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Manufacturing in Romania

Foreword

Dear Readers,

The Dentons Europe offices cover a legendary territory for manufacturing and industrial projects, including Spain and France to the west, Russia, Kazakhstan and Uzbekistan to the east, Germany, Poland, Hungary and other Central European countries in the middle and from Italy to Turkey to the south. This territory offers a vast population with strong purchasing power and excellent infrastructure, combined with vast workforce resources and industrial expertise.

Dentons Europe has been at the forefront of the first industrial projects going east after the fall of the Berlin wall, actively advising on greenfield and brownfield projects as well as on acquisitions and joint ventures when Central European countries—Romania, Czech Republic, Slovakia and Poland—joined the European Union. We are now actively witnessing Asian investors' interest for manufacturing in Europe.

The legal environment in the countries we cover has greatly evolved. It is a strong advantage to have been present in some of the emerging economies of Eastern Europe, Caucasus and Central Asia for the past 20 to 30 years, as the legacy legal systems in these countries can still be felt, in particular with regard to land acquisition and environmental norms. Today many jurisdictions, including in Western Europe, offer state aid and tax incentives to attract the best manufacturing projects.

We are well placed to help you choose your entry doors to the European Union and to Eurasia.

We hope the Manufacturing Guide you have selected will be of interest. It aims to give you a general overview of key checkpoints for this jurisdiction. Do not hesitate to contact me or the authors of this guide for any further information.

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Romania and the European Union

Romania has been a member of the European Union since 2007 and is currently in the process of adhering to the Schengen Area. The currency of Romania is the Romanian LEU (RON), but it will commit to the Euro once it has fulfilled all necessary requirements. Romania is a semi-presidential republic with a head of government—the prime minster—and a head of state—the president. Both government and the president hold executive functions.

The most important sectors of Romania's economy in 2016 were industry (25.7 percent), wholesale and retail trade, transport, accommodation and food services (20.2 percent) and public administration, defense, education, human health and social work activities (11.7 percent). Intra-EU trade accounts for 75 percent of Romania's exports (Germany 22 percent, Italy 12 percent and France seven percent); while outside the EU, three percent go to Turkey and two percent to Russia. In terms of imports, 77 percent come from EU member states (Germany 21 percent, Italy 10 pecent and Hungary seven percent) while outside the EU fiver percent come from China and four percent from Turkey.*

* Source: https://europa.eu/european-union/about-eu/countries/member-countries/romania_en.

Preparing to manufacture: greenfield and brownfield projects

A. Corporate Vehicles

The most frequently used entities in practice by foreign investors while setting-up an entity in Romania are the joint stock company and the limited liability company (in Romanian also abbreviated as S.A. and S.R.L.)

SA: The minimum number of shareholders in a joint stock company is two, and the minimum share capital required to register this type of company is the equivalent in lei of 90,000 RON (approx. €19,500). The SA is the best suited form for companies who intend to go public.

a. **Governance**: CEO and board of directors OR management board and supervisory board.

b. **Liability**: limited to the share capital.

c. **Taxation**: non-transparent (the taxation is done at the company's level).

SRL: is more flexible than the S.A. and is also suitable for a single owner (e.g. subsidiaries of multinational companies) or for a small number of members. The establishment of such a structure is a straight-forward and cost-effective process. The minimum share capital amounts to ca. 200 lei (approx. €45). In practice, the share capital is often higher, since banks, tax authorities and other players would request a more substantial amount. The appropriate amount needs to be considered on a case-by-case basis, depending on the future plans and needs of the company,

d. **Governance**: director (s) and shareholder meeting.

e. **Liability**: limited to the share capital.

f. **Taxation**: non-transparent (the taxation is done at the company's level).

There are no tax-transparent registered business structures in Romania. One of the few exceptions is the civil partnerships (Ro: *societate civila*), which, however, may be used in a limited number of activities expressly provided by law (e.g. law firms, agricultural companies).

B. Real Estate, Construction and Insurance

Manufacturing projects may imply, most often, the acquisition of land and the construction of a plant (although other structures, such as acquisition of both land and building or a lease) may apply.

Acquisition of land and buildings

a. **Who can acquire land in Romania?** By law, EU Citizens and legal entities, as well as stateless persons residing in EU member state or in the European Economic Area (EEA) may acquire title over private land.

   Non-EU citizens (including stateless persons or legal entity) may acquire title over private land under the terms set forth by international treaties, on a reciprocity basis.

   In practice, however, international manufacturers will acquire land most often via a Romanian SPV or their Romanian manufacturing subsidiary.

b. **Requirements and/or formalities**

   - Notarized form of the agreement (i.e., authentication by a notary public), under the sanction of absolute nullity of the deed; and
   - Registration with the Land Book;

c. **Specific pre-requisites**: Specific procedures must be followed in a number of cases, for example:

   - Acquiring title over agricultural land located outside the cities' limits or forestry land (as the State, land co-owners, leaseholders and neighbours are holders of special pre-emption rights over this type of land),
   - Acquiring title over agricultural land comprising archaeological sites, or
   - Acquiring land pertaining to State or to municipalities, as the transfer must be performed via public tender, etc.

d. **Acquisition of buildings**: As opposed to land acquisition, there are no nationality restrictions regarding the acquisition of buildings. In practice, the acquisition of the building will be, however, closely linked to the acquisition of land. Most often, a Romanian company (either SPV or subsidiary of a foreign manufacturer) will be the purchaser of both land and building.

e. **General recommendations**: Performing due diligence in order to assess, among other issues: (a) validity of title and title history over the land (including obtaining customary restitution certificates), (b) cadastral aspects, (c) zoning regulations valid for the specific area, (d) restrictions on development in the specific area, (e) access to and from public roads.

