
DOING BUSINESS IN ROMANIA

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I. SETTING UP A COMPANY

Options

Foreign investors may decide to invest in Romania using one of three most common forms of investment: (i) Limited Liability Company – L.L.C.; (ii) Joint-Stock Company – J.S.C.; and (iii) Representative Office.

1. INCORPORATION OF A LIMITED LIABILITY COMPANY (L.L.C.) IN ROMANIA

The steps to be followed in order to incorporate a L.L.C. in Romania are:

1.1 Company's name

The Company's name must be reserved with the local Trade Registry Office. It is advisable to have three name choices. If the name choice includes words like: "National", "Romania", "Institut" or derivatives thereof, a prior approval from the General Secretariat of the Romanian Government ("GSG") is required.

The prior approval for using the word "Romania" (or any of its derivatives) will be issued only if the Company has as a Sole Associate or Associate a foreign legal person, and "Romania" is used to distinguish the Romanian legal person from its parent, from a geographical point of view. (e.g. Lafarge Romania, Coca-Cola Romania etc).

A Company's name reservation certificate is valid for a three months period, and it may be prolonged for another three more months.

1.2 Registered headquarters

It is necessary to conclude documents (lease agreement, most usual), attesting the location of the new Company's premises.

If the premises are rented from an individual, a registration of the lease agreement with the fiscal authorities is required. If the Company's premises will be in a residential apartment building, a stamped approval of the building association and the approval of the immediate neighbors will be also required.

According to the new regulations (as per art. 17 of the Law 31/1990), "at the same location may operate more companies, if the real estate property, through its structure, makes possible the operation of more companies in different spaces, and if one of the following condition is observed:

- a) at least one person is associate in all the companies; or
- b) at least one associate is owner of the real estate property to be used as headquarters."

Furthermore, two companies with completely different shareholding structure cannot be located in the same headquarters.

The Company's representatives should ask from the Landlord a complete ownership title, including title proof and land book (court) registration.

1.3 Associates

A limited liability company is allowed to have from 1 to 50 associates.

The current analysis of Chapter I is made following the currently applicable provisions of the Company Law (Law 31/1990, as amended). A newly drafted version of Company Law is presently under debate in the Romanian Parliament, and following its enactment (foreseen before the 1st of January 2007), it shall substantially change the present corporate governance rules in Romania (including the set-up rules).

The associates of a L.L.C. can be individuals and/or legal entities, Romanian or foreign, without restriction.

An individual or legal entity can be sole associate in one L.L.C. only. A legal entity, a L.L.C., with a sole associate cannot be sole associate in another L.L.C.

The following information and documents are required:

Individuals:

- Name, place and date of birth, domicile and citizenship, name of father and mother, marital status;
- Notarized statements of responsibility of each associate, pertaining to compliance with the legal requirements for holding of such capacity, and attesting the fact he/she does not have any fiscal liabilities in Romania;
- Fiscal record for each Romanian associates;
- Copy of passport and/or the identity card.

Legal entities:

- Certified copies of the incorporation documents of each associate (certificate of registration);
- Board resolution issued by each associate, approving formation of the new entity, identifying the name, headquarters, scope of activity, social capital and Company's administrator(s);
- Bank bonity letter issued by each associate's bank, certifying that the associate is a customer in good standing thereof.

1.4 Social capital

The social capital consists in cash or in kind contributions of the associates. The cash contribution is mandatory.

The minimum amount of the Company's social capital is RON 200 (approximately EUR 57). The social capital is to be deposited in a Romanian commercial bank in cash or by bank transfer.

The social capital is divided into social parts of a nominal value of at least RON 10 (approximately EUR 3).

1.5 Administrator(s)

Each L.L.C. must have at least one administrator. The administrator is responsible for the Company administration, representing the Company in front of the authorities, legal entities and individuals, public or private.

An individual or a legal entity can be appointed as administrator of the Company. An associate can also be appointed administrator.

The same information and documents as for an associate are needed for the administrator, plus notarized signature sample and written management contract between the administrator, legal entity and the Company (if the administrator is a legal person).

1.6 Operational business authorizations for the new company

Companies in the course of incorporation also have to apply for business authorizations when submitting the application for incorporation with the Trade Registry, as follows:

Authorizing a new company with activities performed at the headquarters

The applicant assumes liability, through standard affidavits, that the company in course of incorporation complies with all legal terms regarding fire protection, sanitation, sanitary-veterinary, environment and labour protection for all its activities.

The activities with significant environment impact shall be authorized by the competent environment authorities.

Authorizing a new company with no activities performed at headquarters

The applicant assumes liability, through standards affidavits that the company in the course of incorporation shall not perform any declared activities at the headquarters and working points for a period of maximum three years.

In both cases, the Trade Registry will send copies of the affidavits to the competent public authorities within three days from registration in order to check if the legal requirements for operation of the company are met.

In case the competent authorities consider that the legal operational requirements are not met, they will notify the applicant and give a remedy term.

If, during this term, the applicant fails to remedy the irregularities, the competent authority shall file with the Trade Registry a document prohibiting the performance of the respective activity by the company.

Any modification of the declared status must be duly registered with the Trade Registry.

2. INCORPORATION OF A JOINT-STOCK COMPANY (J.S.C.) IN ROMANIA

The steps to be followed in order to register a J.S.C. in Romania are:

2.1 Company's name – same as 1.1.

2.2 Registered headquarters – same as 1.2.

2.3 Shareholders

A minimum of five shareholders is required. Shareholders can be legal entities or individuals, Romanian and/or foreign, without restriction.

The same documents are required as for the associates of L.L.C. listed in 1.3 above.

2.4 Share capital

The minimum amount for the share capital of the JSC is the RON equivalent of EUR 25,000. The share capital must be deposited with a Romanian commercial bank in cash or by bank transfer. The subscribed share capital can be paid as follows:

- a) Each shareholder can subscribe and pay the total amount of share capital upon Company's incorporation.
- b) Each shareholder can pay at least 30% of share value upon Company's incorporation and the remaining 70% within 12 months from the Company's registration.
- c) A J.S.C. may also be incorporated by public subscription, through a public offer prospectus.

The minimum nominal value of a share is RON 0.1.

The registered share capital is represented by and divided into bearer or nominative shares.

The nominative shares may be issued in a material form, or in a dematerialised form. The share certificate evidences the ownership.

A J.S.C. may issue preferred shares with no right to vote, which may not exceed one-fourth of the registered share capital and may not be held by the Company's representatives, administrators and auditors. The preferred shareholders have priority with respect to dividends, but they do not have the right to vote.

2.5 Administrator(s)

A J.S.C. is managed by one or more administrators, appointed for a mandate of maximum 4 years (that could be prolonged). Several administrators constitute the Council of

Administration (Board). A person may serve as administrator in a maximum of three operational companies in the same time.

The Council of Administration may delegate its powers to a Management Committee, formed by elected administrators.

The president of the Council of Administration may be, although is not required, the general manager or a manager of the Company.

The same documents are required as for the administrator of L.L.C. listed at point 1.5 above.

2.6 Operational business authorizations – same as point 1.6. above.

3. REGISTRATION OF A REPRESENTATIVE OFFICE IN ROMANIA

The representative office is not a legal person and its activity is restricted to marketing, promotion and assisting the mother company's activities in Romania.

The representative office of a foreign company must be authorized by the Ministry of Economy and Commerce. **The application for authorization and registration must include:**

- the registered headquarters;
- the scope of activity, which must be consistent with the foreign company's scope of activity;
- the duration;
- name and position of each employee.

