GETTING THE DEAL THROUGH

Mergers & Acquisitions

in 67 jurisdictions worldwide

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Romania

Simona Mares and Lucian Danilescu

Mares, Danilescu & Asociatii

1 Types of transaction

How may businesses combine?

Under Romanian law, business combinations are achieved through one of the legal structures described below.

Mergers

Two types of mergers are regulated by the Romanian legislation, namely merger by absorption and merger by consolidation. Absorption means the absorbing company acquires the patrimony of one or more companies, which then cease to exist, and the shares (plus a 10 per cent cash payment applied to the nominal value of such shares, if applicable) of the absorbing company are distributed to the shareholders of the absorbed company.

The outcome of merger by consolidation is that the rights and the obligations of the companies that cease to exist are transferred to a newly set up company and the shares (plus a 10 per cent cash payment applied to the nominal value of such shares, if applicable) of the new company are distributed to the shareholders of the initial companies even when dissolute companies are undergoing liquidation, on condition there was no asset distribution carried out between the shareholders. These mergers are allowed between different types of companies (local and EEA-based companies).

Private and public acquisitions of shares

The Companies Law is the main legal framework for the private acquisition of shares in Romanian companies. As a rule, there are two ways of acquiring shares in a Romanian company.

The acquisition of the existing shares

There are mandatory requirements (ie, the quorum and the mandatory majority in the general meeting of shareholders) with respect to the transfer of shares in limited liability companies to third parties whereas the shares in joint-stock companies can be acquired freely by third parties, as a principle. However, shareholders are not impeded from restricting the transfer of shares by inserting certain limitations in the company's articles of association. There are specific capital market regulations that must be complied with in case of acquisition of shares in listed companies and public takeover offers.

For tax reasons, the acquisition of shares in a Romanian company is performed through a special-purpose vehicle located in a tax-favourable jurisdiction.

Contribution to share capital increase

An investor interested in obtaining a contribution in a Romanian company may subscribe to the share capital of the target company in cash or in kind. In case the share capital is increased by contribution in kind, there is the legal requirement to appoint an expert, who must estimate whether the value of the contribution corresponds or not with the number and value of the shares allotted in exchange. When the share capital increase is made in order to perform a merger (or a spin-off) and to pay the shareholders or associates within the absorbed company (or the spin-off company), then the report is no longer compulsory, provided that the merger (or spin-off) project was analysed by an independent expert.

The share capital increase of a company through share public offer must observe closely the mandatory provisions of the capital markets.

Acquisition of assets

The asset deal is mainly regulated by the Civil Code and the Companies Law. The assets can be paid in cash or with shares. Because of limitations regarding the transfer of ownership of land (plots, agricultural land, forest) acquisition of assets by non-resident companies is performed through a Romanian special-purpose vehicle if such assets represent such immoveable property located in Romania. As of 1 January 2012, the limitation regarding the acquisition of building plots by non-residents is no longer applicable to EEA-based companies, provided the five-year transitory period from Romania joining the EU has passed. As regards the acquisition of agricultural and forestry land by non-resident companies based in the EEA, the limitation will stay in force until 1 January 2014.

Business transfers

As regards the transfer of business either partially or totally, special consideration must be given to the provisions of the Labour Code, regarding the protection of employees' rights in the event of a transfer of a business unit or parts thereof, and the Competition Law.

Privatisation

As per the Privatisation Law, the Romanian state's stake may be diminished through one of the following methods:

- sale of shares (the most common);
- share capital increase either by private contribution, or by contribution for companies within the portfolio of the Ministry for Economy and Trade;
- transfer of assets against no consideration, or transfer of assets with a public utility purpose, in special cases; or
- any combination of the above.

Investors can make contributions to the share capital of state-owned companies that carry out public utilities under the terms established by the public institution. The company or the involved public institution may give the investor an option right as regards the acquisition of shares. Other investments for completing unfinished projects will be attracted by means of a public-private partnership.