Construction permitting

a. **Development**: Construction works in Romania are performed based on a building permit. The building permit is backed by specific documentation, including: urbanism certificate, technical and zoning documentation, technical endorsements required under the urbanism certificate (e.g. from gas, sewerage, water providers, etc.), environmental permit.

b. **Commissioning**: Upon completion of the construction works, authorities are invited to confirm the commissioning by way of an official reception minutes. A certificate attesting the construction will also have to be obtained.

c. **Post-commissioning**: Investors may be required to obtain certain permits, such as: environmental permit and fire permit.

- Construction contracts: FIDIC and other international model construction contracts are often used for major, complex developments.
- **Specifics of insurance before and during the construction phase:**

  a. **Insurance securing the rights over the land and building**: There are no mandatory insurances (except insurance of residential buildings for earthquake), however title insurance and warranty and indemnity Insurance may be useful tools to mitigate certain title risks and are recommendable.

  b. **Insurance during the construction phase**: There are no mandatory insurances for the construction site; however, for larger projects, various insurances are customary (construction/engineering works, third party liability insurance (including during the construction phase), insurance for vehicles, employee accident insurance, fire and other risks insurance, installations, equipment and assets insurance etc.)

C. Administrative law – dealing with authorities – including anti-bribery laws

There is no specific or "general" business licence in Romania; however, upon incorporation of the company with the Trade Registry, the company shall indicate that it is familiar and that it will comply with the sanitary, environmental, sanitary-veterinary, food safety and work safety requirements. After incorporation, the company may also need to apply for certain other licenses for these areas, on a case-by-case basis.

The Trade Registry issues a certificate of registration, as well as an ascertaining certificate which lists the activities declared by the company as being carried out effectively (whether at the headquarters or at the working unit). Technical advisors have to provide input on a case-by-case basis for operational permits (if needed) and real estate permits (for instance, fire safety permit, clearance from the health and safety and fire prevention specialist for the employees' workplace).

Active and passive bribery, including bribery of foreign officials are crimes under the applicable domestic legislation. A company can be held criminally liable for corruption offences committed by individuals acting on its behalf.

D. Employment

The template form of the employment agreement is government-approved, but it may be further customized by the parties within the limits provided by the Romanian legislation, for instance, by adding special non-compete, mobility, confidentiality clauses or the employees' obligation to observe group-level policies.

All employment agreements must be registered prior to the actual commencement of work by each employee in a comprehensive electronic database to which all employers must log on to, called the "Electronic General Register of Employees", and abbreviated "REVISAL". As a rule, such registrations are handled by specialized HR/accounting companies, which liaise with the labor authorities on a current basis, permanently updating the employees' files and registrations, as any subsequent amendments to employment agreements or any other changes in the employment status (such as suspension, termination or retirement) must be registered as well.

Depending on the duration, there are two types of employment agreements in Romania:

- For an undetermined period (this being the rule, as a protective measure for employees); and
- For a fixed-term period (by way of exception, mainly for specific project-based work and may be concluded in certain cases provided by law).

No more than three fixed-term employment agreements may be concluded successively under a maximum period of 36 months.

Manufacturing employees may work in shifts with the observance of the special norms for night work.

Temporary agency work

a. Involves a triangular contractual framework: The agency concludes an employment agreement with the temporary employee and, based on a separate contract with the user, assigns the employee to the user, to work there temporarily under the user's supervision and direction;

b. Maximum 24 months per assignment, with the possibility of extension for a period that, cumulated with the initial period, cannot exceed 36 months.

Social security contributions:

a. Contribution for Social Insurance (CAS), payable by the employee (25 percent). Additional contributions are payable by the employer, in case of special working conditions (four percent) and in case of particular working conditions (eight percent);

b. Social Health Insurance Contribution (CASS), payable by the employee (10 percent);

c. Labor Insurance Contribution, payable by the employer (2.25 percent); and

d. Income tax (10 percent), payable by the employee.

Monthly gross (statutory) minimum salary (in 2020)

Basic monthly gross minimum salary for full-time employees	RON 2,230 (approx. €465);
For employees who have one-year seniority in the field from which they have graduated, working in positions that are requiring higher education graduates.	RON 2,350 (approx. €490)
For employees working in constructions.	RON 3,000 (approx. €630)

E. Tax and State Aids

Main taxes which may be relevant for the manufacturing sector include:

a. **Corporate Income Tax (CIT)**: Romania implemented a flat tax system; thus, the applicable corporate income tax rate is 16 percent and applies to both resident companies and those entities operating in Romania via a permanent establishment. The tax basis can be reduced through certain deductions.

b. **Value Added Tax (VAT)**: Value added tax is neutral for companies carrying out commercial activities and registered for VAT purposes. Such companies collect the tax on their own sales and deduct the tax they have paid on purchase of goods and services. The net VAT payable is the difference between collected VAT and deductible VAT. VAT Credits can be reimbursed under certain conditions. Exports (outside of the European Union) are VAT-exempt. The standard rate is 9-19 percent for a limited category of goods, mainly food and non-alcoholic drinks, five percent for delivery of buildings or apartments, under certain conditions.

c. **Losses**: Losses can be carried forward for seven years.

d. **Customs regime**: There is a uniform customs regime throughout the EU so that goods can move freely within the area. Goods imported from a country outside the European Union are liable to duties payable upon entry into the European Union; Goods exported outside the European Union are exempt from custom duties in general.

e. **Elimination of double taxation**: Romania concluded a wide array of double tax treaties aimed at eliminating double taxation.

