

Romania

Trends and Developments

Overview of 2023 and Broad Trends for 2024

Despite a slight dip in the number of deals, Romania's M&A market defied the global slowdown in 2023, boasting a higher overall value compared to the previous year. Sectors like retail, hospitality, and energy led the pack, while TMT also saw significant activity.

This outperformance might seem counterintuitive, but several factors could explain it. Firstly, Romania's M&A market is still relatively young and stable, potentially offering attractive investment opportunities that are harder to find in more established markets. Secondly, ongoing geopolitical tensions and supply chain reshuffles are prompting companies to make strategic investments, and Romania might be seen as a more secure option. Finally, the country's stable political, social, and legal environment may be particularly appealing in this uncertain global climate.

The momentum of the Romanian M&A market shows no signs of abating in 2024, with a palpable buzz of activity in the market. Several factors suggest this positive trend will continue, driven by a combination of broader geopolitical and economic influences, attractive opportunities, and specific market dynamics, such as:

- long-awaited interest rate cuts;
- the readjustment of sellers' valuation expectations;
- renewed investor interest, as investors who adopted a cautious wait-and-see approach in late 2022 are returning, bringing fresh capital; and
- investors may be shifting their focus from low-yielding bank deposits towards real-world assets like those offered through M&A.

The sectors expected to remain at the forefront of M&A activity in 2024 are energy, finance, TMT, healthcare, retail, and real estate. We anticipate deals to revolve around several key themes:

- There will be consolidations of previous or ongoing deals, along with add-on acquisitions and strategic reorganisations within these sectors.
- Many deals initiated in 2023 will likely be finalised in 2024.
- Encouraged by the success of past funds and increased investor appetite (both private and institutional) to place liquidities in productive assets, private equity firms (and funds in general) are expected to remain active acquirers.
- Romania is undergoing a generalised development programme and there will be a lot of opportunities in infrastructure, logistics and industry in general.
- A new phase in the growth of the local technology market is expected to continue reaping benefits, attracting foreign capital and joint ventures.

At the same time, 2024 presents an opportunity to gauge the repercussions of recent regulatory changes. While designed to streamline corporate operations and enhance business ease, these developments also appear to impose a more substantial tax burden on companies of all sizes.



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is a leading independent Romanian law firm. Established in 1995 as one of the first incorporated partnerships, the firm brings together strong local talent, with exceptional credentials, outstanding track records and distinguished careers in law, business and academia. The Bucharest office is staffed by a team of 70 skilled lawyers and tax advisers. Traditionally focused on the private sector and foreign investment projects, Popovici Nițu Stoica & Asociații is widely recognised by both industry observers and peers as a leading transactional law firm among market leaders. The firm has consistently participated in the majority of M&A transactions in Romania across a diverse range of industries, including energy, healthcare, retail, IT, financial services, telecoms and real estate.

While 2024 promises continued growth, it will also be a test of recent regulatory changes. These changes aim to streamline corporate operations, but also introduce potentially heavier tax burdens for companies of all sizes.

Recent Changes in the Corporate Law

The Companies Law 31/1990 and the trade registry legislation recently underwent important changes designed to facilitate doing business in Romania. These efforts appear to be paying off, as evidenced by the strong M&A performance in 2023. Here are some key changes impacting the corporate and M&A landscape:

- A legal framework has been created for carrying out cross-border reorganisations (transfer of the registered office to another member state without liquidation and without loss of legal personality) and cross-border division by setting up new companies. The legal framework for cross-border mergers has also been strengthened.
- The documentation and formalities required for new company setups have been streamlined, with a notable shift towards digitalisation. Virtually all registration processes with the trade registry can now be conducted online, expediting the establishment process.
- Mergers and divisions/spin-offs are now subject to verification by the trade registry rather than the courts. This strategic move has significantly reduced the implementation timeline for such transactions by eliminating the lengthy waiting periods associated with court hearings.
- While the provisions regarding UBOs (ultimate beneficial owners) have been clarified to some extent, ambiguities remain regarding the timing of UBO information submission. Nevertheless, there is a growing trend towards incorporating UBO information into company articles of association.
- The deadlines for the payment of share capital subscriptions have been extended.
- In limited liability companies, the default majority rule for changes to the articles of association (in the absence of a specific provision in the articles) has changed from unanimity to an absolute majority of shares and shareholders.