The documents required from the mother company include:

- a document issued by the foreign Chamber of Commerce or by other competent authority attesting the existence of the foreign company, its scope of activity and social capital;
- bank bonity letter;
- by-laws or legal incorporation documents;
- Board meeting resolution approving the setting up of the representative office;
- certificate attesting the tax payment;
- notarized power of attorney.

The Ministry of Economy and Finance must issue the authorization or reject the application within 30 (thirty) days of its registration. After the issuance of the authorization, the representative office must be registered at the Romanian Chamber of Commerce and Industry and must also obtain a fiscal code from the fiscal authorities.

The annual tax for registration is currently USD 1,200.

II. ACCOUNTING, REPORTING AND AUDIT REQUIREMENTS

1. GENERAL INFORMATION

The main Romanian Rules and Regulations consist of:

- Laws (i.e. Accounting Law nr. 82/1991 republished in January 2005) or Government Ordinances, detailing significant changes in legislation;
- Norms or regulations, providing a detailed explanation of how the Laws or Government Ordinances or decisions should be implemented;
- Orders of the Ministry of Public Finance providing additional guidance on accounting and tax issues.

The financial and tax year is, usually, the calendar year. Exceptions are allowed for the foreign branches acting in Romania and or the consolidated subsidiaries of the foreign companies, other than the entities authorised by the National Securities Commission.

In accordance with the Accounting Law, it is mandatory for all legal entities and authorized individuals to keep accounting records in Romanian language and in the national currency of Romania. For internal information purposes, entities may choose to draw up statements in another currency.

As of the 1st of July 2005, Romania's currency, previously coded as ROL, has been redenominated so that ROL 10,000 is exchanged now for 1 new leu. The new leu is the actual currency of Romania and is divided into subdivisions called Bani. The international code of the currency of Romania is RON (new Leu). Starting on this date, the currency in which the transactions are accounted is new Leu. The existing banknotes and coins (i.e. the old lei), shall be legal tender until the end of December 2006. By the 31st of December 2006, the existing banknotes and coins (i.e. the old lei), are to be replaced gradually by the new banknotes and coins. Starting with the 1st of January 2007, the exchange shall be made only at the National Bank of Romania (NBR) branches carrying out payments and at the offices of the credit institutions authorized by the NBR Governor's order to perform the exchange. There is no time limit for exchanging ROL notes and coins for RON notes and coins. Starting with the 1st of July 2005, the currency in which the transactions are accounted is RON.

Every company must have three (3) main officially ledgers, stamped and binded and registered within the legal entity. These ledgers are:

- **General Ledger ("Registrul Jurnal")**, for the chronological and systematic recording of the company's transactions;



- **Inventory Ledger ("Registrul Inventar")**, kept with a view recording the annual stock count of the company's patrimony;
- **Movement of Accounts ("Registrul Cartea Mare")**, filled-in at the end of each month. It is used for establishing the monthly movement of accounts, checking the accounting records and drafting the trial balance.

There are two ledgers to be kept by a company, that should be registered with the territorial Fiscal Administration within 30 days since its incorporation:

- **Control Ledger ("Registrul Unic de Control");**
- **Tax Evidence Ledger ("Registrul de Evidenta Fiscala")**, with the detail of the calculation of the corporation tax. Not applicable in case of micro-enterprises.

The Company also must buy and register at the Labour Chamber the Employees Ledger ("Registrul de Evidenta a Salariatilor"), within 60 days after the set up date.

Furthermore, each company must keep three (3) internal ledgers (non-registered):

- **Petty Cash Book ("Registrul de casa")**, in which all the cash transactions are recorded on a daily basis. The limit for daily cash payments to a single legal entity is RON 5,000, except for payments to Cash&Carry shops which are allowed in amount of maximum RON 10,000. The maximum daily cash payments to more suppliers is RON 10,000. The split of an invoice in many cash payments to the same supplier is forbidden. There are no restrictions regarding cash payments to natural persons.
- **Sales Ledger and Purchase Ledger ("Jurnal de vanzari si cumparari")**, in which all sales and purchases are recorded on a daily basis. These ledgers are the basis for the VAT declaration.

The Company must file two (2) returns to the Financial Administration, on a monthly or quarterly basis depending on the Company's turnover and the option declared by the Company at the beginning of each tax year:

- VAT-return;
- Tax-return (corporation tax, income tax and all other taxes to the state budget).

These declarations are to be filled with the Financial Administration before the 25th of the month following the reported month and must be signed by the administrator of the Company (or a person authorized by him) and stamped.

As of June 2005, new regulations concerning the Tax Evidence Ledger have been published under the Order no. 870/2005, further modified by Order no. 949/2005, issued by the Ministry of Public Finance.

The major provisions are:

- a) The Tax Evidence Ledger is a document with a special printing and circulation status;
- b) The format, content, printing characteristics, manner or distribution, use and maintenance of the

Tax Evidence Ledgers have been established;

c) Corporation tax payers are required to purchase the Tax Evidence Ledger from the fiscal units that are located in the territory where they have their fiscal residence within 60 days from when the Order enters into force;

d) By way of derogation, taxpayers can keep the Fiscal Register in an electronic format. This derogation is to be received from the departmental tax authorities. The books and the accounting records may be hand-written or in an electronic format and can be used as evidence in court and are subject to review by Romanian fiscal and judicial authorities. Accountants should prepare a trial balance from the nominal ledger on an annual basis and this trial balance is the basis for preparation of periodic financial statements.

The companies must archive all ledgers and financial documents a period of 10 years.

The payroll statements must be deposited quarterly to the Labour Chamber and must be archived for a period of 50 years.

The companies must submit monthly the social security and unemployment statements to the authorities in charge.

2. ACCOUNTING POLICIES

In 1997, the Ministry of Public Finance undertook a programme to make Romania's auditing and accounting legislation comparable to international standards and European Union directives on accounting and auditing.

As a consequence, in 1999, The Emergency Ordinance 75/1999 as approved by Law 133/2002 established the authorized body responsible for the training and regulation of the independent audit function in Romania, the Chamber of Financial Auditors.

The programme for the accounting legislation has been implemented in the following three phases:

1. "harmonization" of financial reporting in Romania with the requirements of International Accounting Standards and the European Union 4th Directive (Order 94/2001 and Order 306/2002);



2. "conformity" of accounting regulations with International Financial Reporting Standards ("IFRS") and respecting conformity of accounting regulations with European Directives (Order 907/2005);

3. "compliance" of accounting regulations with European Directives (Order 1752/2005), that replaces the "harmonization" Orders 94/2001 and 306/2002, effective from the 1st of January 2006.

The Order 1752/2005 provides the applicable base to be followed and is accompanied by accounting regulations for compliance with the 4th and the 7th Directives of the European Economic Communities, addressing the prescribed layout and content of the annual financial statements, accounting principles and valuation rules, rules to the preparation, approval, auditing and publication of the annual financial statements. The following fundamental concepts apply:

- Accruals basis
- True and Fair view
- Comparatives
- Going Concern
- Prudence
- Independence
- Separation
- Intangibility
- No offset
- Economic substance and reality of events

Accounting principles are meant to reflect cost values, but "fair value" should also be considered for carrying values for annual financial statement preparation. This includes revaluation of tangible assets. It is indicated that valuation should be completed by a professional valuator, member in a relevant recognized body.

