The Mergers & Acquisitions Review

Eighth Edition

Editor
Mark Zerdin

Law Business Research

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THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

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THE PRIVATE COMPETITION ENFORCEMENT REVIEW

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EDITOR'S PREFACE

There is cause for optimism and caution in light of the past year's events.

First, we can be tentatively optimistic about Europe. The possibility of a euro breakup appears to have faded, and European equities markets performed, on the whole, exceptionally well in 2013. Indeed, the euro/dollar basis swap has moved sufficiently to open up euro capital markets to borrowers wishing to swap proceeds to dollars; the World Bank sold its first euro benchmark bond for more than four years in November 2013, and non-European companies like Sinopec and Korea Natural Gas have issued large euro bonds in recent months. If the European economy continues to grow (and analysts are expecting growth to quicken), it is hoped that the prospect of crisis will continue to fade.

Second, though 2013 was a comparatively languid year for global M&A, the buoyancy of the credit and equity markets cannot be ignored. In terms of financing, the seeming willingness of banks to allow for looser borrower constraints, to underwrite jumbo facilities in small syndicates, and to offer flexible and fast bridge-financing for high-value acquisitions, presents a financing climate that should be particularly amenable to corporate M&A. It is also notable that continued political and economic instability did not impede the completion of some standout deals in 2013, including the *Glencore/Xstrata* tie-up and Vodafone's disposal of its shareholding in Verizon Wireless. These deals show that market participants are able, for the right deal, to pull out all the stops. After a period of introspection and careful balance sheet management, corporates may be increasingly tempted to put cash to work through M&A.

There remains, however, cause for prudence. There is considerable uncertainty as to how markets will process the tapering of quantitative easing (QE) by the US Federal Reserve. The merest half-mention by Ben Bernanke, in May 2013, of a possible end to QE was enough to shake the markets, and to nearly double the 10-year US Treasury yield in a matter of months. Emerging markets are particularly sensitive to these shocks. The oncoming end of QE may already have been priced into the markets, but there is a possibility that its occurrence will cause further, severe market disruption. In addition, there are concerns around how the funding gap left by huge bank deleveraging will be filled, and centrifugal pressures continue to trouble European legislators. Finally, there are broader concerns as to the depth of the global economic recovery as growth in the BRIC economies seems to slow. Optimism should, therefore, be tempered with caution.

I would like to thank the contributors for their support in producing the eighth edition of *The Mergers & Acquisitions Review*. I hope that the commentary in the following chapters will provide a richer understanding of the shape of the global markets, together with the challenges and opportunities facing market participants.

Mark Zerdin
Slaughter and May
London
August 2014

Chapter 55

ROMANIA

Andrea Hulub, Alexandra Niculae and Vlad Ambrozie[1]

I OVERVIEW OF M&A ACTIVITY

Among the very few European countries that succeeded in resuming economic growth relatively quickly after the 2008/2009 financial turmoil, Romania has maintained its attractiveness to foreign investors due to its position as an emerging market and owing to investment safeguards offered by its EU membership.

Although M&A activity stayed low, the market generated a reasonable number and diverse range of transactions. Notable developments ranged from distressed businesses, materialised start-ups, long-awaited exits and successful greenfield projects to corporate-debt restructurings and failed privatisation projects.

M&A activity in 2013 concentrated on a handful of areas, with clear predilection for the financial services sectors, real estate, energy and natural resources, and the industrial sector as a whole. Significant transactions likewise occurred in agribusiness and fast-moving consumer goods.

Although the market continued to be dominated by strategic investors, an essential influx of new entrants has unfrozen certain segments of the market.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

An EU Member State since 2007, Romania incorporated in its M&A legal framework the main body of relevant European law, having already implemented all pre-eminent directives in the field, such as the Merger Directive 2005/56/EC, the Prospectus Directive

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2003/71/EC, the Takeover Directive 2004/25/EC, and the Insider Dealing and Market Abuse Directive 2003/6/EC.

As such, M&A transactions in Romania are largely regulated by Company Law No. 31/1990, the Trade Registry Law No. 26/1990 and by the newly enacted Civil Code.