Demergers

The patrimony of a company that ceases to exist, without liquidation, can be transferred either totally (total spin-off) or partially (partial spin-off) to one or several already existing companies, to start-ups or to a combination of both and the latter's shares (plus a 10 per cent cash payment applied to the nominal value of such shares, if

applicable) are distributed to the shareholders of the initial company, according to the Companies Law and following the provisions of the articles of association of the companies involved in the process.

Joint ventures

Though not a legal entity, the joint venture (JV) is much preferred to incorporated project companies, especially in public procurement, which is very active in Romania. The characteristics of the JV its activity are mainly regulated by the Civil Code and the Tax Law. The JV does not have a patrimony of its own, provided the ownership right over the assets put together by the partners involved continues to belong to the latter and not to the JV itself. The partners' contribution to the benefits and losses can be different than their initial contribution to the JV. Every JV must have a leader. The leader represents the JV towards third parties, registers the JV with the relevant tax authorities and carries out the JV's bookkeeping. Third parties do not have obligations against the JV but against the partners of the JV that entered into business relationship with them, which are responsible in solidum. Any stipulation within a JV agreement limiting the partners' liability will not be enforceable against third parties. On the other hand, third parties will be held liable solely towards the partner with whom they entered into the business relationship, provided that the latter did not disclose his position when entering into the business relationship.

2 Statutes and regulations

What are the main laws and regulations governing business combinations?

The key Romanian law governing business combinations consists of the following legislation:

- the Companies Law;
- the Civil Code;
- the Capital Markets Law and regulations issued by the National Securities Commission;
- the Tax Law;
- the Competition Law and regulations issued by the Romanian Competition Council;
- the Privatisation Law; and
- the Labour Law.

3 Governing law

What law typically governs the transaction agreements?

Mergers, spin-offs, acquisitions of assets, share capital increases, privatisations are mandatorily governed by Romanian law. A Romanian company will remain subject to Romanian law if involved in an international merger. The share purchase agreements may be governed by any law although the transfer of shares in a Romanian company must comply with the Romanian imperative formalities according to the type of company involved. The delegated judge to the Trade Registry has jurisdiction to analyse the compliance of a cross-border merger with legal requirements regarding the procedure followed by merging Romanian legal entities, European companies headquartered in Romania, or if the case may be, newly set-up companies.

4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

Share and asset deals

The share deal is concluded in a private signature document and is binding for the signing parties as of the execution date. The transfer of shares must be registered with the Trade Registry for enforceability against third parties and in the shareholders' registry. We note that transfer of shares in joint-stock companies needs to comply with various rules depending on the type of the shares transferred. Notwithstanding these rules, shareholders can provide, within the company's articles of association, for other ways of transferring the shares. Transfer of dematerialised shares which are traded on a regulated market will be carried out pursuant to capital market regulations. We also underline that the resolution of the general meeting approving the transfer of shares in a limited liability company to third parties is subject to 30-day term as of the publication in the Official Gazette in which creditors may file opposition. The publication (of the call of the general meeting, the resolution of the former) and the registration of the share purchase agreement (SPA) are subject to fees.

The asset deal involving the transfer of land must be performed 'ad validitatem' in authentic form and is subject to notary fees. The transfer of ownership right over immoveable property other than land is binding between the parties if concluded under private signature but the registration in the Land Book is conditioned by the authentic form. It should be stressed that according to the provisions of the Civil Code, ownership of immovable property is transferred only by means of registration in the Land Book. However, these provisions will be effective as of the date when cadastral works for each administrative-territorial unit are finished and a land book for the respective immoveable is opened. The transfer of moveable assets is valid if performed under private deeds.

Corporate formalities applicable to mergers and demergers

The first step is the preliminary resolution of the general meeting establishing the grounds for negotiations to be carried by the legal representatives; the resolution is registered with the Trade Registry. It is followed by the merger or spin-off project including the transferred patrimony, the exchange ratio of the share, etc. The project is published in the Official Gazette or on the official website of the company at least 30 days or one month, respectively, prior to the general meeting where shareholders decide with respect to the merger or the demerger. Creditors holding enforceable claims against the companies, dated prior to the publishing of the merger or demerger project, without being mature on the publishing date, can file an opposition to the merger or demerger. Mergers and demergers are approved by the shareholders of the companies involved and become effective either as of their registration with the Trade Registry or as of the registration with the Trade Registry of the final resolution of the general meeting by which the merger or demerger was approved. All publication and registration fees are relatively low.