Things to watch out for:

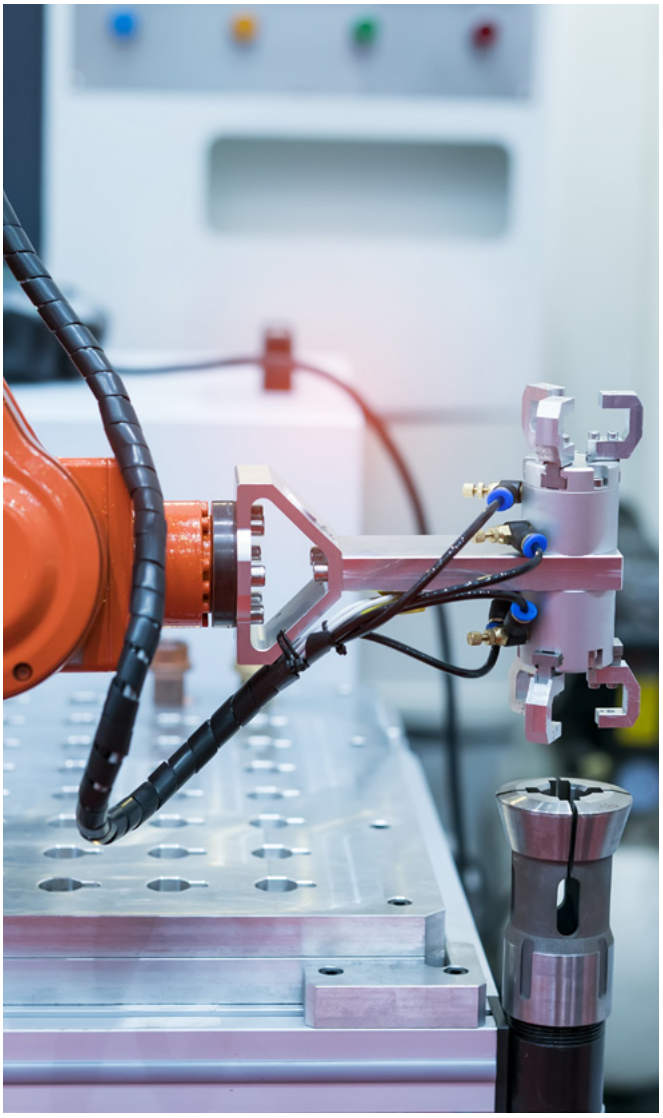
a. **Transfer pricing**: Transaction between associated companies have to be concluded at arm's length. Failure to apply the arm's length principle can result in readjustment of revenues. Companies falling under the transfer pricing legislation must submit specific transfer pricing documentation.

b. **Thin capitalization rules**: As of January 2018, new rules apply to deductibility of interest and to other costs that may be equated to interest. The difference between the borrowing costs and interest income represents "excess borrowing cost". In the event such "excess borrowing cost" is limited to the extent they exceed 30% of a certain calculation basis.

Controlled foreign company (CFC) rules:
A company is a deemed CFC only if the following conditions are cumulatively met:

a. The taxpayer alone, or together with its associated entities, holds a direct or indirect participation of more than 50 percent of the voting rights of that company, or, alternatively, it owns directly or indirectly more than 50 percent of the capital or is entitled to receive more than 50 percent of the profits of the said company; and

b. The profit tax paid on its profits by the company is lower than the difference between the profit tax that would have been charged for the company under the applicable Romanian profit tax provisions and the actual profit tax paid.



Incentives for foreign direct investment (FDI)

- **Industrial parks are useful investment instruments**. Current legislation provides owners of industrial parks with, e.g. tax exemptions for: land, buildings, construction and a number of other specific incentives.
- Conditions: The founders must request the title of industrial park from the Ministry of Regional Development, Public Administration and European Funds upon fulfilment of certain legal conditions. Both the possibility of developing new industrial parks and the acquisition of already existing industrial platforms are envisaged.
- **EU (European Union) funds**: As a member of the EU, between 2014-2020 Romania will benefit from allocation of €42 billion in non-refundable financing, which is split in **different** operational programs.
- **State aid schemes to support investments**:
  a. Financing a part of the wage costs for a period of two consecutive years for every job created as a result of an investment project. Target: Most sectors except agriculture, steel manufacturing, shipbuilding, transportation, energy;
  b. Financing a part of the costs for acquisition of tangible and intangible assets associated with the investment. The minimum investment to be considered eligible is €3 million.
- **Tax exemptions for certain employees**: Romania does not tax the salary revenues of certain IT and Research and Development employees.

F. Protecting your intellectual property and complying with data privacy obligations

As an EU member state and party to all main European and international agreements relating to IP, Romania has an IP regime that is substantially harmonized with IP regimes in other European countries. Romania recognizes the following IP rights over various intellectual works, some of which may be registered for protection, while others cannot:

a. Copyrights in original works (including databases and computer programs);

b. Neighbouring rights (including right to artistic performances, phonograms, videograms and broadcasts);

c. Patents;

d. Utility models;

e. Industrial designs;

f. Trademarks;

g. Geographical indications;

h. Topographies of integrated circuits;

i. Databases;

j. Trade secrets and know-how;

k. Domain names.

Registration to protect some of the intellectual works enumerated above (e.g., inventions, models, designs, trademarks), as specifically regulated in their respective legal framework, is possible on a national level (with the Romanian State Office for Inventions and Trademarks), European level (with the European Union Intellectual Property Office and European Patent Office), and international level (through World Intellectual Property Organization).

Measures for the protection of IP rights: includes administrative, civil and criminal liability measures provided for in the copyright and, generally, in the intellectual (including industrial) property laws. For breach of an IP right, the right holder has a number of remedies, including:

a. That the breach be stopped;

b. That illegally obtained profits be released (the right holder may receive profits illegally obtained by those in breach of IP rights); and

c. For culpable breach, that the prejudice be compensated with damages.

Claims for damages: are reviewed according to general rules (which require proof of the kind and monetary amount of the damage) and, as a benchmark, may take the form of payment of an amount corresponding to a license fee or other suitable remuneration. Holders of IP rights can also use of certain measures envisaged by the law against unfair competition, if the case.