There is no direct mention of IFRS in the Order 1752/2005 or the accompanying accounting regulations, the 4th and the 7th EU Directives, which are consistent in many areas with IFRS and supposedly where further guidance is required, there should be a reference to the relevant IFRS.

In the 4th EU Directive, there are some IFRSs that are not applied or have only limited comment, such as: deferred taxation (IAS 12), financial instruments (IAS 32 and IAS 39), functional currency concept (IAS 21), business combinations (IFRS 3), leases (IAS 17), construction contracts (IAS 11), segment reporting (IAS 14), employee benefits (IAS 19), discontinuing operations (IAS 35), agriculture (IAS 41), intangible assets (IAS 38). The extent of specific disclosure requirements is more limited than IFRS requirements, while IFRS has more guidance on accounting policies and principles in specific areas and for specific industries.

3. DISCLOSURE AND REPORTING REQUIREMENTS

Financial statements

As the application of the Order 1752/2005 commenced, some issues on treatment and disclosure arose, requiring further clarifications. The Order 1752/2005 differentiates between entities that need to meet all financial reporting requirements and those that can complete simplified financial reporting. The "size criteria" indicators are:

- Turnover for the year over EUR 7.3 million;
- Total assets at year end over EUR 3.65 million;
- Average number of employees for the period 50;

An entity that meets the size criteria during two consecutive financial years or that is a listed company (that has its securities traded on a regulated market) is required to annually complete financial statements that comprise:

- Balance sheet;
- Profit and loss statement;
- Statement of changes in shareholders' equity;
- Cash-flow statement;
- Explanatory notes.

For 2006 reporting the above criteria are to be based on the financial statements for the year ending 31st of December 2005. Entities that do not meet the size criteria are required to prepare:

- Condensed balance sheet;
- Profit and loss statement;
- Explanatory notes to the simplified financial statements;
- The statement of changes in equity and/or cash flow statement are optional for entities below the size criteria.

In addition, the annual financial statements for all entities (regardless of size) should be accompanied by a written declaration of the responsibility for entity management for the annual financial statements and an Administrator's Report on Operations.

The Order 1752/2005 details a specified chart of accounts listing to be applied and includes direction for the mapping of individual accounts to the balance sheet and income statement formats. The formats of the balance sheet (full and condensed), profit and loss statement, statement of changes in equity and cash flow statement are provided in the 4th EU Directive.

Explanatory notes are to be completed to present information on the accounting regulations underlying the preparation of the annual financial statements and the accounting policies used and to provide additional information that is not disclosed in the financial statements, but that is relevant information for the users to understand the financial statements. Specific details for mandatory explanatory notes preparation are included in the Order 1752/2005, more specifically the 4th Directive that includes: Non-current assets, Provisions, Profit distribution, Analysis of operating result, Statement of receivables and payables, Accounting



principles, policies and methods, interest and financing sources, information regarding employees, administrators, management and supervisory bodies, computation and analysis of the main economic and financial indicators. The Order 1752/2005 and the 4th Directive detail other specific disclosure requirements.

Even the Order 1752/2005 introduced the 4th and the 7th EU Directives and as a consequence the financial statements should provide for consistency in accounting and presentation for Romania with current EU member states starting with 2006, the users of the Romanian financial statements must bear in mind that up to the 31st of December 2003, Romania was considered to be a hyperinflationary economy, under the criteria of IAS 29- "Financial reporting in hyperinflationary economies". The Romanian law never accounted for the hyperinflation, fact that would make the financial statements comparability an issue for the companies incorporated before the 31st of December 2003.

Report of Administrator(s)

A Report of the Administrator(s) is to be completed for each financial year to accompany the financial statements and includes comments on the current year's activities of the entity, the financial position and a description of the main risks and uncertainties facing the entity. Disclosure of financial and non-financial ratios is encouraged.

Approval and publication

The annual financial statements include details of the persons that have prepared the financial statements.

The Administrator (or Chairman of the Board of Directors) and the preparer are required to sign the annual financial statements. The annual financial statements and the Report of the Administrator(s) are presented to the general meeting of shareholders. The annual financial statements, the Report of the Administrator(s) and the Report of the Financial Auditor (if the case) are submitted to the Trade Register within the following deadlines:

- 150 days after year-end for the companies above the size criteria and public interest entities;
- 120 days after year-end for the companies not meeting size criteria or being public interest entities;
- 60 days after year-end for micro enterprises and dormant companies.

A company not having its own accounting department and/or a qualified person in charge of the accounting records, and which had turnover greater than the RON equivalent of EUR 50,000, must contract an authorized person (individual or firm) to prepare its financial statements.

4. DIVIDEND DISTRIBUTION

Dividend distribution is based on the statutory accounting net profit.

Consolidated financial statements

The Order 1752/2005 and the 7th EU Directive stipulates that consolidation is required where any entity in the Group is a listed company. If a group does not contain a listed company, then consolidated financial statements will be prepared if the Group meets two of the following three criteria based on the latest financial statements (the "consolidation size criteria"):

- Turnover for the year over EUR 35.04 million;
- Total assets at year end over EUR 17.52 million;
- Average number of employees for the period 250.

Even if the Group meets the consolidation size criteria, it is not required to prepare consolidated financial statements if the parent entity of the Group is also a subsidiary entity and its own parent entity is governed by the Romanian law or EU member state law and where the parent entity holds all shares in the exempted entity or where the parent entity holds 90% or more of the shares in the exempted entity and the remaining shareholders in or members of the entity have approved the exemption.

The exemption does not apply for entities that are listed companies or have a requirement as a state institution for employees' information.

A subsidiary is not required to be included in the consolidation if it is not material to provide a true and fair view of the assets, liabilities, financial position and results for the period for the consolidated Group as a whole or has severe long-term restrictions, information is obtained with a disproportionate expense or undue delay, the shares of that entity are held exclusively with a view to a subsequent resale.

The 7th EU Directive provides guidance for consolidated financial statements in relation to preparation principles, content of explanatory notes, the Report of Administrator(s), the audit requirements, approval, execution and publication, layout of the consolidated balance sheet and income statement.

5. IFRS ADOPTION IN 2007

The Order 907/2005 provides reinforcement to further regulations to be published by the Romanian authorities, the following entities will be required to comply with IFRS: credit institutions, insurance and reinsurance companies, listed entities and entities with securities traded on a regulated market, state-owned entities and entities which benefit from State support or State guarantees. In 2007, the preparation of IFRS financial statements for the

year ended 31st of December 2006 would be required to enable comparatives to be available for 2007 reporting.

The Order 1121/2006 reiterates certain points of the Order 907/2005 and in addition, the Article 4 states the fact that the entities that prepare IFRS financial statements are obliged to also prepare financial statements compliant with EU Directives (Order 1752/2005).

6. AUDIT REQUIREMENTS

The financial audit is mandatory for the entities meeting the size criteria and for public interest entities (including listed companies). Entities preparing simplified financial statements do not require a financial audit, unless required by other legislation.

The financial auditor is required to comply with audit standards as issued by the Romanian Chamber of Financial Auditors, that decided the adoption of the International Standards on Auditing as issued by the International Federation of Accountants (IFAC).

IV. TAXATION

1. PAYROLL TAXES

Gross realized salary represents the gross salary negotiated plus additional bonuses or other incentives of nonpermanent nature.

Employers calculate and withhold salary contributions when paying salaries. State budget contributions are payable by the 25th of the month following the month the salary relates to. Withholding and not wiring these social contributions within 30 (thirty) days from this date is a criminal offence and is sanctioned accordingly.