In addition to the regulations mentioned above, listed companies are subject to special rules provided by the Capital Markets Law No. 297/2004 and to the regulations issued by the National Securities Commission (NSC). Among such specific regulations NSC Regulation No. 1/2006 on issuers and securities operations and NSC Regulation No. 6/2009 regarding exercise of certain shareholders' rights in connection to companies' general shareholders' meetings stand out as the most significant.

M&A deals involving banks and non-banking financial institutions, insurance companies or other specialised vehicles are subject to additional sector regulations.

The Romanian merger control rules are provided by the Competition Law No. 21/1996 under the Romanian Competition Council instructions, guidelines and control, with the limitations derived from exclusive jurisdiction reserved by the European Commission under the EU Merger Control Regulation of 2004.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

The corporate and takeover legal framework in Romania is generally aligned with the various EU corporate directives, such as the Takeover Directive 2004/25/EC, the Shareholder Rights Directive 2007/36/EC and the Merger Directive 2011/35/EC, as well as with the OECD principles of corporate governance.

The Romanian corporate governance and takeover system is thus a stable one, ensuring a level playing field for shareholders and stakeholders, a good level of access to information and company transparency, and delimitation of board and management responsibilities and related liability.

Having reached maturity, the corporate and takeover legal framework is also sound, with no significant regulatory amendments having recently been passed.

In the capital markets sector, 2013 saw the replacement of the former supervisory authority – the National Securities Commission – with the newer Financial Supervisory Authority, as public authority taking over NSC attributions along with those formerly pertaining to the Insurance Supervisory Authority and the Private Pension System Supervisory Commission.

In the financial services sector, Romania's National Bank Regulation No. 5/2013 has added, among others, additional corporate governance and capital quantity and quality requirements for financial institutions.

From a tax perspective, the beginning of 2014 has brought through Emergency Government Ordinance No. 102/2013 for the amendment of the Fiscal Code (in force as of 1 January 2014) certain much-awaited incentives for holding companies. These incentives consist of exemptions from corporate income tax concerning dividends, capital gains and liquidation income, and are applicable subject to minimal criteria being met (further detailed in Section VIII, *infra*).

As a Member State, Romania will further extend transparency requirements, shareholder protection and engagement principles and safeguards, as these are anticipated under the European Commission Action Plan on European company law and corporate governance.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

In actively seeking foreign investment, Romania's struggle is starting to pay off as Romanian National Bank figures for 2013 show that the value of foreign direct investment increased to just under €3 billion. While this translates to a 25 per cent rate increase by comparison with the results for 2012, the additional good news is that this year's value marks the peak of the last four cycles.

Traditionally, foreign investment has been the main driver of the Romanian M&A market, as Romania became an M&A-friendly jurisdiction in the last decade.

Events within the Cyprus financial sector have contributed to strengthening the view that Romania is one of the potential deal-structuring platforms, at least for deals of regional reach. This view is fundamentally supported by: a fairly low 16 per cent flat rate corporate income tax and a fiscal consolidation process well under way; structural reforms in a number of sectors, such as public services and particularly health care; and enhancement of legal and political stability as a result of EU membership.

Romania remains vulnerable, however, to outbound developments while CEE growth forecast is low, unpredictability and turbulence involving important European countries are foreseen and liquidity constraints are overreaching. Even so, the once fierce lack of competition (the key that made post-bubble Romania an appealing destination for some) is diluting, and there are signs that capital is starting to shift beyond the stability of Poland and Czech Republic into the riskier Romania and Hungary.

In such a landscape, the main M&A foreign investors remain those who originate in the United States and the western EU economies, such as the Netherlands, Austria, Germany, France and Italy. South Africa remains among the most acquisitive nations, special regard going to the group New Europe Property Investments which, once again, was involved in the largest transaction in the real estate sector (acquisition of the City Park Constanța shopping mall in an €80 million deal). Additional South African players establishing a presence in Romania include Steinhoff Group (featuring in the global acquisition of Austrian furniture retailer Kika).

What is more, China's interest in the entire CEE has become starkly visible. With Romania under the spotlight, the third CEE-China Economic Forum led to memorandums of over €8 billion worth for the upcoming years, as well as to multibillion regional investment credit lines. At least for the energy and IT sectors, industry leaders expect that these will stand the test of time.