Approval from the Romanian Competition Council (RCC)

Any operation of acquisition of control (by means of share or asset deal or joint ventures) over a certain undertaking is subject to merger control by the RCC, provided the following turnover threshold conditions are cumulatively met:

- the combined aggregate turnover of the undertakings concerned exceeds the equivalent of €10 million and
- at least two of the undertakings concerned have achieved a Romanian turnover exceeding €4 million in the year prior to the transaction.

Filing a merger notification with the RCC is not subject to any legal deadline. However, the sanctions for implementing a merger without the prior approval of the RCC in case such approval is needed under the above-mentioned conditions, can be up to 10 per cent of the aggregate turnover of the undertaking in default. Therefore, it is advisable that the merger notification be submitted as soon as possible and prior to taking any 'irreversible' measures, such as appointing new management, changing the target company's object of activity or altering its business conduct.

The notification can also be filed based solely on the intent to close a transaction, reflected in the form of a memorandum of understanding, an agreement over the general terms of the transaction, etc.

The filing fee for a merger notification is now 4,775 lei, but is subject to periodic changes by the RCC.

The review period for a merger control operation can be up to two to three months, in cases of obtaining unconditional clearance, and up to six months (or more) if an investigation is started by the RCC or certain measures need to be implemented by the parties in case of conditional approval of the transaction.

Upon receiving conditional or unconditional clearance from the RCC, an authorisation fee is due to be paid by the acquiring undertakings. This authorisation fee is calculated subject to the cumulated turnovers achieved by the acquirers and the target (and its subsidiaries) in the year prior to the issuance of the clearance.

The authorisation fee shall follow the below structure (values), in direct connection with the turnover of the undertakings concerned:

Authorisation fee (€)	Turnover (€)
10,000	4,000,000 – 15,000,000
12,500	15,000,001 – 25,000,000
15,000	25,000,001 – 50,000,000
17,500	50,000,001 – 75,000,000
20,000	75,000,001 – 150,000,000
22,500	150,000,001 – 250,000,000
25,000	> 250,000,000

Merger operations at the European level and falling under the scope of the EC Merger Regulation shall be assessed in accordance with the provisions of the EC rules and regulations regarding the respective filings and fees, the merger notification being filed with the European Commission.

Listed companies

Listed companies have reporting obligations that are performed on a regular basis and upon the occurrence of certain significant events.

As mentioned in question 6, certain changes in the structure of the share capital of listed companies have to be reported. Also the merger and spin-off projects have to be disclosed to the Romanian National Securities Commission (CNVM) and the market. The public offer documents need the prior approval of the CNVM, otherwise the transaction will be rendered null and void. Consequently, a public offer announcement may be launched only after the issuance of an approval decision by the CNVM regarding the offer documents and must be compliant with European regulations regarding the content and publication of prospectuses, as well as the distribution of advertising releases. Consequently, a bidder who intends to make a public purchase offer has to submit with the CNVM an application for the approval of the document. The CNVM decides whether or not to approve the purchase offer within 10 working days as of the registration of the application.

As a general rule, listed companies must ensure that the inside information is published by the issuer in a manner that enables fast access and complete, correct and timely assessment of the information by the public. The issuers shall promptly inform the public, but no later than 24 hours, if a set of circumstances arises or an event occurs that, though not yet formalised, if disclosed to the public would have a significant impact on the prices of its financial instruments or related derivative financial instruments.

5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

There are very few specific obligations for private companies with regard to disclosure of information related to business combinations. The directors must publish the merger or demerger project at least 30 days prior to the general meeting approving such operation.

