fund compensates the investors within the limits established by the President of Securities Commission on an annual basis.

KEY PLAYERS

Financial Investment Services Companies

The intermediaries which provide investment services in Romania are the financial investment services companies authorized by the Securities Commission, the credit institutions authorized by the National Bank of Romania, as well as the equivalent of such entities that have been authorized by the competent authorities of the relevant Member States of the European Union ("EU").

Financial Investment Services Companies (*S.S.I.F.*) are legal entities, established as joint-stock companies, authorized by the Securities Commission to provide investment services. Such authorization provides what type of investments services the respective Financial Investment Services Company is entitled to perform.

The principal financial investment services are related to the sale and purchase of financial instruments on behalf of investors or on their own account, the management of investment portfolios within the limits of their mandates and the placement of financial instruments.

Other related services include the administration of financial instruments, the safe custody services, the granting of credits to investors, and providing investment advice concerning financial instruments.

The initial registered capital of a Financial Investment Services Company is to be determined according to the Securities Commission regulations which provide certain thresholds for such capital depending on the type of investment services provided by the respective company. A Financial Investment Services Company has to comply with the authorization conditions, prudential and capital requirements as required by the Securities Commission.

The Financial Investment Services Company has to notify any change in its organization and operation to the Securities Commission.

The Securities Commission has to be notified in case any person intends to acquire directly or indirectly the shares of a Financial Investment Services Company, thus becoming a significant shareholder, or intends to dispose, directly or indirectly of such position held in a Financial Investment Services Company.

Also, any significant shareholder which proposes to increase or decrease its holding, so that the proportion of the voting rights or of the share capital would reach, exceed, or fall below 20%, 33% or 50% has to notify the Securities Commission first.

Agents of Financial Investment Services Company

Investment services are provided by agents of Financial Investment Services Companies registered with the Securities Commission Register.

Foreign intermediaries

With regard to foreign intermediaries, their ability to operate in Romania depends on whether they are domiciled in a Member State of EU or in a non-member State. If the Financial Investment Services Company is authorized by the competent authority in a Member State, it may provide, on the Romanian territory, investment services either directly or via a branch. In case of Financial Investment Services Company domiciled in countries which are not members of EU, such companies can carry out financial investment services by setting up branches in Romania, which must be authorized by the Securities Commission.

Traders

Traders are legal entities which carry out transactions with derivatives such as futures and options contracts in their own name only. Such entities must be authorized by the Securities Commission, and registered in the Securities Commission Register. The clearing and settlement of the transactions concluded by the traders have to be carried out only through intermediaries.

Investment Consultants

The investment consulting services regarding financial instruments may be provided by Investment Consultants, natural or legal persons, which are registered with the Securities Commission Register.

Rating Agencies

The Securities Commission issues regulations regarding the selection criteria for Rating Agencies which evaluate and rank the listed companies and the financial instruments traded on the stock exchanges.

Management Companies

The management companies (S.A.I.) are legal entities registered as joint-stock companies, and authorized by the Securities Commission.

The main object of activity of such companies is the management of undertakings for collective investment in securities. The initial registered capital of management companies has to be of at least the Lei equivalent of EUR 125,000.

Depository

The Depository is considered to be a credit institution authorized by the National Bank of Romania or a Romanian branch of a credit institution authorized in a Member State which is entrusted for safekeeping of all the assets of an undertaking for collective investment in transferable securities.

Undertakings for collective investment (Rom. - Organism de Plasament Colectiv)

The Undertakings for Collective Investment in securities are either open-ended investment funds set up under civil contracts, or closed-end investment funds. Each such undertaking:

(i) performs collective investment services;

(ii) at the holders' request must ensure the redemption of the units.

The Undertakings for Collective Investment are undertakings authorized by the Securities Commission whose object of activity is the collection of financial resources in order to perform collective investments by investing cash resources in liquid financial instruments.

Open-Ended Investment Funds

This is a fund whose units are traded on the stock exchange. Such fund units have to be of a single type, fully paid at the time of their subscription and shall confer equal rights to their holders.

Apart from these units, the fund cannot issue any other financial instruments. The price of such units is established according to the net asset value effective on the purchase date. The price of redemption of such fund units is determined according to the net asset value certified by a Depository which is effective on the redemption date.

Close-end funds

This is a fund which is set up as a joint-stock company, and may only manage assets of its own portfolio. Such companies are not allowed under any circumstances to manage assets on behalf of third parties even if they are given a mandate in this respect.

CAPITAL MARKET LISTING REQUIREMENTS

In order to be eligible for listing on a stock exchange, the Capital Market Law stipulates certain requirements regarding both the issuer company and its shares.

The listing on the stock exchange of certain shares requires the prior publication of a Prospectus approved by the Securities Commission. The Prospectus must comply with the requirements of the Securities Commission.

The company which applies for the listing must be registered for at least three years prior to the request for listing on the stock exchange. Further, the company must have an estimated net worth of at least EUR 1 million. If such a valuation is not available, the company must have a share capital plus the reserves (including the profit or loss of the last financial period) worth at least EUR 1 million.

The shares of the company applying for listing on the stock exchange must be negotiable and fully paid for. In addition, the company applying for listing must ensure a free float of 25% of its outstanding shares for the public, or a lower float if a large number of shares are distributed among investors.

MANDATORY CORPORATE DISCLOSURE

In order to ensure a fair and equal treatment to all investors as well as the transparency of the market, the Securities Commission may request the publicly traded issuers to provide all necessary information regarding their activity on a regulated market.