When looking ahead, projections for foreign investment are positive, as backed up also by the preliminary results of Q1 2014 when the disclosed value rose to 30 per cent (by reference to Q1 of 2013). Hopefully, the critical components will not be distorted by 2014 being an election year.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

During 2013, the most attractive sectors for M&A in Romania proved to be financial services, real estate, energy and natural resources, industrial and agribusiness.

i Financial services

The financial services sector dominated the M&A market in 2013, being however characterised by consolidation mechanisms, along the same lines as in the previous year. Extensive transactions were carried out in banking and insurance.

The following transactions shared the spotlight:

a UniCredit Tiriac Bank SA and UniCredit Consumer Financing IFN SA acquired the Retail and Royal Preferred Banking business of RBS Bank Romania SA, attaining approximately €315 million in assets and €315 million in liabilities. The financial terms of the transaction were not disclosed. Following this transaction, UniCredit climbed to the 4th spot for the first time since the bank entered in Romania, with a 7.6 per cent market share.

b Raiffeisen Bank Romania SA acquired the consumer portfolio of Citibank Romania SA, with the focus solely on the corporate sector. The portfolio consisted of almost 100,000 customers, with over €90 million in gross assets and over €175 million in deposits, as well as all Citibank consumer banking staff in Romania. The financial terms of the transaction were not disclosed. These two transactions were considered the most attractive deals of the banking industry since the sale of BCR to Erste Bank.

c Fondul Proprietatea SA launched a buy-back tender offer of 600 million shares, representing 4.5 per cent of the fund's paid share capital. Valued at €135 million, this was the biggest offer conducted by a company on the market.

d Emerging Europe Accession Fund (EEAF), an investment fund managed by Axxess Capital, acquired 96.3 per cent shares of Nextebank, the Romanian subsidiary of MKB Bank Zrt Hungary. The financial terms of the transaction were not disclosed.

e Local businessman Dorinel Umbrarescu acquired 93.27 per cent of the shares of ATE Bank Romania SA, a subsidiary of Piraeus Bank group, in exchange for €10.3 million.

f SIF Banat-Crisana SA, the leading financial investment company in Romania, with a portfolio of 1.6 billion lei, acquired the majority stake of stocks issued by the management company SAI Muntenia Invest SA (50.01 per cent) in exchange for €1.86 million.

g In the context of Cypriot financial sector reorganisation, Marfin Bank Romania SA acquired from the Romanian branch of Bank of Cyprus gross assets of €82 million, deposits of €77 million, as well as all staff related to this transaction.

ii Real estate

Real estate remains a key driver for economic growth, particularly in Romania's post-bubble period where market corrections proved to be far more excessive compared with the robust development potential.

Unsurprisingly, new project developments sprouted and the trend was led by developers with strong market experience. For instance, almost all noteworthy active developments are carried by the highly matured Portland Trust, Sonae Sierra, Skanska, Immochan, Afi or New Europe Property Investments. Just as in the past few years, it is still the industry leaders that thrive. However, when it comes to securing financing, this is tightly linked to eco-friendly concepts, city-centre projects and, most of all, high pre-letting quotas.

Although, like other markets, Romania has seen its share of investors exiting or potentially new investors inconclusively scrutinising the market, there was no shortfall of real estate transactions.

Be it the office or retail sector, new project developments or classic acquisitions, the market is dominated by already-established players aiming to improve or expand their portfolio. Market consolidations are the prime scope.

With the prominent exceptions of New Europe Property Investments and Global Worth, the real estate market remains unattractive to new investment capital, and it is clear that revival lies with financial institutions effectively undertaking to boost the sector. What is better though, lenders have increasingly started to acknowledge failure of projects and accept confronting the market with more realistic asset valuation. A leading figure here is Alpha Bank having taken-over Doamna Ghica Plaza, a 600-flats bankrupt residential project, following a €45 million loan granted back in 2007. But there is more to come here, according to Deloitte CE Private Equity Survey and Romanian Banking Association – Ernst & Young Romanian Barometer, financial institutions expect a solid increase in lending activities, while investors' confidence continues to grow and is approaching the 2003–2007 levels.

With a focus on the retail and office sectors that were the market's stars, the following were the most important real estate transactions.

Once more, the biggest real estate transaction involves New Europe Property Investments acquiring the City Park Constanţa shopping centre. Seller was Neocity Group, and the reported deal value was of €80 million.