Employees' Contributions as a percentage of gross realized salary:

1. Social security fund contribution - 9.5% (the social security contribution is capped to a base capital at five times the average salary for the respective year);
2. Unemployment fund contribution- 1% (calculated based on the negotiated gross salary);
3. Health fund contribution - 6.5%.

Employers' Contributions as a percentage of gross realized salary fund:

1. Social security fund contribution: 19.5%; 24.5%; 29.5% depending on working conditions, capped at five times the national average gross salary, multiplied by the average number of employees;
2. Leaves and indemnities contribution is of 0.85% (the taxable basis is capped to 12 minimum gross salaries established national-wide multiplied with the number of employees working for the company for the respective month);
3. Unemployment fund - 2%;
4. Guarantee fund contribution: 0.25%;
5. Health fund - 6%;
6. Work accidents insurance fund - 0.4% - 3.6%, depending on the risk category. The criteria for risk categories are set up by the methodological norms.
7. Labor office commission – 0.25% or 0.75%.

2. CORPORATE TAX

At the moment of incorporation, the companies can also apply for and choose their fiscal status, whether or not they will be registered as corporation tax payer or an income tax payer (micro-enterprises). A company can also opt for being a VAT payer, provided that its turnover does not exceed RON 200,000.

Micro-enterprises status

Micro-enterprises are companies that, by the end of the prior tax year, fulfill the following conditions cumulatively:

- operate in the field of manufacturing, service rendering and / or trade;
- has between one and nine employees;
- its turnover did not exceed EUR 100,000;
- has private share capital;
- incomes derived from management and consultancy services should count for less than 50% of the micro-company's total income.

Existing legal entities can opt for benefiting from this fiscal treatment provided that they fulfill the abovementioned cumulative conditions and they have never been micro-enterprises.

The condition regarding the employment of the first employee should be met within sixty days since the incorporation of newly created entities.

Legal entities in the finance and gambling sectors cannot be micro-enterprises.

As well, companies with a shareholder having more than 250 employees.

Micro-enterprises can be set up in disfavored and free trade zones as well.

Micro-enterprises are taxed at 2% of income earned, payable each quarter, by the 25th of the month following the quarter for which the tax is paid. Failure to comply with the above-mentioned conditions will attract payment of corporation tax as of the next tax year. This process is irreversible.

Profit tax

All companies doing business in Romania, other than micro-enterprises, are chargeable to corporation tax on all taxable profits. The standard rate of corporation tax is 16%, applicable to both Romanian companies and to foreign companies operating through a permanent establishment in Romania.

The taxable profit is calculated as the difference between the revenues derived from any source and the expenses incurred in order to obtain these revenues, throughout the tax

year, of which non-taxable revenues are deducted and to which non-deductible expenses are added. The tax liability should be computed and booked on a quarterly basis.

The declaration and settlement of due taxes should be made quarterly, not later than the 25th calendar day of the following month for the previous quarter. On a yearly basis, companies should also submit an annual corporation tax statement until 15-th of April. Romanian companies are allowed to carry forward, for a period of five years, on a FIFO basis, the fiscal losses as declared in the yearly corporation tax returns. Irrespective of change of the fiscal treatment (i.e., micro-enterprise), there is a five-year span for recovering the fiscal losses starts as of its registration.

3. TAX ON DIVIDENDS

Dividend payments made by a Romanian company to another Romanian company are subject to 10% dividend tax.

Subsequent to Romania's accession to the EU, dividends paid by a Romanian company to another Romanian or EU resident company are not taxed if the beneficiary holds at least 15% (respectively 10% starting with 2009) of the shares of the Romanian company for a continuous period of at least two years concluded upon the date of dividends payment.

For nonresident shareholders, the dividend tax rate may be reduced through the application of Double Taxation Treaties concluded between Romania and other countries (more than sixty treaties are currently in force).

The allocation of dividends is made by a decision of the General Meeting of Shareholders on the basis of the annual financial statements, proportionally with the sharing. Dividend tax is due for any profits distribution towards shareholders, individuals or companies, Romanian or foreign.

Dividend tax is withheld by the Company that distributes the dividends at the date when the payment is made to shareholders. The tax is due to be paid on the 25th of the following month of settlement. For distributed but unpaid dividends, the related tax should be settled no later than 31 December of the year in which the dividends were distributed.

4. PROPERTY TAX

The owners of land and buildings located in Romania, either legal entities or individuals, are liable to an annual tax that is payable in two installments.

The value of the tax on land located outside cities is computed by reference to the category of land and area (i.e. in hectares). The value of the tax on land located inside cities depends on area, category of land and the rank of city.



Individuals pay tax on building of 0.1% from the taxable value of the building.

Provided that the individual holds more than one building, the tax is increased.

The rate of tax on building for legal entities is established by the competent local council between 0.25% and 1.5% applicable to the book value of the building.

Fully depreciated buildings benefit from the 15% tax reduction.

The tax rate for buildings not re-valued during the last three years will be established by the local tax authorities from 5% to 10%.

5. TAX ON INCOME FROM REAL ESTATE TRANSACTIONS

Legal entities are liable to pay 16% corporation tax on the net gain resulted from a real estate transaction.

The income is cumulated with other profits of the profit taxpayer and is subject to the filing and settlement terms. See also Section "CORPORATION TAX".

For individuals, transactions of any type of real estate held for a period of less than three years prior to its disposal shall be subject to a tax of 3% for amounts of up to RON 200,000. For amounts exceeding RON 200,000 the tax will be RON 6,000 plus 2% on what exceeds this limit. The same principle applies to real estates held for more than three years prior to the disposal, except that every tax rate presented above will be reduced with one percent (i.e. 2%, respectively 1%). The threshold remains RON 200,000.

The following are EXEMPTED from real estate taxation:

- in kind contributions (land or buildings) to the social/share capital of legal entities;
- alienation of constructions of any kind and related land, of intravilan and extravilan lands without constructions acquired as a result of the restitution of ownership right (as defined by restitution law);
- alienation of constructions of any kind and related land, of intravilan and extravilan lands without constructions acquired as a result of inheritance or donation between relatives up to 4th rank, inclusive;
- alienation of constructions of any kind and related land, of intravilan and extravilan lands without constructions acquired as a result of an exchange transaction ("schimb imobiliar");

The public notaries who authenticate the transfer transactions have the obligation to calculate the cash and submit the real estate tax to the state budget up to the 25th day of the month following the authentication of the respective transfer document.

In case the transfer of ownership of constructions or lands is not performed through a public notary, the taxpayer bears the obligations to declare the income obtained, in five days, at the latest, from the alienation date, in front of the fiscal authority correspondent to his / her fiscal domicile.

6. CAPITAL GAINS TAXATION

In case of transfer of ownership over social parts, the capital gain shall be calculated as the positive difference between the selling price and the nominal value/purchasing price. As of the second transaction, the nominal value shall be replaced with the purchasing price, which shall include any and all expenses related to commissions, transaction related taxes or any other related expenses evidenced by receipts.

The calculation of the capital gain shall be made upon the closing of the transaction, based on the contract concluded between the parties.

In case of the gain resulted from the transfer of ownership of the social parts and shares (participations) in closely held companies, the obligation of the tax calculation and withholding belongs to the purchaser, upon the closing of the transaction, based on the agreement concluded between the parties.