With regard to privacy in Romania, as an EU member state, the General Data Protection Regulation applies to Romania.

Operating

A. Connecting to utilities

In general, excepting remote locations and land located outside city limits, utilities should be available.

Utilities are available from various (public or private) providers, and the choice is available to consumers.

For example, there are multiple electricity/gas suppliers, and from the beginning of 2018 this market became liberalized, with the national authority having no rights to control the prices. This decision has had a big impact, as the market became competitive.

Depending on the location of the plant, specific easement rights may need to be secured for utility providers in order to connect to utilities networks.

A special regime is applicable for renewable energy.

B. Health and Safety

Main obligations of a manufacturer as employer in Romania include:

a. To have on staff or retained via a specialized services provider (an individual or a company), an authorized labor health and safety officer, a labor medicine doctor and a fire prevention specialist;

b. To evaluate risks to the health and safety of employees in the choice of work equipment, the chemical substances or preparations used, and the fit-out of work places;

c. To provide for initial, periodic, change of working conditions or return-to-work medical check-ups for each employee at the employer's expense;

d. To provide health and safety at work training for the employees; and

e. To have in place internal regulations.

Employers with more than 50 employees must organize a committee for labor health and safety. Such obligation is incumbent to employers with less than 50 employees only if the working conditions are difficult, harmful or dangerous (such categorization is to be made with the help of an authorized health and safety specialist, whose services must be retained).

C. Trade Unions

Unions: may be established by a minimum of 15 employees from the same company but, in order to become representative for negotiations with the employer, the number of its members must equal at least 50 percent plus one of the total number of employees.

Representative: At the level of employers with more than 20 employees and which do not have a representative trade union, the employees have the possibility to appoint a special representative to protect and promote their rights and interests. The employees' representatives must be elected with the vote of at least 50 percent from the total number of employees. The number of such representatives must be established upon mutual agreement between the employer and the employees, and their mandate may not exceed two years since appointment.

Collective Bargaining Agreement: Employers with more than 20 employees must initiate negotiations for the conclusion of a collective bargaining agreement at company-level.

D. Industrial Risk & Insurance

Various types of insurance policies are available on the market, and there is a fairly large degree of flexibility to negotiate the terms and conditions of a policy.

According to each policy's terms and conditions, reaction to notify a risk covered by a policy is of essence.

E. Commercial and Insolvency related risks related to suppliers

Under Romanian legislation, creditors must register their receivables against the insolvent debtor within the insolvency procedure. Certain creditors are considered "key creditors" with special rights (forming a special voting category), as they supply essential services or goods for the insolvent debtor's activity).

Secured creditors have priority at disbursement.

As a rule, suppliers are registered as "unsecured creditors" due to the lack of any mortgage, privilege or special rights securing the payment obligation of the insolvent debtor.

Suppliers may secure their rights before the insolvency opening by, for instance, (i) claiming up-front payment from the debtor for most of the relevant prices, (ii) agreeing with the debtor a title retention clause until the full payment (this clause must be registered into the Electronic Archive for opposability purposes), (iii) negotiating a settlement with the debtor.

F. Defending your intellectual property

Depending on their exact nature and intensity, IP infringements may constitute contraventions (non-criminal offences), criminal offences or civil torts/ breach of contract.

Patent and trademark infringement (especially where the violation is made for commercial purpose): Under most circumstances, those constitute a criminal offense and may be reported to the competent authorities which will launch an investigation and press charges if any misconduct is identified.

Defamation in the press: is under most circumstances sanctioned as a civil tort. To the extent defamation is perpetrated by a competitor, it is also considered an act of unfair competition and sanctioned by the competition regulator with a fine. Statements and allegations brought under defamation claims (especially if made by journalists/ consumers) are normally balanced by the courts against rights of free speech and freedom of press, convictions are laid out only insofar defamatory statements fall outside the domain of free speech/ freedom of press.

Breach of confidentiality related to IP rights: may constitute, depending on the circumstances, a contractual violation, in cases where confidentiality is a contractual duty. In a few limited cases, breach of confidentiality may constitute a crime (e.g. disclosure of privileged information by patent office clerks before a patent is issued, unauthorized disclosure of privileged information by lawyers). Acquiring confidential information (including related to IP) by means of commercial espionage is also qualified as a criminal offence.

Victims of IP infringements as well as of defamation in the press may seek interim and permanent relief as well as compensation before the civil courts. Urgent interim relief may be sought in the form of injunctions ordering the perpetrators to cease immediately any breach of IP rights. Victims of IP infringement may request to be compensated with the profits illegally obtained by perpetrators from unauthorized use of protected materials and with any other indemnity covering the actual damage sustained.

IP related claims fall within the jurisdiction of specialized IP departments of civil courts, except for criminal cases, which are tried by criminal courts. Plaintiffs are expected to prove the existence and extent of their damages. Courts may, in determining the amount of damages, refer to such benchmarks as the amount of a license fee, expected royalties, etc.

G. Regulation compliance

Conditions in the EU regulations have to be met, especially the directive of product safety (Directive 2001/95/EC of the European Parliament and of the Council of December 3, 2001);

Authorities have put in place online platforms so that consumers may file petitions easier;

Authorities may trigger investigations in order to establish the compliance of the products with the regulations in force;

Sanctions may include fines (established on a case-by-case basis) or, in specific cases, the obligation to recall or even withdraw products from the market.

H. Competition law investigations

The Competition Council: is an autonomous authority aimed at protecting and stimulating competition on the market and to ensure a normal competitive environment, who runs competition related investigations.