The disclosure of the initial information is made through the Prospectus.

Furthermore, the listed company must inform the market about any material event that may influence the price of its shares within 48 hours from such occurrence.

Moreover, the listed company is required to provide information enabling the shareholders to exercise their rights with respect to the general meetings and voting rights, the payment of dividends, the issuance of new shares, and the capital increases.

Any listed company has reporting obligations to the Securities Commission and the stock exchange regarding the financial status at the end of the fiscal year including any significant information enabling the investors to evaluate the activity of the company, including profit and losses. The listed company:

(i) must file quarter, half-year and annual reports, which must be also published within maximum 5 days from their approval;

(ii) must also disclose the audited results at the end of the fiscal year.

The listed company has to inform the public, as well as the Securities Commission with regard to any inside information which directly concerns the said listed company. Any delay in such disclosure must be notified to the Securities Commission, which may require the listed company to immediately disclose the information in order to ensure the transparency and the integrity of the market.

A listed company whose shares are admitted to trading on a stock exchange in Romania or on the stock exchange of a Member State must ensure that similar information is made available to each of these exchanges.

When, as a result of a sale or a purchase of shares issued by a listed company, the voting right percentage of an investor exceeds or falls below 5%, 10%, 20%, 33%, 50%, 75% or 90% of the voting rights, that investor has to notify such positions to the issuer, the Securities Commission, as well as to the stock exchange within maximum three business days.

SPECIAL PROVISIONS REGARDING LISTED COMPANIES

The cumulative voting method is a procedure used in the election of the Board of Directors of a listed company if the number of Board Members is at least 5, or is requested by a significant shareholder. The significant shareholder is a shareholder who owns at least 10% of the issued capital of the company.

The extraordinary general meeting of shareholders of a listed company has the prerogative to decide upon any share capital increase. The share capital increase, in cash or in kind, must be approved at an extraordinary general meeting attended by at least 3/4 of the total number of the shareholders, by a vote of at least 75% of the voting rights.

Any sale, purchase, exchange, or guarantees involving fixed assets, which have a value exceeding 20% of the total of the fixed assets less receivables, or joint ventures with a duration of more than one year which involve fixed assets, which have a value exceeding 20% of the total of the fixed assets may be concluded by the company's Administrators or Directors only with the prior approval of the extraordinary general meeting of the shareholders.

By way of derogation from the provisions of Companies Law no. 31/1990, the identification of the shareholders entitled to receive dividends will be determined by the listed company within 10 business days after the general meeting of shareholders which approved the distribution of dividends. The respective general meeting must also set the payment date which should not exceed 6 months as of the date of the meeting which approved the distribution of dividends.

PUBLIC OFFERINGS

Public offerings are regulated by the Capital Market Law as well as by rules provided by the Securities Commission. All types of public offerings require prior authorization given by the Securities Commission. Therefore, any advertising of such offerings before obtaining the above mentioned authorization is prohibited.

Here are the main requirements concerning the *Public Sale Offers, and the Public Purchase Offers*.

(i) The Public Sale Offer must be made through an intermediary authorized to provide investment services with prior publication of a prospectus approved by the Securities Commission. The Public Purchase Offer is the offer to buy securities addressed to all holders by mass media or other means and it must also be made through an intermediary authorized to provide investment services.

(ii) The application for authorization must be accompanied by a Prospectus in case of a Public Sale Offer, or by a Purchase Offer in the case of a Public Purchase Offer. The above documents must provide information regarding the listed company, and the conditions of the offer.

(iii) The Prospectus shall contain all information enabling investors to correctly asses the assets, liabilities, financial position, profit and loss as well as the provided guarantees. The Prospectus and the Purchase Offer must comply with the requirements of the Securities Commission.

(iv) The Prospectus, or the Purchase Offer must be approved by the Securities Commission in maximum 10 days as of the date of their submission, although any amendment of the initial information will extend this term.

(v) Failure to obtain the approval of the Prospectus or of the Purchase Offer, or to comply with the conditions set forth in the approval decision renders the public offer void.

(vi) The Prospectus for a Sale Public Offer is valid 12 month as of the date of publication, while the Purchase Offer is available only for the approved period. However if the offering announcement is not made within 10 business days as of the Securities Commission approval, the Purchase Offer is cancelled.

(vii) Once the announcement is published, the Offer becomes mandatory and it has to be made available to the public in the form and content approved by the Securities Commission. The Sale or Purchase Offer is valid throughout the period set out in the announcement, but it may not exceed the time limit set out by the Securities Commission.

(viii) The Public Sale Offer may be valid for a period of minimum 5 business days and maximum 12 months, while the Purchase Offer may be valid for minimum 15 business days and maximum 50 business days, as determined by the Securities Commission.

(ix) Any significant new event or the modification of the original information in the prospectus or offer document that occur during the validity term of the offering and affecting the investment decision has to be included in a supplement.

Voluntary Takeover Offer

The Voluntary Takeover Offer represents a purchase offer directed to all shareholders of a company by a person, who, together with his/her affiliates intends to acquire more than 33% of a listed company.

In respect thereof, the offeror has to send the Securities Commission a preliminary announcement. After obtaining the approval from the Securities Commission, the offeror must make the offer public by sending it to the subject of the takeover and publish it in one central and one local daily newspaper.

Within five days as of receiving the preliminary announcement of the Voluntary Takeover, the Board of Directors of the listed company must inform the Securities Commission, and the stock exchange regarding their position. The Board of Director of the listed company may also convene an extraordinary general meeting of the shareholders in order to inform them of the management position regarding the takeover offer.