The listed companies must comply with the reporting requirements established by CNVM regulations and by the regulated markets where the securities issued by them are admitted. Such companies must inform the public, without delay, of any major new developments that are not public knowledge, and that may, by virtue of their effect on their assets and liabilities or financial position or on the general course of their business, lead to substantial movements in the prices of their shares. This information shall be submitted to the CNVM and to the operator of the regulated market where the shares issued by the company are traded without delay but no later than 48 hours as of the moment that event occurred or the date when the respective information is acknowledged by the issuer and shall be made available to the public by means of at least one national daily newspaper. Furthermore, CNVM may request companies to update it with all necessary information for maintaining an adequate level of investors' protection, as well as market efficiency.

6 Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

In mergers and acquisitions relating to privately held companies there is no obligation of special disclosure of any shareholdings.

A requirement for such disclosure applies to listed companies. Where, following the acquisition or sale of the securities issued by a company admitted to trading on a stock exchange, the proportion of voting rights held by a person reaches, exceeds or falls below 5, 10, 20, 33, 50, 75 or 90 per cent of the total voting rights, that person must notify, within a maximum of three working days from acknowledging this operation, the company and at the same time the CNVM and the stock exchange. The company admitted to trading on a stock exchange that received such information must make available to the public that operation within a maximum of three working days. The voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended.

Said disclosures shall also apply in case of an individual or legal person who holds, directly or indirectly, financial instruments that give the right to purchase shares to which voting rights are attached, already issued by a company whose shares are admitted to trading on a regulated market.

7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

Directors must exercise their mandate with prudence, diligence and loyalty in the best interest of the company. Moreover, they have a general obligation to maintain confidentiality regarding the company's sensitive commercial information, even after the termination of their mandates.

A director who has personal interests, directly or indirectly, in a certain operation, contrary to the interest of the company must inform the other directors, as well as the censors or intern auditors with respect to that situation and must refrain from voting in that operation and in any consultation thereof.

When a business combination takes the form of a merger or spin-off, the directors must prepare a plan (project) for the process, respecting certain particular legal provisions. The project is then published in the Official Gazette or on the official website of the company at least 30 days or one month, respectively, prior to the general meeting in which shareholders decide with respect to the merger or demerger. Afterwards, they have to summon the respective general meeting for the approval of the process. Ultimately, the directors are

in charge of the mandatory proceedings with the Trade Registry and other relevant authorities and of all the required disclosures.

By contrast, the shareholders do not have specific duties except for paying in full their subscribed shares. Notwithstanding, they have a general obligation to act fairly with other shareholders and the management bodies of the company.

8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

In case of a merger or spin-off the directors must have the general meeting's prior approval with respect to the operation.

The decision regarding the acquisition of assets is usually adopted by the directors. However, the law provides two situations where general-meeting approval becomes compulsory.

First, for private companies, the shareholders' approval is mandatory for any sale, acquisition, lease, exchange or setting up of guarantees related to any assets of the company in case the value of such assets exceeds half of the total book value of all the assets of the company. The decisions issued by the general meeting will be valid if they are taken by a number of shareholders representing at least one quarter of the aggregate voting rights, whereas for the second summons Companies Law stipulates that the required threshold is one fifth of the aggregate voting rights.

Second, for listed companies, the acquisition, sale, exchange or set up of guarantees involving immoveable assets whose value during a financial year exceeds, either individually or cumulatively, 20 per cent of the total immoveable assets, minus any claims, must be first approved by the general meeting. The same rule applies to any leasing exceeding one year involving tangible assets, whose individual or cumulative value against the same co-contractor or persons involved or acting in concert exceeds 20 per cent of the total value of tangible assets minus any claims on the date when the legal document is concluded, as well as any associations for a period of time longer than one year which exceed the aforementioned value. In case these obligations are not complied with, then each shareholder may file a claim with the competent court of law for rendering the act null and void and engaging the director's liability.

9 Hostile transactions

What are the special considerations for unsolicited transactions?

The relevant Romanian legislation does not stipulate specific provisions regarding hostile takeover procedures and does not distinguish between friendly or unsolicited bids.

Regarding the limited liability company, there are specific provisions that prohibit the transfer of shares to third parties without the approval of any shareholders who own at least three-quarters of the share capital.