Investigations:

a. Are launched either ex officio or following information received from third parties. Such information might be provided even under an anonymous basis using the whistleblowing platform available on the competition authority's website.

b. The Competition Council may investigate any alleged infringement of the competition regulations or may pursue sector investigations for the purpose of exploring a certain market peculiarities. Under investigations, the competition authority may require information and documents from the parties concerned and, furthermore, in the case of targeted investigations, dawn raids may be carried out.

c. During dawn raids, the parties concerned have the obligation to provide full access to the companies' documents, computers and locations in accordance with the scope and limits provided in the investigation order and the court decision authorizing the dawn raid. The parties concerned have the right to be represented by a lawyer during a dawn raid and may claim for the attorney client privilege with respect to certain communications/ documents.

d. A sector investigation is finalized with a report on the market, which may represent a starting point for a targeted investigation if there are clues of an anticompetitive behavior.

e. Targeted investigations might end with a sanctioning decision applying fines ranging between 0.5 and 10 percent of the guilty party's turnover, depending on the gravity and duration of the incriminated behavior.

f. Full cooperation with the Competition Council is the advisable approach during investigations, the parties concerned having the right at any time to be represented by a lawyer.

g. Failure to cooperate with the Romanian Competition Council and to provide the information/documents requested or providing incomplete information may be sanctioned by the competition authority with fines ranging between 0.1 and 1 percent of the respective party's turnover.

The biggest volume of fines applied by the Romanian Competition Council comes from cartels.

I. Tax audits

As a rule, notice of a tax audit is sent in advance. A tax audit may last up to a few months.

The burden of proof lies with the taxpayer and representation during a tax audit is recommended.

The statute of limitation for tax obligations is, as a rule, five years.

The right to challenge tax decisions is guaranteed.

J. Compliance monitoring – anti-bribery, anti-money laundering and whistle blowing rules in Romania

Compliance: Most multinational companies active in Romania have implemented strong group-level compliance programs, including internal control system and formal processes and procedures that would normally help avoid and mitigate such risks.

The legislation applicable to corruption-related crimes is not fully applicable to private companies, but most multinational companies have implemented dedicated compliance officers, whistle-blower hotlines or other mechanisms for individuals to report suspected unethical conduct. These have proven helpful in internal investigations as they facilitated internal reports on wrongdoing or misconduct.

Anti-money laundering regulations: apply explicitly to various service providers and entities dealing with funds/financing (such as financial institutions, lawyers, notaries,), but also to persons/entities providing services or selling goods against compensation in cash exceeding €10,000 (or the equivalent in RON) per single operation (or more operations, if those are connected). Cross-border operations, singular or connected, exceeding € 15,000 (or the equivalent in RON) shall be reported by the financial institutions.

Although the anti-money laundering regulations do not target manufacturing companies expressly, it needs to be carefully assessed on a case-by-case basis whether compliance procedures for anti-money laundering (AML Procedures) need to be implemented at the company level.

The concerned companies need to have in place proper AML Procedures, which should cover measures including appointing a compliance officer in charge with AML Procedures and informing the National Office for the Prevention and Control of Money Laundering about his appointment, implementing "know-your-customer" audits and records and reporting suspicious transactions. Lack of compliance with the AML Procedures may be sanctioned with fines or even suspension of business licence or closing down the business unit.

Acquiring and selling a plant

(buy side & sell side key check points)

A. Share deals & Asset deals

Transfer of title over shares: operates differently for "SRL" and "SA". While the shares of an "SA" are transferred through signing in the Shareholders' Registry (Ro: Registrul Acț ionarilor), unless otherwise provided in the bylaws of the target company, the transfer of shares in a "SRL" operates only after the lapse of a 30-days opposition term, when creditors can oppose to the share transfer. Because of the opposition term and related filings, the procedure for transferring shares in an SRL can take up to two months. This is something to consider in a transaction, especially in international transactions involving multiple jurisdictions, where transfer of shares has to happen simultaneously.

Transfer of title over assets: the formalities vary largely depending on the specific assets to be transferred. For instance,

a. For transfer of land an execution of a notarized contract is necessary (followed by subsequent registration with the land book);

b. For transfer of contracts: the consent of the contracting party needs to be obtained before the transfer (unless a party has previously agreed to the transfer, in which case a notification will be enough);

c. For transfer of movable assets (e.g. equipment): a written contract is necessary in practice (unless there are also, additional, special registration requirements).

Share vs. asset deal: The following paragraphs address the differences between a share deal and an asset deal from a corporate standpoint, but tax aspects may also have to be considered when choosing between a share or asset deal for a plant acquisition.

Share deal main pros & cons:

a. No cherry picking possible: all the assets and liabilities are transferred;

b. Extensive due diligence, particularly for the purpose of the negotiation of the indemnity provisions inserted in the SPA;

c. Indemnity provisions may cover various liabilities, such as environmental risks;

d. While the asset deal may be structured to benefit of the security of the financed assets, security restrictions/limitations may apply in case of share deals.

Asset deal main pros & cons:

a. Cherry picking possible: There is no automatic transfer of all the assets and liabilities pertaining to the transferred plant. The parties may agree to exclude specific assets and liabilities (with the exception of the employment contracts where applicable);

b. Transfer of contracts pertaining to the plant (if any transferred) requires the approval of the relevant counterparties (unless a party has previously agreed to the transfer, in which case a notification will be enough) – thorough due diligence required on this specific point.

c. The assets may serve to secure the acquisition debt (*ipoteca*).

B. Real Estate

Requirements and/or formalities when buying or selling a Plant (land and constructions): (a) notarized contract (i.e., authentication by a notary public), under the sanction of absolute nullity of the deed; and (b) registration with the Land Book.