In case of a portfolio of securities, the net income shall be determined at the end of the tax year, for the entire portfolio, as the positive difference between the gains and the losses during the year, related to the transfer of securities, except for those received, on a free-of-charge basis, under "Mass Privatization Program".

The tax rate applicable on the net gains resulted from the transfer of securities is of 1% (for shareholding for a period exceeding 365 calendar days) or 16% (for shareholdings of less than 365 calendar days).

The capital gains realized on disposal of shares in limited liability companies will be subject to 16% taxation irrespective of the holding period.

Capital gains realized by legal entities are subject to 16% corporation tax.

7. VALUE ADDED TAX (VAT)

The operations included in the VAT scope are those for which the following conditions are fulfilled:

- They represent a supply of goods / services in return for a consideration or an operation assimilated thereto
- The deemed place of supply is in Romania
- They are performed by taxable persons
- They result from economic activities.

The import of goods, the intra-community acquisitions and operations deemed as intra-community acquisitions are also within the VAT scope.

A taxable person is any person conducting economic activities anywhere in an independent manner, irrespective of the purpose or result of those activities. Also, any private individual who performs a supply of new means of transport (i.e. which was either supplied no longer than six months after the date of first entry into service or has not traveled more than 6,000 kilometers) is also deemed as a taxable person.

Romanian companies performing transactions with companies within the EU deal with such operations as intra-community supplies and intra-community acquisitions.

Intra-community supplies are VAT-exempt with deduction right, provided that certain conditions are fulfilled, whereas intra-community acquisitions are subject to VAT under the reverse charge mechanism.

Special regimes are applicable for transactions in new means of transport, excisable products and distance sales.

The new system enforced in Romania from 1 January 2007 for intra-community trade in goods entails additional compliance requirements consisting in Intrastat, Recapitulative Statement (for both intra-community supplies and intra-community acquisitions) and other supplementary documentation for justifying the VAT exemption applicable to intra-community supplies, as well as supplementary information for completing the VAT return.

VAT on imported goods is no longer actually paid in customs by the persons who obtained a certificate for postponing the VAT payment.

The taxable amount for VAT purposes for imported goods is the customs value, to which customs duties, excise duties (if any) and ancillary expenses add up, such as commissions, packing, transport and insurance costs occurring subsequent to the entry of goods into Romania until their first destination.

The rules for establishing the place of supply for goods and services (and therefore the place of VAT taxation) are fully aligned with the EU 6th VAT Directive. New rules on the place of supply for services related to intra-community trade – such as transport, ancillary and intermediary services, to works on movable goods are applicable.

Also, new rules have been introduced in respect of telecommunications, radio / TV broadcasting and electronically-supplied services, leasing operations with means of transport.

Services provided by offshore entities to Romanian companies with a deemed place of supply in Romania are subject to Romanian VAT.



A reverse charge mechanism applies for services which have the place of supply where the beneficiary is established or has a fixed establishment (e.g. consultancy, marketing services, telecommunications and electronically-supplied services). This is possible provided that the non-residents are not established in Romania for VAT purposes. Under the VAT reverse charge mechanism, VAT is not actually paid, but only shown in the VAT return as both input and output tax, provided that the beneficiary is registered for VAT purposes.

Under certain conditions, the reverse charge mechanism also applies for other types of services (e.g. work on movable goods, intra-community transport of goods, services ancillary to intra-community transport of goods), if such services are provided by offshore entities to Romanian entities which communicate their Romanian VAT registration number to the suppliers, or if the services have the place of supply in Romania.

The beneficiary is no longer required to issue self-invoices for the services received, unless the invoice issued by the offshore supplier has not been received until the 15th business day of the month following the one in which the tax is due.

Invoices for domestic supplies must be issued no later than the 15th business day of the month following the one when the supply of goods occurs.

Conversely, the chargeability for ICS occurs at the date when the invoice is issued for the entire value of the supply in question, but no later than the 15th of the month following the one when the ICS is performed.

Taxable persons registered for VAT purposes are allowed to adjust the output VAT if the value of the goods or services supplied cannot be cashed in because of the declared bankruptcy of the client. The initial output VAT can also be adjusted for price increases or discounts and for returns of goods.

The standard VAT rate is 19% and is levied for all supplies of goods and services, including imports, which do not qualify for an exemption (with or without credit) or for the 9% VAT reduced rate (for medicines for human and veterinarian use, books, newspapers and periodicals, accommodation in hotels or in areas with a similar function, cinema tickets, admission fees at museums, historical monuments, zoos and botanical gardens, fairs and exhibitions, supply of school manuals, supply of prostheses and orthopedic products).

If a taxable person registered for VAT purposes performs both taxable and exempt operations without deduction right, the 'input VAT' can be recovered according to the following criteria:

- directly attributable to VAT-able transactions - fully deductible
- directly attributable to exempt transactions - fully non-deductible
- related to both VAT-able and exempt transactions - subject to pro rata.

A new calculation mechanism of the pro-rata is applicable. Thus, the value of sales of capital goods, as well as the value of other operations performed on an occasional basis, (e.g. leasing, rental of immovable goods) is not included in pro-rata calculation.



The revenue threshold for VAT registration has been lowered from RON 200,000 (around EUR 57,000) to the RON equivalent of EUR 35,000 and a new calculation method for this threshold is introduced (i.e. revenues derived from the operations not entitling to deduction). This means that more companies are required to register for VAT purposes (including all banks and insurance companies).

As a general rule, the fiscal period is the calendar month. For taxable persons registered for VAT purposes whose previous year-end turnover did not exceed EUR 100,000 the fiscal period is the calendar quarter.

The usage of standard pre-printed fiscal invoices is no longer mandatory, but only the issuing of invoices containing the minimum information required by law. Taxable persons are also allowed to issue summary invoices or invoices on behalf of the supplier, and to issue and store the invoices electronically. From a VAT perspective, the signing and stamping of the invoices is no longer mandatory.

VAT returns should be submitted to the tax authorities by the 25th of the month following the fiscal period; the VAT is due by the same date. Taxable persons not registered for VAT purposes are required to pay VAT and to submit a special VAT return on services rendered by non-residents, which have the deemed place of supply in Romania. These obligations must be fulfilled by the 25th of the month following the one when the services are supplied.

As of the EU Accession, taxable persons are required to file quarterly summarized declarations for intra-community supplies and intra-community acquisitions. Also, new reporting requirements must be complied with, such as the non-transfer ledger and the ledger for goods received from another Member State.

If a company is in a VAT refundable position, it must tick the VAT refund box on the VAT return to claim the refund. Alternatively, the balance can be carried forward against VAT liabilities reported in future returns. The refund claims must be processed by the tax office within 45 days from submission.

Large taxpayers (as classified by law) are entitled to refund on request, with a subsequent inspection (i.e. a "fast refund"). Other taxpayers may be entitled to a "fast refund" (i.e. without a prior inspection) but only after a complex risk analysis.

From 1 January 2007, taxable persons registered for VAT purposes in Romania are not the only ones entitled to a VAT refund. Taxable persons established in the EU and taxable persons established outside the EU (under reciprocity conditions) are also entitled to VAT reimbursement from Romania, if certain conditions are fulfilled.

8. CUSTOMS DUTIES

The Customs regime is regulated by the New Romanian Customs Code, in force as of June 2006, and by Government Decision 707/2006 for the approval of the Norms for Application of the Customs Code. The Romanian Customs Code ensures the applicability of the



provisions comprised in the Council Regulation no. 2913/92 that institutes the EU Customs Code.