After the receipt of the preliminary announcement, during the term of the offer, the Board of the listed company shall inform both the Securities Commission and the stock exchange of all the transactions carried out by its members, and the executive management regarding the securities subject to the Voluntary Takeover Offer.

Moreover, during the term of the offer, it is prohibited to enter into transactions, or take any measures which could affect the assets of the company, except for the current management activities.

Operations considered to affect the company's assets may include share capital increases, issuance of securities which grant subscription rights, transfer of assets representing at least one third of the net assets according to the yearly financial balance sheet, and measures which may affect the status of the classes of shares of the listed company.

The minimum price for the takeover offering is supposed to be at least the highest price among the following:

(i) the highest price paid within 12 month prior to the voluntary takeover offer by the same offeror for shares of the same issuer;

(ii) the weighted average market price for the said shares computed for the last 12 month prior to the offer, or

(iii) at least the net asset value per share following the latest financial balance sheet.

The offeror cannot launch another offer for the shares of the listed company within one year from the closing of the takeover offering.

Mandatory Takeover Offer

The Capital Market Law also provides that the shareholder holding alone or together with other affiliates more than 33% of the voting rights of a company listed on the stock exchange must launch a Mandatory Takeover Offer. The Mandatory Takeover Offer must be made as soon as possible, without exceeding a 2-month term from reaching the 33% threshold.

Until the Mandatory Public Offer is made, all voting rights exceeding 33% are suspended, and the offeror cannot acquire any additional shares of the same company.

The minimum price offered has to be at least equal to the highest price paid by the offeror for the same shares within the 12 months prior to the launching of such offer.

In case such price calculation method cannot be applied, the minimum price for the Takeover Offer is supposed to be at least the highest price among the following:

(i) the weighted average trading price in the last 12 months prior to the offer;

(ii) the value of the company's net assets according to the last financial balance sheet;

(iii) the value of the shares, following an expert report prepared by an independent auditor.

The public offer is no longer mandatory if the percent exceeding 33% of the voting rights is acquired as a result of an excepted transaction, such as a privatization process, share acquisition from the Ministry of Public Finance or from other entities, share transfer between the parent company and its subsidiaries, or between the subsidiaries of the same parent company, or a Voluntary Takeover Offer directed to all shareholders for all the shares of the listed company.

Counteroffer

Any counteroffer may be launched within 10 business days as of the publication of the announcement of the initial offer and it has to refer to the same amount of shares and target the same share capital. The price of the counter offer must be at least 5% higher than the price of the initial offer.

The Securities Commission determines the criteria for selecting the winning bid. A tender is conducted by the Securities Commission in order to select the winning offer. The price is increased with at least 5% over the highest price offered in a previous round until no other price increase offer is submitted.

If the majority shareholder holds more than 95% of the share capital or has acquired more than 90% of the shares targeted by the public purchase offer, it is entitled to ask the minority shareholders to sell their shares at a fair price.

On the other hand, a minority shareholder has the right to request the majority shareholder which has over 95% of the shares to buy its remaining shares at a fair price.

The fair price is considered to be the price offered in the voluntary or mandatory takeover offering, only if the offeror has exercised its right within 3 months from the closing of the said offer. Otherwise, the price shall be established by an independent expert in accordance with international valuation standards.

GREENHOUSE GAS EMISSION CERTIFICATES

At the beginning of 2010, the Securities Commission published the Approval Notice no. 10 of February 22, 2010 whereby it provided that the "greenhouse gas emission certificates" qualify as securities. Consequently, the trading of such certificates was regulated by the capital markets legislation. However, the said Approval Notice no. 10 of 2010 was suspended by the Bucharest Court of Appeals shortly after the issuance thereof, pursuant to a motion to suspend filed by one

of the securities brokerage companies. Further on, the Bucharest Court of Appeals cancelled the said Approval Notice no. 10 of 2010, pursuant to an action for annulment filed by the same securities brokerage company.

The National Securities Commission challenged this decision of the Bucharest Court of Appeals, by filing a recourse with the High Court of Cassation and Justice, on the docket of which the recourse case is currently pending.

Consequently, currently the greenhouse gas emission certificates are not considered as being securities. Therefore, they are traded as commodities, VAT being applicable to the transactions.

The greenhouse gas emission certificate is the title which confers the right to issue a ton of carbon dioxide equivalent during a defined period, according to the Government Decision no. 780 of 2006 regarding the Approval of the Trading Scheme of the Certificates for GHG Emission Allowances.

The transactions with greenhouse gas emission certificates, which are carried out by entities which are not operators of the installations, have to be performed through authorized brokers.

In order to trade such greenhouse gas emission certificates, all the parties involved in the transaction have to be registered with the Romanian Register of Greenhouse Gas Emission Certificates.

10. COMPETITION – Economic Concentration

The relevant **Romanian competition laws and regulations** regarding economic concentrations are:

- ✓ Competition Law No. 21 of 1996, as amended (the "Competition Law")
- ✓ Order no. 385 of 2010 Regarding the Approval of the Application of the Regulation Regarding the Economic Concentrations ("Regulation")
- ✓ Order no. 386 of 2010 Regarding the Guidelines on the concepts of economic concentration, undertakings concerned, full-function joint-ventures and calculation of turnover
- ✓ European Union Council Regulation no. 139 of 2004 on the Control of Concentrations between Undertakings ("Merger Regulation")

Types of transactions considered as economic concentrations

As provided by the Competition Law, an economic concentration is realized by the merger of two or more companies or by a company taking over the control of another independent company.

