enabling new business

SWITZERLAND GLOBAL ENTERPRISE

Romania
Legal provisions

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Ernst & Young Romania
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COMMERCIAL LAW

According to Art. 135 of the Constitution of Romania, which is incorporated under Title IV – Economy and public finance, Romania's economy is a free market economy, based on free enterprise and competition. Provisions regarding public and private property are under Art. 136.
Public property belongs to the State or to the territorial administrative entities. The mineral resources of public interest, the air, the waters with energy potential that can be used for national interests, the beaches, the territorial sea, the natural resources of the economic zone and the continental shelf, as well as other possessions established by the organic law, shall be public property exclusively. Private property is inviolable, in accordance with the organic law.

For business environment some of the key laws are:

- Law No. 31/1990 (re-published) – The Companies Law regulating all aspects regarding company formation, administration and operation
- The Law No. 85/2014 on insolvency prevention and insolvency procedures regulates the aspects of economy sanitization through insolvency procedures, including insolvent companies rescue procedures and cross-border insolvency

More specific information on the regulations regarding commercial activities is given in the sections below.

SETTING UP COMPANIES

The Law No. 31/1990 on Companies Law, with its successive amendments establishes five types of commercial entities. All companies must be registered by their partners/associates/shareholders with the competent Trade Registry Office (Oficiul Registrului Comertului) which is subordinated to the National Trade Registry Office (Oficiul National al Registrului Comertului - ONRC) within the Ministry of Justice. Law No. 26/1990 with its amendments provides all details regarding the National Trade Register Office and the 42 territorial offices under its coordination, including organization and procedures. The forms of legal commercial entities are:

a) *General Partnership (Societate in nume colectiv – SNC)*
b) *Limited Partnership (Societate in comandita simpla – SCS)*
c) *Partnership Limited by Shares (Societate in comandita pe actiuni – SCA)*

The partners in all three types of partnerships have unlimited liability and are jointly liable with respect to the obligations of the partnership. The creditors of the partnership must first act against the partnership in order to claim the execution of its obligations and, only to the extent the partnership does not comply with its obligations within 15 days, they may act against the partners.

The minimum share capital is stipulated only for a partnership limited by shares (approximately EUR 20,000 calculated at an exchange rate of RON 4.5/EUR). No share capital requirements are provided for the other forms of partnerships.

d) *Limited Liability Company (Societate cu raspundere limitata – SRL)* is a company formed by a limited number of partners (no more than 50). Its registered capital cannot be less than RON 200 (approx. EUR 45). The registered capital is normally divided into shares *(parti sociale)* with a registered value of not less than RON 10 each. The shareholders' liability is limited to the amount subscribed in the company's share capital. Shares cannot be freely traded.

e) *Joint-Stock Company (Societate pe actiuni – SA)* is a limited liability corporation with a registered capital of at least RON 90.000 (approx. EUR 20.000) and at least two shareholders. Shares can be nominative or bearer shares, and can be freely traded or pledged. A joint-stock company may be set privately or by public subscription.

Other forms of business entities available to foreign companies include:

Representative offices (Reprezentanta). Foreign companies may open representative offices in Romania following a registration procedure with the Ministry of Business Environment, Commerce and Entrepreneurship and pay an annual fee of RON equivalent of USD 1,200 for the authorization. Representative offices cannot carry out commercial activities or conclude contracts on their own

behalf, but are entitled to promote and supervise the business of their parent organization. Upon authorization, the representative office must be also registered with the competent tax authority and pay an annual income tax of RON 18,000.

Foreign companies may establish also *subsidiaries (filiale)* or *branches (sucursale)* in Romania. They must be registered with the appropriate territorial trade registry. Both have to comply with Romanian fiscal and legal rules, but subsidiaries are fully accountable to relevant local authorities, while branches have to comply with local regulatory framework, but responsibility stays with their parent company.

The forms of business most commonly used by foreign investors are the limited liability company (SRL) and joint stock company (SA). Banks and insurance companies can only be organized in the form of joint-stock companies (SA). Representative offices are often used as a market entry technique, allowing for an assessment of existing opportunities before making a more substantial commitment to Romania.

Formal steps to be taken for setting up a company

1. Location / area where the company will have its main headquarters and, if necessarily secondary headquarters

The company can be established in a location which is the property of one or more shareholders or in their use (rented property). The proof of registered office may be: the lease agreement registered with the competent fiscal authorities, the ownership title, the Land Book excerpt not older than 30 days.