10 Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

Both the break-up fees to be paid by the target company and the reverse break-up fees to be paid by the purchaser are regularly included in pre-agreements (heads of terms, letters of intent, memoranda of understanding, terms sheets) to the SPA governed by Romanian law, being assimilated to a penal clause. They represent the assessment of the damages in case the other party is in default and unreasonably does not conclude the deal. Such fees are calculated in consideration of the estimated expenses to be incurred by the due-diligence process (lawyers, tax advisers, financial consultants) and with the financing process. As opposed to the break-up fees, the reverse break-up fees are more difficult to enforce provided the closing of the deal is subject to several conditions precedent (ie, satisfactory due-diligence reports). Another example is that of a purchaser who agrees to compensate the seller if the deal does not close by long stop date as result of antitrust issues. In case of litigation, the break-up and reverse break-up fees cannot, as a general rule, be reduced by the judge. There are few exceptions to the rule, the most important one being that the penalty (ie, the break-up fee) highly exceeds the damage that could be forecasted by the parties upon signing the binding pre-agreement. Notwithstanding, the penalty reduced as such by the judge cannot be lower than the principal obligation (the obligation of the parties to conclude the SPA).

As regards financial assistance, a joint-stock company may not grant advance payments or loans for third parties (except the employees of the company, in which case certain financial parameters must be observed) to subscribe or to acquire the company's shares. Credit institutions and other financial institutions are excluded owing to their object of activity.

11 Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

In the case of public offers, the form and content of the prospectus or offer document must be approved by the CNVM prior to launching such process.

12 Conditional offers

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

In private deals, the parties are free to insert any conditions regarding the buyout offer. For many types of acquisition agreements it is customary for the parties to negotiate conditions precedent, including financing aspects.

With regard to listed companies, the Capital Markets Law does not provide a legal frame under which a public tender offer is conditioned by certain events. Any person wishing to make a public offer shall submit to the CNVM an application for the approval of the prospectus or offer document. On the date of publishing the announcement, the offer becomes binding and the prospectus or the offer document must be disclosed to the public, in the form and content approved by the CNVM. If the public offer is issued without the prospectus or offer document first being approved or if it is not consistent with the requirements within the approval decision, then such offer will be rendered null and void and the tenderer will be held liable towards investors acting in good faith for the reimbursement of the payments made and for the damages incurred as a result of the nullity of the transactions performed on the basis of such offer. Any significant new event or the modification of the original information presented by the prospectus or by the offer document, which is capable of affecting the investment decision, during the time when the offer is valid, shall be included in a supplement. This supplement shall be also approved by the CNVM within maximum seven working days and shall be disclosed to the public.

13 Financing

If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

A distinction should be made between a transaction involving the acquisition of shares of a non-listed company and takeover bids for companies admitted on a regulated market. In case of private busi-

ness combinations, the parties usually include the obtaining of proper financing by the buyer as condition precedent, without the seller necessarily undertaking to assist the purchaser in such process. The outcome depends on the negotiations between the parties provided the purchaser cannot be compelled by law to assist the buyer in obtaining financing. See also question 10 for additional information as regards the restrictions of a joint-stock company to offer financial assistance. With regard to takeover bids for listed companies, the bidder should have obtained the necessary financing for the acquisition, as a prerequisite for the approval of the bid by the CNVM.

14 Minority squeeze-out

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

The Companies Law regulates the specific conditions for exclusion of associates only for LLC. In the case of a joint-stock company not listed on a regulated market the squeeze-out of shareholders is not permitted by law.

The squeeze-out of minority shareholders is permitted only to listed companies and is strictly regulated by the Capital Markets Law.

The squeeze-out procedure may be performed only following a public purchase offer addressed to all shareholders in a listed company for all their holdings. In this case, the offeror has the right to require the shareholders which have not subscribed to the offer to sell the said shares at a reasonable price, if the offeror is in one of the following situations:

- it holds shares accounting for more than 95 per cent of the share capital; or
- it has acquired within the public purchase offer addressed to all shareholders and for all their holdings, shares accounting for more than 90 per cent of those targeted by the offer. The shares issued by a listed company shall be suspended from trading as of the date the CNVM approved the announcement. Pursuant to such approval, the announcement shall be publicly disclosed through the market where the securities are traded, by publishing it in the CNVM bulletin, on the CNVM website and two national financial newspapers within a maximum of three working days from its approval.