The authority controlling the economic concentration at the national level is the Competition Council. Its goal is to prevent the establishing of monopolies or companies/joint ventures with a dominant position on a certain market which can lead to a significant restriction, prevention, and distortion of the competition.

Turnover thresholds

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

i) the combined turnover of the companies involved in the transaction exceeds the Lei equivalent of 10,000,000 EUR, and

ii) each of the companies involved in the transaction has a turnover in Romania in excess of the Lei equivalent of 4,000,000 EUR.

Note:

The turnover thresholds mentioned above are calculated by taking into account the combined turnover of the entire group.

The turnover threshold should be calculated by taking into consideration the value of the revenue obtained by all companies of the group on the relevant market less the value of the sales and/or services on the relevant market traded within the group and for the group's internal needs.

Notification of the Competition Council

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

The preparation of the Notification and related documentation is a laborious process, involving information and documentation from the parties involved in the transactions.

Decisions issued by the Competition Council

Within forty-five (45) days from the date the Notification becomes effective, i.e. the application together with all the supporting documents are filed with the Competition Council, the said authority may issue the following decisions:

a) a decision of non-objection, if, although the transaction represents an economic concentration, there are no reasons for non-authorization, or

b) a decision to start an investigation, if the transaction represents an economic concentration and there are doubts regarding the compatibility with a normal competitive environment. Within five (5) months as of the start of the investigation, the Competition Council may issue:

(i) a decision of refusal of the authorization of the economic concentration;

(ii) a decision for the authorization of the economic concentration;

(iii) a decision for conditional authorization of the economic concentration which will include certain conditions in order to ensure the compatibility of the economic concentration with a normal competitive environment.

If the Competition Council will consider that the economic concentration does not meet the legal requirements, it will issue a letter in respect thereof within thirty (30) days from the date when the Notification became effective.

According to the Regulation, until the Competition Council issues a decision related to the approval of the economic concentration, the following actions cannot be implemented:

(i) the entering of the acquired legal entity on another/new market;

(ii) the exiting of the acquired legal entity from the market where it carried out its operations;

(iii) the changing of the scope of activity of the acquired legal entity;

(iv) the exercising of the voting rights for the appointment of members in the executive management of the acquired legal entity;

(v) the exercising of the voting rights for the approval of the income and expenses budget of the acquired legal entity;

(vi) the exercising of the voting rights for the approval of the business plan of the acquired legal entity;

(vii) the exercising of the voting rights for the approval of the investment plan of the acquired legal entity;

(viii) the changing of the name of the acquired legal entity;

(ix) the restructuring, closing, or splitting up of the acquired legal entity;

(x) the selling of the assets of the acquired legal entity;

(xi) the dismissal of the employees of the acquired legal entity;

(xii) the termination or cancellation of long term contracts or other important agreements signed with third parties;

(xiii) the listing of the acquired legal entity on the stock market.

However, the law provides that by filing an application with the Competition Council, the parties may apply for derogation from the above rules. When granting the derogations, the Competition Council must take into consideration the effects of the suspension of the economic concentration, upon one or several of the economic agents involved in the operation, or upon third parties, or upon competitors.

Violations of the antitrust legal norms

The breaching of the provisions of the Competition Law regarding:

(i) the filing of the Notifications;

(ii) the actions which cannot be taken prior to the issuance of a Decision by the Competition Council regarding approval of the economic concentration; and

(iii) the non-compliance with an obligation or a condition imposed by a Decision of the Competition Council in accordance with the law,

is punishable with a fine ranging from 0.5% to 10% of the turnover registered during the fiscal year prior to the transaction.

Economic Concentration on the European Union Community Market

According to the Merger Regulation, an economic concentration has a Community dimension where:

(i) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5,000 million, and

(ii) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million,

unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The above conditions are cumulative.

A concentration that does not meet the above-mentioned thresholds has a Community dimension where:

(i) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2,500 million;

(ii) in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;

(iii) in each of at least three Member States included for the purpose of item (ii), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and

(iv) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million,

unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. Also, in this second scenario, the above conditions are cumulative.

It is considered that an economic concentration exists regardless of the fact that the companies involved in the concentration have or do not have their registered offices or their main activity fields within the Community, provided that they conduct significant operations within the Community.

If the annual turnover of the combined businesses exceeds the specified thresholds mentioned above in terms of global and European Union sales, the proposed transaction must be notified for review to the European Union Commission ("EU Commission").

The EU Commission may also examine mergers which are referred to by the national competition authorities of the Member States. This may take place upon a request of the national competition authority of a Member State, or of the merging companies. Under certain circumstances, the EU Commission may also refer a case to the national competition authority of a Member State.

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11. ROMANIAN LABOUR LAWS

The relevant **Romanian labour laws** are:

- ✓ **Labour Code**, approved by the Law no. 53 of 2003 ("Labor Code")
- ✓ Law no. 62 of 2011 Regarding the Social Dialogue ("Law no. 62")
- ✓ Law no. 67 of 2006 Regarding the Employees' Protection in case of the transfer of Undertakings ("TUPE Law")

General Terms and Conditions of the Employment

The standard terms of the employment are provided by the Labour Code.

The **Romanian labour laws** require the mandatory filing with the Employees' Registry, i.e. REVISAL of a Standard Employment Agreement in Romanian language. This is a 3-page form issued by the Ministry of Labour.

In practice, the employers supplement the provisions of the Standard Employment Agreement with an Annex. Such Annex includes detailed rights and obligations of the parties to the employment agreement.