2. The denomination (name of the company and logo of the company, as the case may be) is established by the shareholders and must differ of those of other companies registered in Romania. The denomination is checked at the Trade Register Office of the county where the headquarters is established; a proof of their registration and reservation for a period of three months will be issued;

3. Incorporation documents (e.g. constitutive act, articles of incorporation, statute), executed by the shareholders, directly or through a person empowered through the resolution of the General Meeting of the Shareholders (under certain conditions this document must be executed in notarized form)

4. Documents provided by the shareholders / directors:

a) Copy of the documents attesting the existence of the shareholders legal entities

b). Affidavit of the future representatives of the Company confirming that (i) they fulfil all conditions required by law to hold and exert such positions; (ii) they are not fiscal residents in Romania (if the case) and they have no debts towards the Romanian State budget

c) Letter of good standing issued by each shareholder’s (legal person) bank or by the chamber of commerce from the shareholders’ state of origin

d) Identity documents of the future representatives (directors) of the company

5. Opening the bank account for the transfer of company's share capital and obtaining the poof of payment of the cash contribution. If the case, documents attesting the ownership of the goods contributed in-kind to the share capital of the company.

6. Proof of the payment of the Trade Registry registration fees, Official Gazette publication fees and fiscal stamps

7. Fiscal registration form

8. Standard form declaration regarding the authorization of the activities performed at company's premises

9. The file with all the necessary documents is being submitted to the Trade Registry Office in the county where the headquarter of the company has been established

10. The competent Trade Registry Office will verify the legality of the documents and issue the registration certificate

The company registration in Romania takes approximately one week after preparing all the required documents.

JOINT VENTURE OPPORTUNITIES

Foreign companies may enter Romanian market as partners with Romanian conterparts, or may operate as 100% foreign-owned companies. Many foreign companies do so under *joint-venture agreements*. Under this agreement, parties act together for the accomplishment of a common business goal.This form of doing business in Romania does not create a legal entity. The third party has no right towards the joint-venture and undertakes obligations only in relation to the co-contracting member of the consortium.The main advantages offered by joint ventures include quick market acces utilizing an existing infrastructure and specific licences (when needed) as well as good knowledge of the local businesss environment. Disadvantages include potential acquisition of excess personnel and the possibility of not having complete control of the business.

Franchising regulations in Romania are very much the same as in other countries, basically granting the franchisee the right to operate or develop a business, product, technology or service. The contract – Franchising Agreement – reflects the interest of the members of the franchise network, and protect the franchisor's industrial or intellectual property rights.

European Economic Interest Grouping (EEIG) is a type of legal entity established under the European Community (EC) Regulation No. 2137/85 The objective of this Regulation is to facilitate and encourage companies from different countries to do business together and/or form consortia to take part in EU programmes. An EEIG may be established in any EU member state. Its purpose is to

develop the economic activities of its members by a pooling of resources, complementary activities and skills. EEIG's activities are ancillary to those of its members, i.e. must be related to the economic activities of its members and play a supporting role (e.g. joint accounting or prospecting), but cannot replace them. It may function in Romania through subsidiaries, branches, representative offices, or other non-legal entities provided these comply with domestic legislation.

PROMOTION OF INVESTMENT

Promotion of foreign direct investments (FDI) is made by the Ministry of Business Environment, Commerce and Entrepreneurship, Ministry of Economy and Ministry of EU Funds. At a de-centralized level, the Agencies for Regional Development and the 42 chambers of commerce in each county of Romania and the City of Bucharest provide detailed information and extensive support to foreign investors.

The Chamber of Commerce Switzerland – Romania is in the best position to give primary information and orientation to newcomers on the Romanian market.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

There is no restriction for market entry and business development in Romania. As in any other EU country, circulation of goods, capital and people is free.

The laws governing work permits for Romania are similar to most European Union member states. Non-EU citizens need to obtain a work permit, a long-stay visa and a stay permit to legally work in the country. To start this process an applicant needs to have been offered a job in Romania.

The Romanian government has a quota system in place that regulates the number of work permits granted to non-EU employees each year.

In most cases, a work permit has to be applied for by a business in Romania on behalf of its future employee. It is the employer's responsibility to prove that the position could not be filled by a Romanian or a candidate from another EU country.The employer must also prove that the candidate has the qualifications and experience for the position. This requires supporting documents that an expat would need to provide such as a CV, reference letters, criminal clearance and medical checks. The process for obtaining a Romanian work permit can take up to 60 days.