The price offered within a mandatory takeover bid, as well as within a voluntary takeover bid, where the offeror has acquired by subscriptions within the offer, shares accounting for more than 90 per cent of the shares targeted, is presumed to be a fair price. However, such presumption is applicable only in the situation when the offeror has exercised his squeeze-out rights within three months from the closing of the said offer. If not, the squeeze-out price shall be determined by an independent expert in accordance with international valuation standards.

The existing shareholders are obliged to sell their shares to the shareholder exercising its squeeze-out rights within a maximum of 12 working days from the date of publishing the aforementioned announcement. The intermediary shall make the payments to the respective shareholders within a maximum of five working days from the end of the 12-working-day period. Within a maximum of three working days as of lapse of five-working-day term, the proof of making the payments to the major shareholders and of establishing the account mentioned in the previous paragraph shall be submitted to the entity in charge of recording the shareholders of the issuing company in order to transfer the title over the shares. The ownership transfer over the shares will be made within a maximum of four working days from such submission of relevant documents.

15 Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Following the implementation of the EC Merger Directive, the Romanian legislation regulates the merger between Romanian or European companies headquartered in Romanian and EEA companies. The particular stages and documents for cross-border merger are similar to those for domestic mergers, including the information described in 'Update and trends'. As regards asset deals, all the information included in question 1 and in the 'Update and trends' section is applicable.

16 Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

As described in question 4, in case of a share deal, the longest waiting period is of 30 days as of the publication in the Official Gazette of the general meeting resolution to transfer the shares in a limited liability company to third parties. Additional waiting periods are linked to pre-emption rights, calls of the general meeting (minimum of 30 days for a joint-stock company and 10 days, if not differently provided in the by-laws for a limited liability company).

In principal, mergers and demergers are subject to:

- a 30-day waiting period as of the publication of the preliminary resolution in the Official Gazette;
- a 30-day waiting period as of the publication of the merger project in the Official Gazette or on the website of the company; and
- specific terms regarding the call of the general meeting, as detailed in the paragraph above.

17 Sector-specific rules

Are companies in specific industries subject to additional regulations and statutes?

Mergers and spin-offs of credit institutions, financial service institutions and insurance companies are conditioned by the prior approval of the surveillance authorities in Romania and thus follow specific regulations.

18 Tax issues

What are the basic tax issues involved in business combinations?

The transfer of shares held by a Romanian company in another Romanian company either to a Romanian or to a non-resident entity is levied with 16 per cent duty.

Capital gains are computed as the difference between the sale price and the acquisition price of the shares (including any other commissions, taxes or other amounts paid upon the acquisition of the respective shares) if shares were purchased, or the shares nominal value if they were obtained through in-cash share capital contributions.

Under the domestic law, capital gains obtained by non-resident legal entities as a result of sale of shares in a Romanian legal entity, including shares held in companies largely owning Romanian real estate, are subject to corporate income tax in Romania at 16 per cent, unless more favourable treatment is applicable under a relevant DTT. As explained in question 1, when forecasting the exit, the investors prefer to use SPVs located in a tax-favourable jurisdiction.

Thus, as a rule, under the DTT, the non-resident seller will be exempted from payment of tax on any capital gains arising from the sale of the shares held in a Romanian company, provided that it is tax non-resident in Romania with no permanent establishment in Romania, regardless of the value of its real estate assets in the total assets of the company.

Update and trends

The Romanian M&A market had a good year in 2012, despite a political climate marked by uncertainty. A few very significant deals were finalised, including the largest transaction in the last two years.

For 2013, the M&A market could see additional gains considering Romania's privatisation programme (as agreed with the IMF) of state-owned companies such as Posta Romana, the state postal service, and petrochemical plant Oltchim, as well as the sale of of minority stakes in other state-owned companies. Moreover, strategic sectors may continue to attract investors.