In its relentless expansion, New Europe Property Investments further acquired Deva shopping centre for around €45 million and Severin shopping centre for a value of around €15 million. Likewise, participations were secured in retail developments Mega Mall (a 70 per cent stake for €20 million in a joint venture with Austrian fund Real4You) and Vulcan Value Center (a 50 per cent stake for €10 million in a joint venture with Benevo Group). For the fund, last year also meant the opening of Galaţi Shopping City, an approximately 27,000m^2 retail development that took only six months to finalise. Once the industry's dark horse – as all its prominent investments were made especially post-bubble – last year's experiences confirm that the South African fund is here to stay.

Following the acquisition in 2012 of a 12,000m^2 prime area, Global Worth has just commenced development of Bucharest One project, a 22-storey office tower. Upon completion scheduled for late 2015, the project is envisaged to accommodate approximately 45,000m^2 gross leasable area. The project is located in the capital city's La Défense district, the hottest area (for years now) in real estate development (besides Skanska's Green Court project and Portland Trust's Floreasca Park on their way, La Défense gained in 2013 the Promenada Mall and Sky Tower – Raiffeisen's landmark buildings).

Also, these are busy times for Global Worth, the reconversion of ex-City Mall into an office project reaching the final stage.

With the industry seized to a few, sound insolvencies show however that real estate will continue to remain a sensitive sector. Though residential insolvencies are most spread, office and retail were also exposed last year, most echoing insolvencies involving a 30,000m^2 office project in northern Bucharest (awarded by Europa Property SEE Real Estate Awards in 2012 both office development of the year and greenest building prizes), as well as two shopping malls in the secondary markets of Oradea and Craiova.

iii Energy and natural resources

The energy and natural resources sector remained an attraction for investors, in spite of a volatile political environment. Investors could not ignore the resources' potential and the favourable investment incentive and tax treatment and, therefore, seized local opportunities.

The main movements in this field were subject to central transactions on the local market (IPO, SPO and private placements), being part of the privatisation programme of the state-owned companies in the energy sector imposed by the International Monetary Fund, as follows:

a The Romanian Ministry of the Economy sold 15 per cent in the national gas company Romgaz through an initial public offer (IPO) launched on the Bucharest Stock Exchange. Romgaz IPO was the biggest initial public offering in Romania, also including global depositary receipts traded in London. The value of the transaction was €391 million.

b Two stake packages of 15 per cent of the national gas company Transgaz have been sold on the Bucharest Stock Exchange last year: one held by the Romanian Ministry of Economy, by way of a secondary public offer (SPO), in exchange of €72 million, and the other held by the Property Fund, by way of a private placement, in exchange for €68 million.

c The Romanian Ministry of Economy sold a 10 per cent stake in the national nuclear power producer Nuclearelectrica through an IPO launched on the Bucharest Stock Exchange, with the purpose of admitting to trading. The value of the transaction was €63 million.

Aside from the above, the following transactions were significant:

a The European Bank for Reconstruction and Development (EBRD) sold its stake (1.62 per cent) in OMV Petrom SA, by way of a private placement. The value of the transaction was €87 million.

b Lukerg Renew, the joint venture of Russian oil giant Lukoil and Italian developer ERG Renew acquired two projects from Vestas for €109.2 million.

c South Korean giant Samsung became the largest investor in solar parks in Romania after completing an investment of €100 million in Slobozia, Giurgiu County. Samsung acquired a photovoltaic project in Romania, managed by LJG Green Energy Source Alpha, with a functional capacity of 45MW.

iv Industrial and agribusiness

Alongside the above-mentioned market segments, industrial and agribusiness were also active areas for acquisitions in 2013.

Agribusiness

Romania has significant agricultural growth potential, given the extensive resources and the need for heavy investment offering vertical and horizontal expansion and consolidation opportunities. Furthermore, projects are encouraged by both EU and government subsidies available for investments in the sector.

Continuing last year's trend, 2013 M&A activity in these sectors was dominated by strategic investments. These were either already established players consolidating their local presence or extending their portfolios or new entrants penetrating the local market.