Tax Regulatory Developments Directly Impacting Companies

From 1 January 2024, several tax amendments impacting the taxation regime of companies have come into effect.

First, there is a new tax introduced on big companies, namely a minimum tax of 1% on turnover (after the deduction of certain revenues and depreciation of certain assets). This new tax applies to companies with a turnover of at least EUR50 million in the previous year. If the 1% tax exceeds the 16% general corporate income tax, it is owed instead of the latter. Moreover, companies in the oil and gas and banking sectors with a turnover of at least EUR50 million owe a similar tax on turnover (with different rates and mechanism), which, however, is due in addition to the 16% general corporate income tax.

Notably, this tax should not affect pure holding companies, as dividend income and proceeds from share sales are excluded from the taxable base.

Second, the eligibility conditions for the tax regime applicable to microenterprises have changed. The new conditions are much more restrictive, with the declared intention to gradually phase out this regime. Most significantly, the testing of the EUR500,000 income threshold is now done cumulatively, at the level of all linked enterprises, not just at the level of the respective entity. The concept of linked enterprises has generated a multitude of questions, undergoing several changes since the first draft of the law, from referencing the definition provided in the SME Law to a separate definition now included in the fiscal legislation.

New FDI Rules

Following a period of adjustment to the recently implemented foreign direct investment (FDI) screening regime, significant changes were introduced to the FDI legal framework in December 2023. While these changes provided clarity on several previously ambiguous aspects, they also substantially broadened the scope of its application. The FDI regime follows Regulation (EU) 2019/452, establishing a framework for the examination of foreign direct investment in the Union. The

regulatory authority in the field is the Commission for the Examination of Foreign Direct Investments (*Comisia pentru examinarea investițiilor străine directe*, or CEISD). The key changes are outlined below.

Expanded definition of investments subject to CEISD approval

Almost any asset deal, share deal, or long-term commercial contract can fall under CEISD scrutiny, including extensions or expansions of existing contracts.

Here are some specific examples that might now fall under the FDI regime (apart from typical share deals or asset or business transfers):

- long-term supply contracts with investment, if it leads to the establishment or maintenance of lasting links with the recipient of the investment;
- establishment of joint ventures;
- changes in the nature of control over a company (eg, change from sole to joint control, or an increase in the number of controlling shareholders);
- acquisitions of real estate, which from the perspective of the authority would fall under FDI, with the analysis involving verification of neighbours;
- loan-to-equity conversions;
- incorporation of a new enterprise, where its establishment represents the creation of a new site for the activity for which financing is requested, which is technologically independent of other existing units; and
- capacity expansions for existing enterprises.

Conditions regarding investments

Investments exceeding EUR2 million, which (i) result in the acquisition of any rights to participate in the management or control of the investee and (ii) are intended to establish or maintain lasting links between the investor and the investee, regardless of the nature of the contract, are subject to scrutiny under the FDI regime.

For certain strategic areas (areas of national security), the FDI regime may also apply to investments below EUR2 million; however, the law does not detail the criteria.

Conditions regarding investors

The legislation no longer provides for different conditions for notification and approval between EU (including Romanian) and non-EU investors. As a result, both foreign (non-EU) and EU investors are subject to the FDI regime. Romanian investors are also considered in the EU category and thus subject to the FDI regime for their investments in Romania.

Potential fines

The implementation of a transaction falling under the FDI regime without CEISD approval may be sanctioned by (i) a fine of up to 10% of the total worldwide turnover for the year preceding the sanction or (ii) cancellation of the investment (where applicable). The sanctioning regime mirrors that of the merger control regime.

Conclusions

The 2024 outlook is living up to expectations. This optimism is fuelled by two key factors: first, a continuation of consolidations, add-ons, and reorganisations or restructurings stemming from the deals of 2022 and 2023; and second, increased appetite among funds and investors to seize the opportunities within various sectors of the Romanian economy.

However, on the regulatory front, there are mixed signals. While streamlined company and trade registry laws are making good on their promise of facilitating business, changes to FDI and tax regimes suggest increased scrutiny and a less generous tax environment. Microenterprises, in particular, may face the brunt of this shift, potentially jeopardising their viability as a distinct business form.

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