A Job Description must be appended to the Standard Employment Agreement as well.

The Standard Employment Agreement has to be registered with the Employees' Registry, a day prior to the starting date of the execution of the employment agreement.

The Labour Code provides that the employment agreement shall not include provisions which would diminish the employee's rights below the minimum levels established by the relevant legislation.

Any document regarding the execution, amendment or termination of an employment agreement has to be registered with the Employees' Register within one day as of the execution of such document.

An employment agreement shall be concluded after a prior verification of the professional and personal skills of the person applying for employment. Also, a person may only be employed on the basis of a medical certificate, attesting that the concerned person is able to perform the respective activity.

Types of employment agreements

Usually, the employer and the employee conclude an employment agreement for an undetermined period of time.

However, the Labour Code also provides for other types of employment agreements, such as:

a. The employment agreement for a determined period of time

This type of agreement is an exception and is concluded in the specific situations expressly provided by the Labour Code. An employment agreement for a limited duration may not be concluded for a period exceeding 36 months

b. The part - time employment agreement

The part - time employment agreement must provide for:

(i) the working hours schedule, which must be shorter than the regular working schedule of 8 hours/day and 40 hours/week;

(ii) the conditions under which the working schedule can be amended;

(iii) the prohibition to work overtime.

c. The temporary employment agreement

This type of employment agreement is concluded between the temporary employment agent and the employee, for one or more employment missions which will be performed by such employee for a beneficiary. Usually, the companies providing Human Resources services are also authorized as temporary employment agents.

The temporary employment agreement states the conditions under which the employment mission is to be carried out, the duration of the mission, the identity and offices of the beneficiary, as well as the remuneration methods for the temporary employee.

Trial period

The parties may also agree with regard to a trial period of maximum 90 calendar days for regular employees, and 120 calendar days for management employees.

However, such a trial period is not mandatory, but in case the parties agree upon it, only 1 (one) trial period can be established.

Throughout the trial period or at the end of it, the employment agreement may be terminated, based on a written notice at the initiative of either party.

Working hours and working time schedule

The regular working schedule is of 8 hours/day and 40 hours/week. Usually, the working hours are distributed uniformly, 8 hours/day, 5 days a week with 2 rest days.

The maximum legal duration of the working time cannot exceed 48 hours per week, including overtime.

By way of exception, the duration of the working time including overtime can be extended over 48 hours per week, provided that the average of the number of working hours, calculated for a reference period of 4 calendar months, shall not exceed 48 hours per week. The former regulations provided for a reference period of 3 calendar months.

Also, with regard to certain activities or professions established by the applicable collective employment agreement, reference periods exceeding 4 months can be negotiated by the said

collective employment agreement, but these periods cannot exceed 6 months. The former regulations provided for the possibility to establish reference periods exceeding 3 calendar months, but which could not exceed 12 months.

Subject to the compliance with the regulations regarding the labour health and safety protection of the employees, in cases of objective, technical or operational reasons, the collective employment agreements can provide for exceptions from the duration of the reference periods established above, but such exceptional reference periods cannot exceed 12 months.

Salary and any extra earnings

The salary is freely negotiated between the employer and the employee, and includes the basic salary, indemnifications, bonuses, as well as other additional payments.

The salary level is based on individual or collective negotiations and the employer may not negotiate and establish the minimum salary level below the minimum national gross salary.

The minimum gross salary is provided by Government Decision and it is of mandatory application at national level.

According to the provisions of the Labour Code, the employees shall receive indemnities for overtime, night work, bonuses for non-compete and mobility clause and allowances for domestic or foreign business trips.

Besides bonuses, indemnities and allowances established by the relevant legal norms, the employers may grant additional payments for exceptional results on specific projects.

Termination of the Employment Agreements

The termination of the employment agreements may occur for reasons pertaining to the employee's fault or for reasons independent of such fault.

a. Termination due to employee's fault

The employer may decide the employee's dismissal for reasons imputable to the employee in the following cases:

(i) If the employee committed a severe violation or repeated violations of the Labour discipline, or of the rules established by the employment agreement, the CEA or the internal regulations, such as the Code of Internal Conduct.

According to the Labour Code, the employer must issue the Code of Internal Conduct. The Labour Code further provides that such Code should include rules applicable to all employees regarding work safety, non-discrimination, proper behavior at the work place, procedures re employees' requests and complaints, work discipline, violations and sanctions, disciplinary procedure, and rules related to the rights and obligations of the employer and employees, or other specific legal or contractual matters.

In case of disciplinary dismissal, the employee may be dismissed only after a prior disciplinary inquiry carried out in accordance with the provisions of the Labour Code.

Failure to conduct the disciplinary inquiry in compliance with the provisions of the Labour Code will result in the annulment by the court of the decision of termination of the employment agreement.

(ii) If the employee is in police custody for more than 30 days.

(iii) If the employee has a physical or psychological disability confirmed by a certificate issued by the relevant authorities.

(iv) If the employee is professionally unfit for the job.

(v) If the employee fulfills the legal requirements, and the employee did not apply for retirement.

b. Termination due to reasons independent of the employees' fault

Usually, this type of termination is caused by the elimination of the employee's position due to reason(s) which does/do not pertain to employee's fault.

Such reasons may be:

- economical difficulties;

- technological changes; or

- reorganization of the employer's activities.

This procedure requires the preparation by the management of an adequate documentation in support of the decision for the termination of the employment agreement.