Provided the Mergers Directive was implemented in the Romanian legislation, mergers, spin-offs, exchanges of shares or contributions of assets benefit from tax-neutral treatment if certain conditions are met.

Any type of partial or total transfer of assets (ie, transfer of a going concern, irrespective of its form) forming an independent autonomous business is not considered supply of goods if the beneficiary is a taxable person and thus is not subject to VAT. In addition, the beneficiary is regarded as the assignor's successor for purposes of adjustment of the VAT deduction right.

As regards asset deals, the seller usually applies 24 per cent VAT. There are few transactions exempted of VAT including transfer of old buildings and non-constructible land plots. However, the option to tax these operations is available to the seller. The option is exercised by submitting a written notification to the relevant tax office.

Special consideration should be given to the taxation of joint venture companies and to the gross-up clauses in a share purchase agreement.

19 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

Both the Labour Code and the Law Regarding the Protection of Employees' Rights in the Event of a Transfer of Business Unit or Parts Thereof (implementing the Directive 2001/23/EC) provide a protection regime applicable to employees in case of transfer of business.

The transferee employer must observe the rights of the employees under their initial employment contracts and under the collective bargaining agreement applicable to the transferor employer, as the case may be. Note that the Law on Social Dialogue removed the national collective bargaining agreement and therefore collective bargaining agreements can only be concluded at the activity level, group of companies level and employer level.

Consequently, the rights and obligations provided by the employment contracts of the transferred employees will be entirely transferred to the transferee.

The Labour Code states broadly the obligation of the transferor employer to inform and consult the trade unions or the employees' representatives with respect to the legal, economic and social consequences for the employees, resulting from the transfer of business.

The Law Regarding the Protection of Employees' Rights mentioend above provides detailed regulation regarding the term and content of the notice to be sent to the trade unions or the employees' representatives. If the transferor or transferee envisages measures regarding its own employees, it will consult the employees' representatives with a view to reach an agreement, at least 30 days prior to the transfer.

Moreover, the transferor and the transferee must inform in writing the representative of its own employees, or their own employees, at least 30 days prior to the transfer, with regard to the transfer date; the reasons for transfer; the legal, economic and social consequences of the transfer on the employees; the measures to be taken with respect to the employees; and the work conditions at the new place of work.

The obligation to consult the employees' representatives should not be interpreted as establishing the obligation to obtain the employees' approval with respect to the measures to be undertaken in relation to the transfer, although the consultation procedures must be followed with a view to reach such agreement.

20 Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

According to the Law Regarding the Protection of Employees' Rights, the target company in bankruptcy or reorganisation procedure does not have to transfer to the new owner its rights and obligations deriving from the individual employment contracts and the applicable collective bargaining contract.

Moreover, the Insolvency Law provides that either the receiver or the liquidator may file actions for declaring void any fraudulent the following: acts concluded by the debtors and causing damage to the creditors' rights, certain asset transfers and business operations entered into by the debtor and the established guarantees likely to prejudice the creditors' rights.

Upon the commencement of the insolvency procedure, the share transfer is subject to the approval of the syndic judge. Also the receiver may decide within the reorganisation plan to issue new shares, to take part in a merger or to sell assets of the target company.

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21 Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

Depending on certain conditions or circumstances provided by the law, there are specific sanctions imposed on individuals or legal entities from fines to imprisonment and penalties including: prohibition to undertake, directly or indirectly, the professional or social activity in the performance of which the offence was committed; shutting down of one or several of the company's secondary establishments in which the offence was committed; placement under judicial supervision; and disqualification from public tenders.

Under the Romanian Penal Code, a public servant who receives a bribe can be sanctioned with imprisonment from three to 15 years. Similarly, bribing a public servant is considered a criminal offence and sanctioned with imprisonment from six months to five years.

As regards economic sanctions in connection with business combinations, as mentioned at question 4, Competition Law prohibits the implementation of an economic concentration without notifying RCC and obtaining the latter's approval. Failure to notify the RCC is considered an administrative offence and is sanctioned with a fine ranging between 0.5 per cent and 10 per cent of the company's aggregate turnover for the year prior to the sanctioning.

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