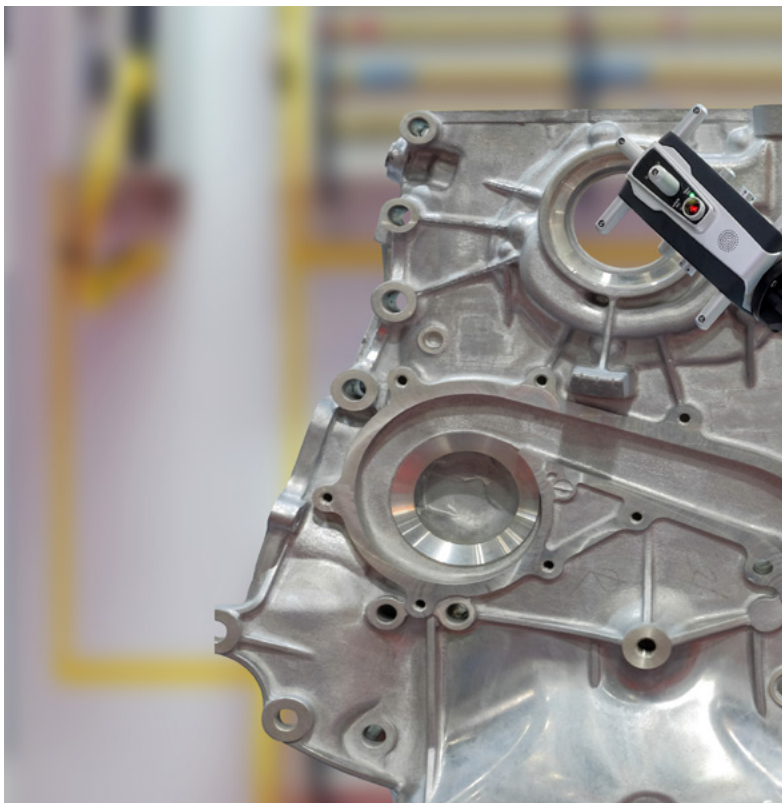
An energy performance certificate must be obtained by the Seller (required when selling buildings).

Basic checklist when buying a Plant in order to identify any possible risks:

a. Land book resolutions and excerpts for the registration of the real estate (land and constructions) in the relevant land book registry;

b. The agreement under which the seller bought (or otherwise acquired) the real estate and the previous title transfers;

c. Easements, mortgages and other encumbrances of the real estate;



d. Compliance of the development with the approved urbanism plans and regulations;

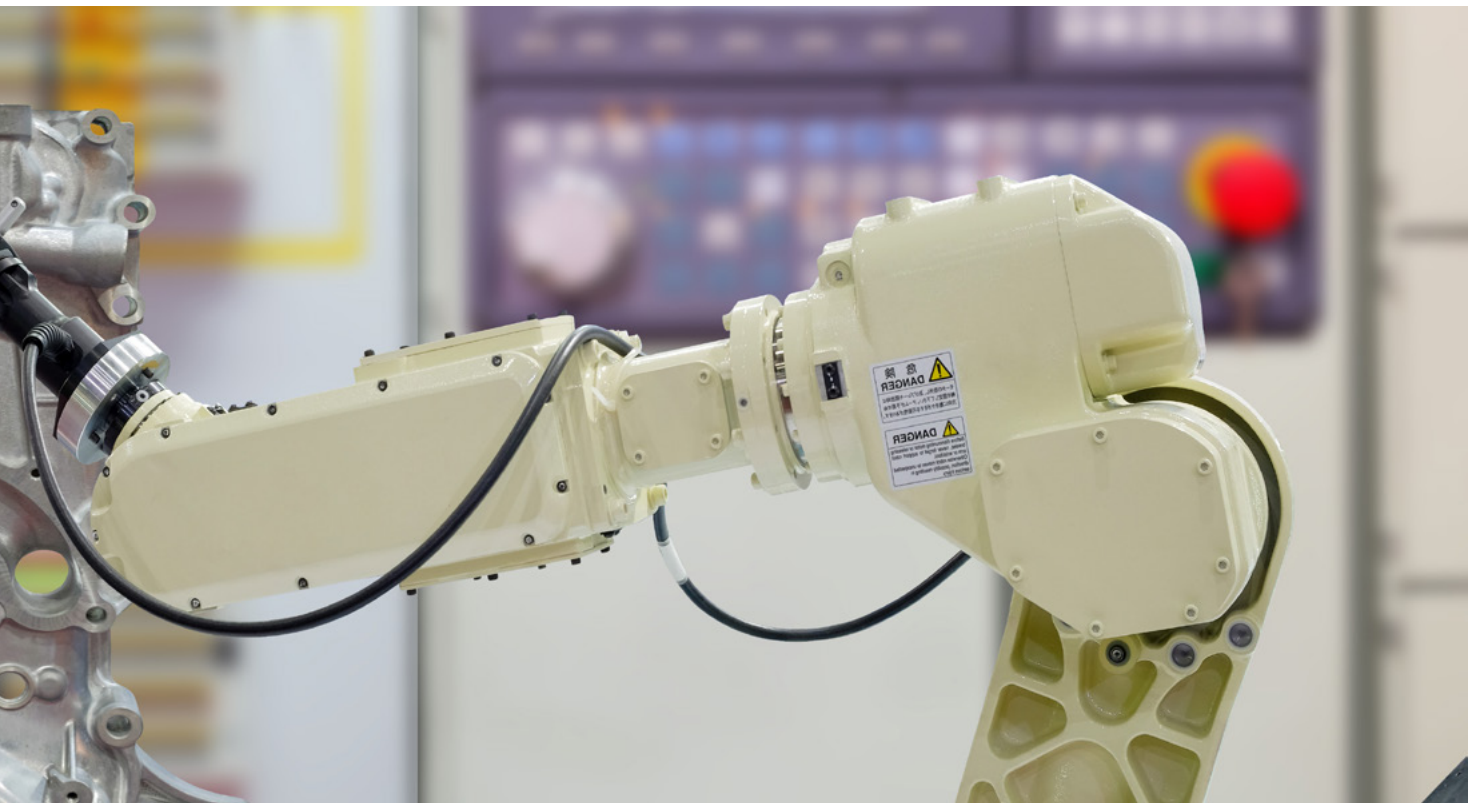
e. Existence of all required permits (including Fire Permit), authorizations and urbanism documentation and compliance of the development with such permits, authorizations and urbanism documentation;

f. Potential restrictions on transferability or prior approvals / formalities required in this respect (e.g., in certain cases, the notification to and prior approval of the Environmental Authority is required);

g. Restitution claims or other litigation with respect to the real estate;

h. Existence of secured free and unrestricted access to and from public roads.