Romania is an associate member of the EU, EFTA and CEFTA and has signed free trade agreements with Albania, Bosnia-Herzegovina, Israel, Macedonia, Moldova, Serbia and Montenegro and Turkey.

Apart from the customs duties the Romanian customs authorities collect also the following taxes:

- the custom fee (that represents 0,5% of the customs value);
- excises for imported goods (as established by the Fiscal Code);
- VAT for imported goods (as established by the Fiscal Code).

Imports of goods with preferential origin (i.e. EU) are not subject to customs duties.

Goods introduced in Romania can have a final (definitive) customs status or a suspense/temporary regime.

The definitive customs status is in the form of:

- imports of goods; and
- exports of goods.

Imported goods are subject to customs duties, as set in the Import Customs Tariffs, which have been successively amended over the past few years. Duties are set as a percentage applied to the import price or customs value of goods. The customs value is comprised of the acquisition value, accessories (such as handling, warehousing, insurance, transport) and other charges non-refundable.

Suspense customs regimes are temporary arrangements, the effect of which is the suspension of customs duty payment. The customs authority asks for a guarantee (in local currency) enabling it to collect the import duties which may be due, in case the suspense status is changed.

Suspense customs regimes include the following:

- transit of commodities;
- customs warehousing;
- inward processing;
- processing under customs control;
- temporary admission;
- outward processing.

The approved suspense customs arrangement comes to an end when the commodities are given a definitive customs status.

9. INTEREST INCOME TAX

The interest on sight deposits/current accounts will be tax-free. However, for sight deposits created before the 1st of January 2007 which mature after this date, the interest income will be subject to taxation and the applicable tax rate will be the tax applicable at the creation date. Interests paid to an affiliate legal entity, EU resident, which has a participation of minimum 25% for a period of time of at least three years are taxed with 10%.

10. FOREIGN EXCHANGE CONTROL

Foreign exchange operations are either current or capital type.

Any payment, transfer and all such operations between residents, which are object of trade with goods and services, may be performed only in RON. According to the applicable law in force issued by the Romanian central bank, namely Regulation no. 4/2005 regarding the foreign exchange, several operations can also be performed in foreign currency.

The current and a large category of capital foreign exchange transactions may be performed without the prior authorization of the National Bank of Romania ("NBR") (e.g. direct investment of non-residents in Romania, investment of non-residents in real estate assets located in Romania, guarantees between residents and non-residents).

The following capital exchange operations were previously authorized by NBR:

1. a) admittance of Romanian financial instruments on foreign monetary market;
- b) admittance of foreign financial instruments on the Romanian monetary market;
- c) acquisition by non-residents of Romanian financial instruments on Romanian monetary market;
- d) acquisition by residents of foreign financial instruments on Romanian monetary market.

2. Operations related to current accounts;

Starting with the 1st of September 2006, the above capital exchange operations have been liberalized and the NBR authorization is no longer required.

Non-residents may perform operations in current and deposit accounts in RON, opened in Romania, without NBR authorization.

As of 2005, residents may open and operate current and deposit bank accounts abroad. However, after opening bank accounts abroad, residents should report to NBR on a monthly basis, the operations made through respective bank accounts, for statistic purposes.

The loans received by residents from non-residents with a period of reimbursement longer than one year, should be notified to NBR, for statistic purposes, and receive a number of the Private External Debt Registry of Romania.

The resident is obliged to submit to the bank the form "Declaration of external payment" ("Declaratie de incasare externa") within ten days since receipt of money from abroad.

In case a resident pays an amount in foreign currency to a non-resident, the resident must submit to the credit institution the form "Declaration of external payment" ("Declaratie de plata externa").

11.LEASING

Leasing operations are deemed finance leases or operational leases. The lease operations are regulated by Government Ordinance 51/1997.

The Fiscal Code defines the finance lease, which is recognized for tax purposes.

A financial lease is a leasing activity that fulfils at least one of the following conditions:

- the risk and benefits related to the ownership over the leased asset are transferred to the lessee from the signing date of the contract;
- the lease agreement clearly states that at the end of the lease period the ownership over the leased asset will be transferred to the lessee;
- the leasing period exceeds 80% of the asset's useful life;
- the lessee has the option of buying the leased asset at the end of the agreement, and the scrap value expressed as a percentage will not be higher than the difference between the useful life and the period of the agreement, divided by the useful life;
- the total amount of installments is higher or at least equals the book value of the asset.

An operational lease is a lease that does not fulfill any of the above conditions of a finance lease.

As regards the fiscal deductibility regime, under the finance lease system, the lessee may fiscally deduct only the interest of the installment and the depreciation of the asset. Under the operational lease system, the lesser deducts the rent and the depreciation.

In case of the finance lease, the lessee is fiscally deemed as owner, while in case of operating lease the owner is the lesser.

12.TAX INCENTIVES FOR INVESTORS

Currently there are few remaining incentives for the incentives for the investors. There is no different treatment to foreign versus national investors. We summarize below herein the main categories of incentives available to the Investors.

Direct investments

The law on direct investments with a significant impact on the economy was in force until 31 December 2006. A new Investment Law may be issued in the near future.

Types of incentives

- Loans with preferential interest (i.e. interest subsidized up to 30% by the state)
- Loans guaranteed by the state (up to 80%).
- Free access to utilities
- Right to use properties from the private domain of the state or of the local authorities
- Subsidies
- Exemptions, reductions and postponement of local taxes
- Other tax incentives such as: offset of fiscal loss with profit obtained from investment in the next 5 years, accelerated depreciation for equipment/installations necessary for the investment, exemption/reduction of VAT and corporate income tax, up to maximum amount of the state aid as per legal provisions.

In order to benefit from the above incentives, the investments must fulfill the conditions regarding amount, duration, objectives and eligibility criteria stipulated in the Investment Law. Incentives are not granted for investments made in the fields expressly excluded from the regulations regarding state-aid issued by the Competition Council, irrespective of their value.

Objectives of investments

Investments should meet at least one of the following objectives in order to benefit from incentives:

- Regional development
- Protection and rehabilitation of environment
- Research and development
- Development of human resources and social integration

Disadvantaged areas

Legal persons that have obtained a permanent investor certificate in a disadvantaged area prior to 1 July 2003 are exempt from paying profit tax throughout the existence of the disadvantaged area.

Industrial parks

An industrial park is established through a joint venture association in participation⁴ ("Association") among any combination of the relevant public authorities and Romanian or foreign legal or natural persons.



Industrial parks are managed by a Romanian commercial company ("Park Administrator"), which may have as shareholders the members of the Association, as long as none of the shareholder members directly or indirectly control the Park Administrator. The duration of an industrial park is of minimum fifteen years, to be prolonged if the case may be. The Park Administrator owns or has the right to use the land and buildings in the industrial park for at least 30 (thirty) years.

For establishing and developing an industrial park, the following incentives are applicable (capped to the maximum admissible threshold of the state-aid):

- exemption from tax and fees to the state budget for changing the destination and removal from the agricultural circuit of the land afferent to the industrial park; and
- reduction of the tax to be levied by the local public administration based on the decisions of the local administration for the real estate of the industrial park.

For investments performed in industrial park before the 31st of December 2006 and consisting in constructions, internal infrastructure and connection to the public utilities, an additional 20% allowance applied to the value of the investment in constructions or their rehabilitation is levied from the taxable profit.

Taxpayers that benefit from the 20% first year allowance on the acquisition value of the technological equipments and patents in use by the 30th of April 2005 cannot benefit from this fiscal incentive.