Once an expat receives their work permit from the employer, they need to apply for a long-stay visa for work purposes at the Romanian embassy in their home or residence country. To get the visa, a

number of documents will have to be submitted including the work permit, proof of sufficient funds and medical insurance. The visa will be issued in maximum 10 calendar days.

Based on this work visa, the non-EU expat travel to Romania and can start his activity with the Romanian company. In order to prolong his legal stay in Romania granted by the work visa, he will be required to apply with the Immigration Inspectorate for the Romanian residence permit. This has to be done at least 30 days before the long-stay visa expires. Expats will have to provide proof of residence, salary and identification as well as medical clearance.

The Romanian residence permit will be issued in 30 calendar days, with a validity ranging between 1 to 3 years, depending on the scope of registration. The renewal procedure for the Romanian resindece permit needs to be undertaken with 30 days before the expiry of the current residence permit.

Non-EU expats travelling with their families will have to apply for a separate visa for each family member. Family members are not allowed to work in Romania unless they also have a work permit. Those already in the country on a temporary residence permit would have to apply for a work permit if they want to take up employment in the country.

For more information, application requirements and fees for residence permits can be found on the website of the Romanian Immigration Inspectorate at http://igi.mai.gov.ro/.

The standard terms of the employment are provided by the Labour Code. By Order of the Ministry of Labor a standard employment agreement has been put in place.

The most relevant information included in each employment contract concluded in Romania (including the amendments thereof) has to be recorded in a special document named General Registry of Employees (REVISAL). REVISAL shall be prepared in electronic format and shall be submitted on-line on the Labor Inspection portal.

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 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.

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 *inter alia* 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 for full-time employment. 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.

Salary and 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 Employment Agreements

Individual employment contracts can be terminated by operation of law in certain cases (e.g., upon the death of the employee, in case the employer is subject to dissolution, on the expiry date of the term for which individual labor agreement was concluded), by mutual consent of the parties or by either party to the employment contract by dismissal or resignation.

Dismissals may occur for reasons related to the employee (e.g., professional inadequacy, as a disciplinary sanction) or not related to the employee (e.g., job cancellations).

a. Dismissal 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 collective employment agreement or the internal regulations.

According to the Labour Code, the employer must issue an internal regulation. The Labour Code further provides that such internal regulation should include rules applicable to all employees regarding work safety, non-discrimination, proper behavior at the work place, procedures regarding 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 or in home arrest for more than 30 days.

(iii) If the employee has a physical or psychological disability confirmed by a certificate issued by the relevant authorities which does not allow the employee to carry out its duties.

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

b. Dismissal 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, as 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 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 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, in accordance with the provisions of the Law no. 62/2011.

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. 62/2011, a Collective Employment Agreement applies to all the employees of a company, irrespective of the fact that they are union members or not.

Labor Disputes

The Labor disputes are settled by a special section of the competent Tribunal. The labor disputes are exempted from court fees. Labor litigation in the courts of first instance may take 6 (six) months or more depending on the complexity of the case and discovery proceedings (such as witness appearances, etc.).

Law no. 62/2011 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. 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. The employee may also choose to claim for damages only, should he/she not wish to be re-hired.

PROCEDURES FOR COLLECTING PAYMENT

Payment collection can be externalized through factoring procedures.

When amicable collection of overdue debts does not work, different methods of execution of the payment documents are available.

Payment documents such as promissory notes, bills of exchange etc. can be executed. If certain guarantees are part of the contract, they can be executed by force of law. Forced execution or foreclosure is an effective applicable procedure.

Filing for insolvency may lead to debtor’s reorganization under judiciary supervision or liquidation of debtor’s assets in vie of partial or total coverage of its debt.

Various actions in court under commercial, financial, civil or criminal law are extreme steps that can result in total or partial debt recovery.

SOURCE: Sites and publications of relevant government institutions, National Bank of Romania, International Trade Institute, “Romania Business Passport” – EY Romania market brochure, The Official Gazette (Monitorul Oficial)

Date:	22nd February 2018
Author:	Chamber of Commerce Switzerland - Romania in cooperation with EY
Author’s address:	21, Plantelor Str., Entr. 2 (c/o Swiss House), RO - 023971 Bucharest