Seller's liability with respect to validity of title: Although seller's liability may be contractually limited under the transfer agreement, usually the seller would be liable for the validity of its title, as in Romania, entitled persons may further challenge invalid titles by way of an action for ascertaining the absolute nullity, that is not subject to statute of limitation under the Romanian law.



C. Third party suretyship on the plant

Movable mortgages

a. **Secured assets**: may be trade receivables, tax receivables, accounts, tangible assets, intangible assets, shares, intellectual property rights, etc. The law expressly requires that mortgaged assets must be sufficiently and accurately described as to allow their identification.

b. **Formalities**: as private deeds must be registered for opposability purposes in a public archive (Electronic Archive for Movable Security), in order to ensure a proper priority ranking. The registration fees are minor. The initial registration is valid for a five-year period and must be renewed. Specific movable mortgages must also be registered in specific registers (e.g., registration of mortgages over shares in the internal company's shareholders' register; registration of a mortgage over IP rights with the patents' office).

Immovable mortgages

a. **Secured assets**: are created over land and/or buildings and other related assets/rights.

b. **Formalities**: The immovable mortgage must be signed under notarial deed in authenticated form (as opposed to a mere legalization of signature). The immovable mortgage must be registered with the Land Registry. The notarial and registration fees for a movable mortgage are established by law as a percentage of the value of the secured obligations. Both the notarial fees and the Land Registry fees must be paid upfront by the debtor.

Release

a. Occurs automatically by effect of the law in case the secured obligations are fully paid off, both in case of the movable and immovable mortgages, due to their accessory nature.

b. However, the secured creditor must carry out the de-registration formalities of the relevant mortgages from the applicable public registers, based on a specific notarial power of attorney (which must be executed as an authentic deed – not just a mere legalization of signature). If needed, depending on the country of issuance, the power of attorney must also bear apostille.

D. Employment & Trade Unions

Buying a business (or a part thereof) usually results in the automatic transfer of employees and their contracts to the buyer.

Under the sanction of fines and potential claims for lack of transparency, all employers have a statutory general obligation to inform and consult with the employees (through the relevant unions or the designated employees' representatives) on (i) the recent and likely development of the company, its economic situation and workforce and (ii) decisions likely to lead to substantial changes in the workplace. It should be assessed on a case-by-case basis to what extent the transaction could be qualified as an action potentially affecting the employees in a significant manner, thus triggering the obligation to consult with the employees' representative/union.

E. Specifics for distressed assets

Under applicable insolvency procedures, the acquisition or divestment of a manufacturing plant is governed by the general rules.

The approval of the creditors' meeting and, in certain cases, even of the court, is needed.

The creditors must agree upon the sale method/ regulation: public tender (more frequently), direct negotiation or a combination thereof.

The auction deed represents ownership title.

F. Merger control

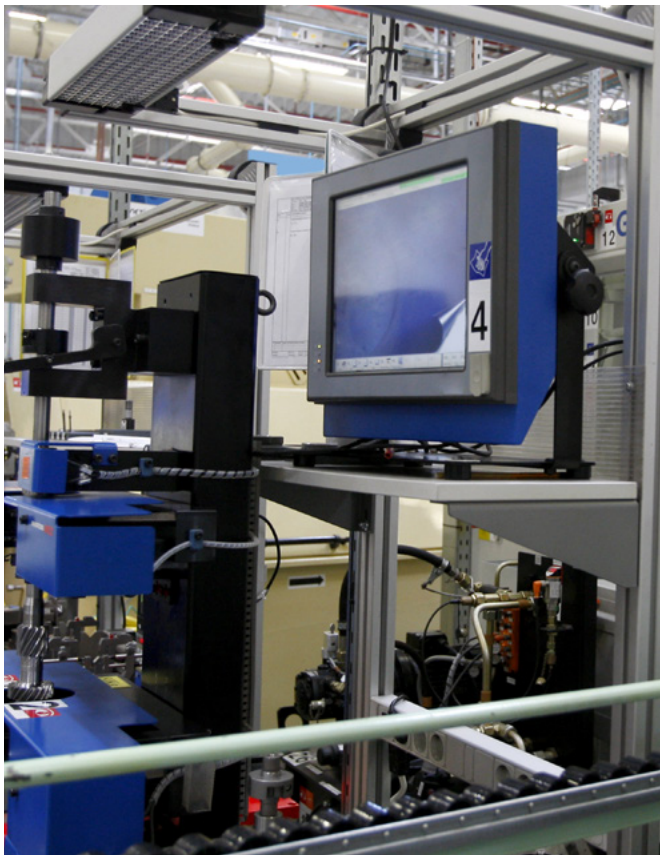
Any type of operation involving a change of control on a lasting basis (such as acquisition of shares, merger, transfer of business, transfer of assets, establishing a joint venture, long term contractual arrangements) might represent an economic concentration from competition perspective, which is subject to the Romanian Competition Council's authorization prior to its implementation, if certain turnover thresholds are exceeded, respectively (i) the combined aggregate turnover of all undertakings concerned (including their groups) exceeds €10 million; and (ii) the individual turnover derived in or from Romania by each of at least two undertakings concerned exceeds €4 million. The thresholds refer to the turnover realized in the financial year preceding the transaction

These rules equally apply to foreign-to-foreign economic concentrations if the Romanian market is indirectly affected and respectively the undertaking concerned fulfils the turnover thresholds in Romania.