Oil and gas incentives

Under the current Petroleum Law, there are no specific incentives for companies operating in the field of crude oil and gas exploration and extraction. However, all the incentives granted under the previous Petroleum Law by companies that have obtained the Petroleum License before September 2004 are still applicable for the period in which the Petroleum License is in force.

The Fiscal Code stipulates that taxpayers operating in the field of exploitation of natural deposits are obliged to set up and deduct for tax purposes provisions for rehabilitation of the exploitation area, up to 1% of the difference between revenues and expenses from exploitation, throughout the entire period of the exploitation of natural deposits. For titleholders of petroleum agreements that conduct petroleum operations in marine perimeters with waters deeper than 100 meters, the provision for dismantling oil rigs, as well as for environmental recovery, is 10% of the difference between revenues and expenses registered throughout the duration of the petroleum exploitation.

In addition, under the Fiscal Code the tax depreciation of buildings and constructions related to petroleum operations whose useful life is limited to the duration of the reserves, and which cannot be used for any purpose after the reserves are depleted, should be calculated on the basis of units of production, based on the exploitable petroleum reserve.

Free trade zones

Free trade zones are delimited areas, governed by a special regime, where commercial activities can be performed by Romanian and/or foreign legal entities or individuals on the basis of the license issued by the administration of the respective zone ("Operators").

Operators acting in free trade zones are eligible to benefit from the following facilities:

- transport of goods to other free trade zones is exempted from settlement of custom duties;
- state aid for investments in free trade zones can be granted in amount of 50% of eligible costs of the investments achieved by large enterprises, and of 65% for small and medium enterprises;
- operational activities performed in free trade zones may be carried in hard currency;
- after the liquidation or restraining the activities performed in the free trade zone, foreign legal entities and individuals can repatriate the capital and profit obtained, provided that all their obligations towards the Romanian state and contractual partners have been settled;
- corporation tax exemption until the 31st of December 2006, provided that USD 1 million investment in fixed assets used in the processing industry have been made up to the 1st of July 2002 and shareholding structure remain unchanged;
- VAT exemption is granted for the following operation: introduction in free trade zones of foreign goods for warehousing purposes only, without fulfilling custom formalities; sale-purchase operations with foreign goods between different operators within the free trade zone or with persons located outside the free trade zone; export of foreign goods located in free trade zones which are in the same status as they were introduced; services directly related to the operations mentioned above.

13. TRANSFER PRICING

The transfer pricing rules, as provided by the Fiscal Code, prevent Romanian legal entities from reducing their profits chargeable to Romanian corporation tax by, for example, making sales at below market price to a non-resident related party, or purchasing goods at above market price from a non-resident related legal entities.

For transfer pricing purposes, a Romanian legal entities or individual is affiliated with a non-resident where one of the parties is holding, directly or indirectly, 25% of the other party's shares. The same principle applies where a third party is holding, directly or indirectly, at least 25% of both the Romanian company and the non-resident company, or where there is a controlling interest. Individuals are considered to be related in case they are spouses or relatives up to 3rd degree.

The Romanian authorities have the power to adjust the company's result where the transactions with a non-resident affiliated company are performed below or over the market value. The market price will be an 'arm's length' one that would be charged if the parties to the transaction were independent of each other. The company will not be required to amend its financial statements if such an adjustment would be performed.

In determining the market price for transactions between related companies, the following methods shall be used:

- Comparable uncontrolled price method, by which the market price is determined based on the prices paid to other companies that sell comparable goods or services to independent persons;
- Cost-plus method, by which the market price is determined based on the costs of the good or service provided in the transaction, increased by an appropriate profit margin;
- Resale price method, by which the market price is determined based on the resale price of the good or service supplied to an independent person, decreased by the selling expenses, other expenses of the taxpayer and a profit margin;
- Any other method provided by the OECD transfer pricing guidelines.

Although Romania is not an OECD member, Romanian tax legislation on transfer pricing aims to be in line with the OECD transfer pricing guidelines.

The OECD guidelines provide that the tax assessment of related party transactions is based on the concept of the market value of transfers, i.e. transfer prices should be adjusted so that they reflect the prices that would have been set between unrelated companies acting independently.

14.FOREIGN CITIZEN'S LEGAL REGIME IN ROMANIA

Visa (stay) requirements

Foreign citizens – depending on their nationality – should apply and obtain the type of visa correspondent to their trip's purpose, before arriving in Romania, from the Romanian diplomatic embassies or consulates in their countries.

European Union's citizens, USA, Canada, Japan, Switzerland, Iceland, Norway, Liechtenstein and Andorra do not need visas to enter the country.

Cash amounts that exceed EUR 10,000 must be declared at customs upon arrival or departure.

Foreign individuals whose stay in Romania exceeds ninety days within a six-month period need to apply for a residence permit, unless a relevant international bilateral agreement stipulates otherwise.

Working in Romania

Foreign citizens may perform services in Romania on the basis of:

- a local employment agreement;
- a foreign employment agreement (assignment).

Foreign citizens that want to work in Romania, based upon local employment agreement must obtain a work permit type A and foreign citizens that will be assigned from a foreign entity to a Romanian company must obtain a work permit type B.

The work permits are issued by the Labour Force Migration Office and are issued for a twelve-month period, with a possibility of extension for another twelve months.

Work permits types C, D, E, F and G are issued for seasonal workers, internships, sportsmen and other categories respectively.

The general rule of assignment, under the Law no. 203/1999 with the subsequent amendments, is that foreign citizens can be assigned for a period of maximum twelve months and after this period elapses if they want to continue to work for the Romanian company they must shift on local payroll.

There are some exceptions to this rule:

- for foreign citizens that work for foreign companies that have their headquarters in EU member states and are assigned in Romania no period of limitation for assignment is provided;
- for foreign citizens who are nationals of states with which Romania has concluded an international agreement stipulating the assignment period; the more favourable conditions in the international agreement will prevail over the internal regulation;
- foreign citizens that are assigned to companies that make direct investments in Romania with significant impact in the economy (as defined by Law 332/2001); their assignment could be for a period up to three years provided that their direct and necessary impact over the activity of the company can be proved.

The work permit will not be necessary, in the following cases:

- for foreigners that are domiciled in Romania;
- for EU and European Economic Area citizens and for their family members; transitory measures comprised in the Treaty of Accession should be observed;



- for foreigners whose access on the Romanian labour market is settled by agreements, conventions or bilateral understandings concluded by Romania with other countries;
- for foreigners that benefit from a form of protection in Romania;
- for foreigners that perform didactic, scientific, artistic or any other category of specific activities, on temporary basis, within specialized Romanian institutions, based upon the related Ministry's order;
- for foreigners that are to perform temporary activities in Romania, requested by ministries or any other branches of the central or local public administration or by autonomous administrative authorities.
- for foreigners that are named head of branches or of subsidiaries of a foreign company that has his headquarters abroad;
- foreigners that are family members of Romanian citizens..

After obtaining a work permit the foreign citizens must obtain a residency permit from the Authority for Foreigners that will give them the right to stay in Romania for the period of time for which they received the right to work in Romania.

Fiscal And Social Security Issues

Also foreign citizens that work in Romania pay taxes as follows:

- The foreign citizens that are employed by Romanian companies, via an individual labour agreement, must contribute to the social security system (contributions to health insurance fund, social security fund and unemployment fund) and pay the individual income tax.