Prior Notices

The dismissed employees will receive, as a rule, a prior dismissal notice of minimum 20 business days.

In case of disciplinary termination or in case the employees are on trial, the employers do not have to issue a 20-day prior notice regarding the termination.

The employees in management positions usually negotiate a longer prior notice term in the employment agreement.

Severance Payment

The employees dismissed due to the reasons not pertaining to the employees' fault are entitled to the payment of a severance payment, as per the provisions of the collective employment agreement applicable at the company level, if the case may be.

The employees in management positions usually negotiate severance packages when concluding individual employment agreements.

Employees on leave during the dismissal process

The Labour Code provides for certain cases when the employees may not be dismissed:

- during the employee's temporary working incapacity (sick leave);
- during pregnancy and maternity leave;
- during the leave for child care up to the age of 2 or for disabled child up to the age of 3;
- during the leave for taking care of a sick child up to the age of 7 or for disabled child having common illnesses until the age of 18;
- during military service;
- during the exercise of an eligible function within a union body, unless the dismissal is decided for a serious misconduct or for repeated misconducts, committed by that employee;
- during annual paid leave.

The employers cannot issue Termination Decisions during these leave periods, and if such decisions are still issued, they are null and void.

Collective Employment Agreements

If the employer has at least 21 employees, a Collective Employment Agreement for all the employees needs to be negotiated and concluded, in accordance with the provisions of the Law no. 62.

The standard terms of employment are those provided by the Collective Employment Agreement entered into by the employer on one side and the employees on the other side, who may be represented during the negotiation by the Trade Union or the Employees Representatives. It must be also noted that, pursuant to the provisions of Law no. 62, a Collective Employment Agreement applies to all the employees of a company, irrespective of the fact that they are union members or not.

Labour Disputes

The Labour disputes are settled by a special section of the competent Tribunal. The labor disputes are exempted from court and stamp fees.

Labour litigation in the courts of first instance may take 6 (six) months or more depending on the complexity of the case, witness appearances, and discovery proceedings.

Law no. 62 provides that an appeal against the decision issued by the court of first instance may be filed within a 10-day term from the date of the receipt of the court decision by the appellant.

The service of process is done by the court, which mails the summons for the initial hearing to the parties.

A termination procedure which did not comply with the legal provisions is annullable. In such case, the court will decide the annulment of the termination, and will compel the employer to re-hire the employee, and to pay damages equal to the total compensation to which the employee would have been entitled for the period that he/she was out of work.

TUPE Law

The employees' protection in case of the transfer of undertakings is regulated by the Labour Code and by TUPE Law.

The provisions of the mentioned regulations need to be complied with when an Employer transfers its business or part of it to another Employer.

Pursuant to the provisions of TUPE Law, both the Transferor and the Transferee have to inform in writing the Employees' Representatives or the relevant Trade Union 30-days before the effective date of the transfer with regard to the following:

i. the fact that a relevant transfer is to take place, the proposed date of the transfer, and the reasons for such transfer;

ii. the legal, economic and social consequences of the transfer;

iii. if any measures in relation to the transferred employees are to be taken;

iv. the conditions of employment.

The rights and obligations of the Transferor, arising from an employment agreement existing at the date of the transfer, shall be entirely transferred to the Transferee.

Pursuant to the relevant legal provisions, the transferred employees cannot be granted rights that are inferior to those they had under current the employment agreement.

According to the TUPE Law, the transferred employees may not be dismissed for reasons due to or in relation to the transfer of undertaking.

Failure by the Transferor and Transferee to comply with the obligations provided in this Law is considered a violation and is punishable by fines.

12. DATA PROTECTION

The relevant **Romanian data protection laws** are:

- ✓ Law no. 677 of 2001 on the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of Such Data, as further amended ("Law no. 677")

- ✓ Law no. 506 of 2004 on the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector

Applicability of the Law no. 677

The provisions of the Law no. 677 apply when the data controller (i) is domiciled in Romania, or (ii) uses equipment or means to process personal data located in Romania, (unless the equipment or means are used only for purposes of transit data through Romania). If the data controller uses means and equipment in Romania, but is not domiciled in Romania, the data controller must designate a representative in Romania.

Data Controllers

The processing of personal data is defined by Law no. 677 as any operation or set of operations that involving personal data, performed by automatic or non-automatic means, such as collection, recording, storage, adaptation or alteration, retrieval, consultation, use, disclosure to a third party by transmission, dissemination or by any other means.

The personal data controller is a natural, or legal person, which decides on the purpose and means of the personal data processing, and operates a recording system of personal data collection and processing which provides specific criteria for accessing the respective data.

Notification of the Data Processing

According to Law no. 677, the data controllers must notify the personal data processing to the National Authority for the Supervision of Personal Data Processing (the "DPA").

The Notification is sent to the DPA before starting any processing or transfer of personal data. All the documents to be filed with the DPA must be in Romanian. No filing fees must be paid when filing a Notification.

If the data controller processes personal data for two or more unrelated purposes, then it has the obligation of filling in separate Notifications for each of these purposes. The data controller must notify the DPA prior to starting any processing of the personal data.

The failure to notify, in the cases in which the Notification is mandatory, as well as the incomplete Notification or the Notification which contains false information, are violations punishable by fines, provided that they are not committed in such circumstances that will make them subject to criminal law.

Consequently, the data controller must first obtain the DPA's confirmation that the Notification is valid and was assigned a registration number in the Register of Recording of the Personal Data

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Processing. After receipt of the above mentioned confirmation, the data controller may start processing and/or transferring the data.