Intra-group transactions are not subject to authorization by the Romanian Competition Council.

Depending on the position of the undertaking concerned (and their group of companies) on the Romanian market, the authorization of the transaction might be realized under a full or a simplified procedure. Furthermore, the degree of affected market concentration (including the upstream and downstream markets) and the anticipated impediment of effective competition may determine the competition authority to initiate an investigation within the authorization process, which will definitely extend the timing of the procedure.

Economic concentrations which might have an impact on national security have to be notified to the Supreme Council of National Defense (in Romanian, Consiliul Suprem de Apărare a ț ării), even if the turnover thresholds for being notified to the competition authority are not met. If the transaction is subject to notification to the Romanian Competition Council, then the latter is performing the procedure with the Supreme Council of National Defense as well.



G. Tax risks

Running a tax due diligence before the acquisition, in order to identify potential tax liabilities not covered by the statute of limitation is highly advisable. Such recommendation is even stronger for share deals.

When structuring the acquisition of a plant as share or asset deal, the tax aspects need to be considered:

While opting for an asset deal may avoid certain "historical" risks, along with the cash transfer representing the attached VAT (if applicable), one needs to assess carefully whether such transaction does not qualify as a transfer of business as a going concern (or not), as the applicable VAT regime differs and, thus, there may be VAT consequences.

Share deals on one hand are not subject to VAT, and, on the other hand, allow investors to benefit from the wide array of DTTs concluded by Romania. Again, careful assessment of the transaction is recommended in order to avoid eventual requalifications, e.g., the scope of the transaction.

Closing down

– Moving away manufacturing from Romania

A. Corporate formalities

In Romania, the procedure for dissolving, liquidating and de-registering a company is relatively straightforward, provided that its fiscal status is clear and appropriate support from the company's accountants is provided in a complete and timely manner.

In order to have the relevant corporate and tax authorities acknowledge the dissolution, certain corporate and fiscal filings need to be made and all outstanding financial liabilities (including without limitation, commercial, employment, as well as tax related obligations) should be settled.

The shareholders can perform a so-called "voluntary" liquidation (without appointing a professional liquidator), as it would decide, as it sees fit, as to the partition of the company's assets and settlement of its debts. The voluntary liquidation (without appointing a professional liquidator) may be performed in case the company does not have significant contracts or assets in its patrimony, as it involves the performance of an accounting valuation.

In practice, however, most companies are dissolved with a liquidation performed by a professional liquidator, appointed to assist with all financial and fiscal matters.

Among other documents, a fiscal certificate stating that the company has no debts towards the Romanian state budget and a shareholder resolution to dissolve and liquidate the company need to be filed with the competent Trade Registry.

The company's creditors benefit from a 30-calendar day opposition term as of the date of the publication of the shareholder's resolution with the Official Gazette approving the dissolution, during which they may object to or challenge the shareholder's resolution to dissolve and liquidate the company, in case they consider that the shareholder's resolution is detrimental to their rights.

To effectuate the de-registration of the company, an up to date fiscal certificate issued by the tax authority confirming that the company has no outstanding debts owed to the Romanian State Budget, shall be submitted to the Trade Registry.

The tax authority may decide to perform a fiscal control if the tax status of the company proves unclear, upon applying for the fiscal certificate. In practice, the tax authorities have a lot of discretion as to when to perform this control, which can delay the dissolution process, therefore we recommend having the situation of company's obligations towards the tax authority clarified, if possible, before starting the process.

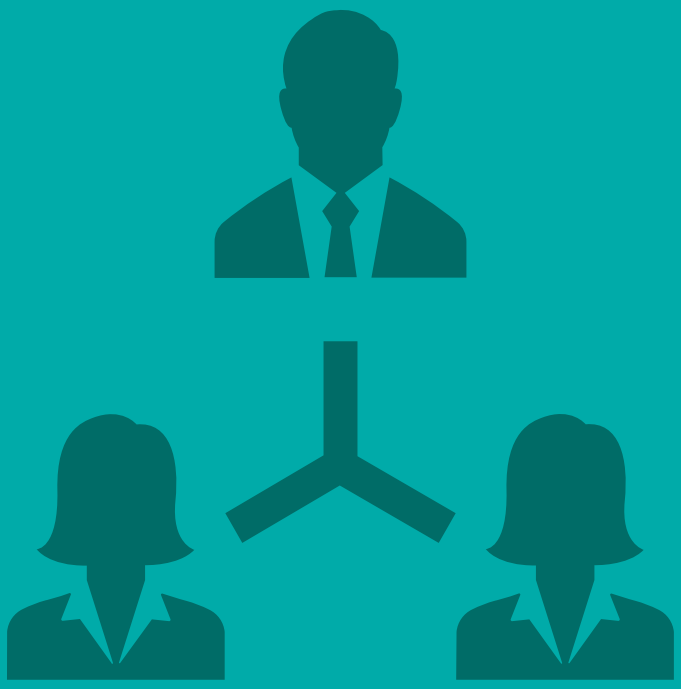
B. Employment matters

The company's dissolution represents a case of automatic termination, by effect of law, of all the employment agreements, starting with the date when the Trade Registry confirmed the dissolution.

The only disadvantage would be the fact that such automatic termination mechanism would mean that all employment agreements would be terminated simultaneously, at the latest stage of the dissolution process (which is effective the moment of the de-registration), and the company would incur salary costs until such date and would not have the possibility to set different termination dates for its employees, according to its operational needs.

Alternatively, the company may consider a redundancy termination scenario (individual or collective dismissals, depending on the total no. of dismissed employees). In this case, specific steps and formalities need to be observed, and prior written notices need to be granted to the employees.

Contacts



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