All these taxes and social contributions are withheld by the employer and paid on the behalf of the employee at the state budget.

Also the Romanian company will pay the social contributions that are due for hiring personnel via an individual labour contract.

- The foreign citizen which is assigned by a foreign company to a Romanian company will pay the 6.5% health insurance contribution (unless there is a valid treaty between Romania and the citizenship country of the foreign citizen, in the field of social insurances) and the individual income tax of 16%.

The individual income tax, in this case, will be monthly declared (via a tax return) and paid to the state budget by the foreign citizen.

V. FOREIGN EXCHANGE CONTROL

1. MAIN FOREIGN EXCHANGE RULES

Foreign exchange operations are either (i) current or (ii) capital type.



Any payment, transfer and all such operations between residents, which are object of trade with goods and services, may be performed only in RON. According to the applicable law in force issued by the Romanian central bank, namely Regulation no. 4/2005 regarding the foreign exchange, several operations can also be performed in foreign currency. This operations are expressly and completely stipulated by the law (Annex 2 of the aforementioned regulation).

The current and a large category of capital foreign exchange transactions may be performed without the prior authorization of the National Bank of Romania ("NBR") (e.g. direct investment of non-residents in Romania, investment of non-residents in real estate assets located in Romania, guarantees between residents and non-residents).

The following capital exchange operations were previously authorised by NBR:

1. a) admittance of Romanian financial instruments on foreign monetary market;
 - b) admittance of foreign financial instruments on the Romanian monetary market;
 - c) acquisition by non-residents of Romanian financial instruments on Romanian monetary market;
 - d) acquisition by residents of foreign financial instruments on Romanian monetary market.
2. Operations related to current accounts;

Starting with the 1st of September 2006, the above capital exchange operations have been liberalized and the NBR authorization is no longer required.

Non-residents may perform operations in current and deposit accounts in RON, opened in Romania, without NBR authorization.

As of 2005, residents may open and operate current and deposit bank accounts abroad. However, after opening bank accounts abroad, residents should report to NBR on a monthly basis, the operations made through respective bank accounts, for statistic purposes.

The loans received by residents from non-residents with a period of reimbursement longer than one year, should be notified to NBR, for statistic purposes, and receive a number of the Private External Debt Registry of Romania.

The resident is obliged to submit to the bank the form "Declaration of external payment" ("Declaratie de incasare externa") within ten days since receipt of money from abroad.

In case a resident pays an amount in foreign currency to a non-resident, the resident must submit to the credit institution the form "Declaration of external payment" ("Declaratie de plata externa").

Non-residents may repatriate and transfer abroad the financial capital held in Romania.

VI. INCENTIVES FOR INVESTORS

Currently there are few remaining incentives for the incentives for the investors. There is no different treatment to foreign versus national investors. We summarize below herein the main categories of incentives available to the investors.

1. DISFAVOURED ZONES

The disfavoured zone is a delimited geographical area, where un-employment rate is three times bigger than the national un-employment rate of the prior three months from the month of preparation of necessary documents for its designating as a disfavoured area, there are no communications means and the infrastructure is slightly developed.

Currently, following abrogation in 2004, only one incentive remained applicable, respectively the exemption from corporation tax for new investment, but only for the legal entities, which obtained the permanent investor certificate before the 1st of July 2003. Companies benefit from this preferential fiscal regime until they reach the maximum admissible threshold of the state-aid. Failure to comply with the criteria set for entities operating in the disfavoured zones attract payment of VAT, taxes and contributions of which they have been exempted from.

2. FREE TRADE ZONES

Free trade zones are delimited areas, governed by a special regime, where commercial activities can be performed by Romanian and/or foreign legal entities or individuals on the basis of the license issued by the administration of the respective zone ("Operators").

Operators acting in free trade zones are eligible to benefit from the following facilities:

- transport of goods to other free trade zones is exempted from settlement of custom duties;
- state aid for investments in free trade zones can be granted in amount of 50% of eligible costs of the investments achieved by large enterprises, and of 65% for small and medium enterprises;
- operational activities performed in free trade zones may be carried in hard currency;
- after the liquidation or restraining the activities performed in the free trade zone, foreign legal entities and individuals can repatriate the capital and profit obtained, provided that all their obligations towards the Romanian state and contractual partners have been settled;
- corporation tax exemption until the 31st of December 2006, provided that USD 1 million investment in fixed assets used in the processing industry have been made up to the 1st of July 2002 and shareholding structure remain unchanged;

- VAT exemption is granted for the following operation:
 - introduction in free trade zones of foreign goods for warehousing purposes only, without fulfilling custom formalities; sale-purchase operations with foreign goods between different operators within the free trade zone or with persons located outside the free trade zone;
 - export of foreign goods located in free trade zones which are in the same status as they were introduced;
 - services directly related to the operations mentioned above.

Currently, there are six free trade zones in Romania located in Constanta-Sud Agigea, Curtici-Arad, Galati, Giurgiu and Sulina.

3. INDUSTRIAL PARKS

An industrial park is established through a joint venture association in participation⁴ ("Association") among any combination of the relevant public authorities and Romanian or foreign legal or natural persons.

Industrial parks are managed by a Romanian commercial company ("Park Administrator"), which may have as shareholders the members of the Association, as long as none of the shareholder members directly or indirectly control the Park Administrator. The duration of an industrial park is of minimum fifteen years, to be prolonged if the case may be. The Park Administrator owns or has the right to use the land and buildings in the industrial park for at least 30 (thirty) years.

For establishing and developing an industrial park, the following incentives are applicable (capped to the maximum admissible threshold of the state-aid) :

- exemption from tax and fees to the state budget for changing the destination and removal from the agricultural circuit of the land afferent to the industrial park; and
- reduction of the tax to be levied by the local public administration based on the decisions of the local administration for the real estate of the industrial park.

For investments performed in industrial park before the 31st of December 2006 and consisting in constructions, internal infrastructure and connection to the public utilities, an additional 20% allowance applied to the value of the investment in constructions or their rehabilitation is levied from the taxable profit. Taxpayers that benefit from the 20% first year allowance on the acquisition value of the technological equipments and patents in use by the 30th of April 2005 cannot benefit from this fiscal incentive.

4. LARGE INVESTMENTS WITH SIGNIFICANT IMPACT ON

ECONOMY („Large investments“)

A large investment is defined as direct investment performed according to provisions of the Law 332/2001 on promoting significant direct investments that (i) exceeds the equivalent of USD 1 million, (ii) has a positive effect on the economy and (iii) generates new jobs.

According to the Law 332/2001 the investors benefit from exemption from payment of customs duties, for certain new goods, manufactured within maximum one year before being imported in Romania and which were never used.

Should companies that carried on direct investments voluntarily liquidate in less than ten years, they shall be obliged to pay taxes established under law for the whole duration of investment, as well as delay penalties, related thereafter. Alienation of assets that benefit of certain fiscal incentives within less than two years shall result in payment of value of fiscal incentives and of related delay penalties.

In addition, the Fiscal Code stipulates the following fiscal incentives with regard to significant investments made up to the 31st of December 2006:

- 20% additional allowance, in the month the investment is completed or accelerated depreciation charge (50% in the first year and straight-line depreciation for the remaining depreciable life of the asset). The two fiscal incentives are mutually exclusive. Investments materialized in buildings could not benefit from accelerated depreciation;
- exemptions from local tax liabilities, provided that the local council has decided exemptions or reductions of tax on land for the whole period of investment performance, but no more than three years as of the investment starting date.