Sensitive Data

Sensitive data are the data related to racial or ethnical origin, political, religious, philosophical opinion, criminal offences, minor offences or other convictions, trade union membership, as well as data regarding health or sex life. In addition to these data, under the Law no. 677, personal identification numbers, or other personal data with a general identification function i.e., national ID/passport details are considered sensitive data. The collection and processing of sensitive data require the prior and express consent of the owner of the data.

Transfer of the personal data abroad

In accordance with the Law no. 677, the transfer of personal data to another country is subject to the filing of a prior Notification with the DPA. The transfer of data does not have to be authorized by the DPA if the data are transferred to an EU/EEA country, or to a non-EU/EEA country for which the European Commission has issued an adequacy decision or other mechanisms are in place to ensure an adequate level of protection. The US-EU Safe Harbor framework is recognized as providing an adequate level of protection.

Registry of Recording of the Personal Data Processing

The Registry of Recording of the Personal Data Processing has the role of assuring the transparence regarding the data controllers' activities and may be consulted by any interested person, such being available online on the DPA's website.

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13. SUPPLEMENTARY PROTECTION CERTIFICATE (DRUG PATENT) ("SPC")

The relevant **Romanian patent law and regulation**, and European Council regulations are:

- ✓ Law no. 64 of 1991 regarding Patents
- ✓ The Instruction no. 146 of December 28, 2006 issued by the State Office for Inventions and Trademarks ("OSIM") Concerning the Supplementary Protection Certificate for Drugs and the Supplementary Protection Certificate for Plant Protection Products ("Instruction 146"), as amended
- ✓ Council Regulation (EEC) no. 469/2009 of May 6, 2009 Concerning the Creation of a Supplementary Protection Certificate for Medicinal Products ("Regulation 469/2009"), repealing Council Regulation (EEC) 1768/92.
- ✓ Regulation (EC) no. 1610/96 of the European Parliament and of the Council of July 23, 1996 Concerning the Creation of a Supplementary Protection Certificate for Plant Protection Products

Requirements for the granting of an SPC in Romania

Requirements under the Regulation no. 469/2009

According to the provisions of the consolidated version of the Regulation 469/2009, an SPC may be granted in case of a patented drug in Romania, if two cumulative conditions are met:

(i) the respective drug is protected by a valid patent;

(ii) the first marketing authorization for the respective drug was granted after January 1, 2000.

The Regulation no. 469/2009 further provides that the possibility for applying for a certificate shall be open for a period of six months starting no later than the date of accession of Romania to European Union in case that the six-month term for filing the SPC application, calculated from the date when the authorization to put the product on market was granted, expired.

According to the provisions of Regulation no. 469/2009, apart from the specific requirements mentioned above, the SPC will be granted if, at the date of filing the application:

a. a valid authorization to place the drug on the market as a medicinal product granted in accordance with the Directive 2001/83/CE or the Directive 2001/82/CEis in effect;

b. a SPC was not previously issued for the respective drug;

c. the marketing authorization referred to at item (a) above is the first authorization to place the drug on the market as a medicinal product.

Requirements under the Instruction 146

According to the Instruction 146, the SPC application has to fulfill the following requirements:

(i) the application was submitted within the time limits stipulated in Regulation no. 469/2009;

(ii) the Romanian Patent Office, i.e. OSIM must determine if the application was submitted within the 6-month period from Romania's accession to the EU, for drugs and plant protection products, respectively, with regard to which the first authorization to place the product on the market as a drug or a plant protection product in Romania was obtained after January 1, 2000;

(iii) the application is accompanied by a copy of the valid authorization to place the drug on the market in Romania;

(iv) the application contains, where necessary, information relating to the first authorization to place the drug on the market, in EEA, and a copy of the authorization published in an appropriate official publication;

(v) the basic drug patent is in force on the date of filing the application;

(vi) the applicant for the issuance of an SPC is the same entity as the initial patent holder – in case of a change of patent holder the relevant transfer documentation must be submitted as well.

The Instruction 146 issued by OSIM provides that an SPC application must be filed, *inter alia,* together with a copy of the Marketing Authorization for the respective drug in effect at the date of filing the application.

According to the above-mentioned Instruction, the Marketing Authorization for Romania is:

a. an authorization valid in Romania for drugs for human use issued by the National Drug Agency, according to Law no. 95 of 2006 regarding the Health Reform;

b. an authorization valid in Romania for a drugs for veterinary use issued by the Sanitary-Veterinary and Food Safety National Authority;

c. an authorization for a drug for human or veterinary use, valid in Romania, issued by the European Medicines Agency ("EMEA");

d. a homologation certificate of the plants protection products issued by the Inter-Ministry Commission for the Homologation of the Plants Protection Products.

Effects of the granting of an SPC

According to the provisions of Regulation no. 469/2009, the SPC has the same effects as the base patent, subject to the provisions of the said Regulation, i.e. only for the drug covered by the Marketing Authorization filed for the granting of the SPC. The SPC, if granted, produces its effects from the date of the expiry of the base patent up to the date of expiry of the SPC.

According to the Patent Law no. 64 of 1991 as amended ("Patent Law"), the patent confers to its owner an exclusive right of exploitation throughout its entire duration. Also, the manufacturing, using, offering for sale, or selling of a product protected by a patent without the consent of the patent owner is prohibited.

According to the Patent Law, the infringement of the patent rights is considered counterfeiting, which is a criminal offence, punishable with imprisonment for a period ranging from 3 months up to 2 years, or by a fine ranging from Lei 10,000 up to Lei 30,000, i.e. around EUR 2,800 up to EUR 8,220.

Exceptions

By way of exception, the actions mentioned above, which were carried out before the publication of the patent application, or before receiving a cease and desist notice from the applicant for a patent with a certified copy of the drug patent application appended, or an SPC with a certified copy of the SPC application appended, are not considered to be infringements.

According to the Patent Law, *inter alia*, the following are not considered an infringement of the rights conferred by the patent mentioned:

(i) if the activities prohibited by the Patent Law are carried out in private and not for a commercial purpose; the production or, as the case may be, the use of the invention are carried out exclusively for private use and not for commercial purpose.

(ii) the use for experimental/testing purposes, exclusively with non commercial purpose, of the object of the patent.

Also, the Regulation for the Application of the Patent Law provides that conducting tests and required studies for the purpose of obtaining the authorization to put on the market a drug, as well as the practical requirements which results from such test and studies are not considered being an infringement of the rights provided for by the Patent Law.

Test batches

The Romanian legislation regarding drugs does not provide any regulations regarding pilot batches. However, according to the representatives of the National Drug Agency, the Guidelines issued by EMEA also apply in Romania starting with January 1, 2007, i.e. the date of accession of Romania to EU.

Test batches may be regarded as being part of the practical requirements for the obtaining the marketing authorization. Therefore, the production of the validation/test/pilot batches may not be considered as an infringement of the rights conferred by the patent/SPC.

Thus, according to the Note for Guidance on Process Validation issued by the EMEA, the size of the pilot batch should be of to at least 10% of the production scale batch, i.e. provided that the multiplication factor for the higher sized of the pilot batch does not exceed 10.

Also, for oral solid dosage forms this size should generally be of 10% of the production scale, or 100,000 units, whichever is higher.

Publication of the Decisions regarding the SPC

The SPC application, together with a brief mention on the decision of OSIM with regard to the granting or dismissal of the SPC application is published in the Romanian Official Bulletin of Intellectual Property ("BOPI") – SPC Section.

Also, OSIM makes available at its offices the copy of the Marketing Authorization on which the SPC is based, for consultation by the public.

Protection of the rights conferred by an SPC

The owner of an SPC may take the following actions in order to enforce the intellectual property rights conferred by the SPC.

Criminal investigation

According to the Patent Law, the infringement of the patent rights is considered counterfeiting, which is a criminal offence, punishable with imprisonment for a period ranging from 3 months up to 2 years, or by a fine ranging from Lei 10,000 up to Lei 30,000, i.e. approximately EUR 2,780 - EUR 8,335.

The criminal investigation may be initiated *ex officio* by the authorities, or following the complaint of the owner of an SPC.

For the damages caused by the counterfeiting, the owner of the patent, or in this case of the SPC, is entitled to compensation, and may request to the competent court the seizure, and, as the case may be, the destruction of the counterfeited products, substances, and of the equipment which directly served for the production of the counterfeited products.

Legal action for damages

The Patent Law provides that the infringer of patent rights is liable for damages to the patent owner. The value of the damages may be calculated depending on the basis of the market value of the infringing products, or of the products protected by the SPC.

The claim for compensation for damages filed in a criminal case is exempted from the payment of the stamp fee. In the case of filing a legal action in a civil court, the plaintiff must pay a stamp fee calculated on the basis of the value of the claim. The resolution of a criminal case usually takes more time than that of a civil case.

Filing of motions for obtaining injunction orders

The owner of the SPC may apply for an injunction to stop the activities which are allegedly infringing on the rights conferred by the SPC. The issuance of an injunction can take from 1 - 2 weeks until 1 - 2 months from the date of filing the application. The injunction order may be subject to appeal.

Opposing the issuance of an SPC

The opposition against an SPC application may challenge (i) the validity of the base patent, and/or of (ii) the Marketing Authorization of the product for which the SPC is requested.

Revocation

The procedure for opposing the granting of an SPC requires the filing of an application for the revocation of the SPC, according to the provisions of the Instruction 146. The application for revocation can be filed by any person during a 6-month term following the publication of the decision of granting the SPC.

Such application for the revocation of an SPC will be heard by the Appeals Commission of OSIM. The Appeals Commission will serve a copy of the application for the revocation of the SPC on the applicant, who can file a reply within 3 months, as of the date of receipt.

The appeals pending before the Appeals Commission of OSIM are included in a list of pending cases, which is published periodically on the website of OSIM.

The decisions issued by the Appeals Commission of OSIM with regard to appeals and application for the revocation must be issued within 3 months from their respective date of filing with OSIM.

However, in practice, there may be several hearings before the said Appeals Commission, and it may take up to 6 months until the issuance of the decision of the Appeals Commission of OSIM. Thereafter, such decision must be drafted and notified to the parties within 15 days, but in practice, it may take longer, i.e. up to 1-2 months.

This means that the procedure regarding the examination of the application for the revocation of the SPC may take up to eight (8) months until the decision of the Appeals Commission is drafted and notified to the parties.

The decision of the Appeals Commission of OSIM may be further appealed with the competent court, i.e. with the Bucharest Tribunal, within 30 days from the date of notification to the parties.

The decision of the Bucharest Tribunal may be further appealed before the Bucharest Court of Appeals within 15 days as of the date when it was notified to the parties.

Legal action for cancellation

According to the Patent Law, a legal action for cancellation of the SPC can be filed with the Bucharest Tribunal. There is no deadline for filing such legal action for cancellation of an SPC.