Examples of the above in the agribusiness and food segments include:

a Takeover of Prutul SA by international giant Glencore in a transaction estimated at €25 million. Glencore thus consolidates its already established local presence and moves a step ahead the other notable players in the field (i.e., Bunge and Sofiproteol).

b Glencore's competitor, French group Sofiproteol, made a similar move for consolidation by taking over Cargil edible oil division in a transaction of around €20 million.

c After the entry last year of a new player (French Group Tereos) on the local sugar market, Austrian group Agrana reinforced its position through the acquisition of two sugar production units from Lemarco in a deal of roughly €10 million. As a result thereof, Agrana now controls half of the country's sugar production units.

d Turkish dairy producer Sutas entered the local market through the takeover of Tnuva production facilities in a transaction of around €10 million. Further movements are expected from Sutas, as it seems that the recent acquisition is part of an overarching expansion strategy at the local level based on a vertically integrated business model comprising farming capacities and biogas production units.

e An exception to the general trend of strategic investments defining the agribusiness sector this year was the acquisition by British private equity fund Insight Investment of Agrirom Borcea, a company controlling around 13,600 hectares of agricultural land and related infrastructure and facilities, in a transaction estimated at around €30 million. Insight Investment thereby entered an already effervescent market dominated by institutional investors like Rabobank, insurance groups like Generali Assicurazioni or investment funds like German Germanagrar and Agrarius.

Fast-moving consumer goods (FMCG)/retail

Similarly to last year, the fast-moving consumer goods and retail industries accounted for some of the year's largest value transactions in Romania.

The do-it-yourself and construction materials segments were the most active:

a Takeover of 15 Bricostore stores by giant Kingfisher in a deal of around €75 million. Kingfisher has thus entered the local €2 billion DIY segment, split between local players like Dedeman or Arabesque and international chains like BauMax, Leroy Merlin or Hornbach.

b Surprising takeover of 27 local Praktiker stores by Turkish businessman Omer Susli. Even though the local DIY market suffered a recent contraction, the competition remains fierce and investors' interest is still high. A good indicator is also Leroy Merlin's DIY chain acquisition of a 4 hectares land at the outskirts of Bucharest where it plans to develop its second local store.

c Takeover of the dyes producer Deutek by one of Axxess Capital funds (EEAF) from the US private equity fund Advent International, which seems to be preparing for a full exit from the Romanian market.

d Takeover by Adeplast (one of the main players on the construction materials segment) of the Dufa brand for the Romanian and Bulgarian markets.

e On the FMCG segment, it is worth mentioning the takeover by Strauss Coffee of the Amigo coffee brand for the Romanian and Bulgarian markets, in a transaction of around €20 million.

Industrial

With institutional investors taking a more cautious approach in expectance of improved predictability and more stable market conditions, strategic players have taken advantage of these circumstances and continued consolidation movements in line with 2012 trends.

In the industrial sector and particularly in the manufacturing segment, the economic downturn and specific market contraction created good opportunities. Conversely, other transactions occurred as a consequence of larger regional/international deals:

a Takeover by General Electric of the oil equipment producer Lufkin Industries, in a deal estimated at around €3.3 billion. As part of the transaction, General Electric also took over Lufkin Industries plant in Pitesti, valued at around €140 million.

b Takeover by Mitsubishi Heavy Industries Ltd of the Romanian division of Belgian Maintenance Partners active in the automotive repair and maintenance sector, in a deal of around €17.3 million.

c Acquisition of the low-cost carrier Blue Air by former management/employees in a transaction valued at €30 million.

d Acquisition by French Group Air Liquide of an additional 16.5 per cent participation in the producer of welding electrodes, Ductil Buzau, in a deal of a €7.5 million. This movement is part of the French group's larger strategy of making the company private.

e Acquisition of Honeywell automotive parts production unit in Pitesti by US Group Federal Mogul.

f Acquisition of Ocna Mures sodium products by Ascom International and Aloref in a transaction of around €6 million.

The pharmaceutical industrial segment appears to also have entered a positive turnaround in 2013.

The following transactions are a good indication of this trend:

a Acquisition of LaborMed Pharma – a local generic medication producer – by US pharmaceutical company Alvogen, in a deal of €25 million.

b Acquisition by SIF Muntenia of a 29 per cent stake in Biofarm – one of the largest pharmaceutical producers on the local market – in a deal of €22 million.

The above trend reflected also on the related segment of pharmaceuticals distribution with one of year's largest local transaction. The British group Alliance Boots acquired a 20 per cent stake in Farmexpert – a dominant player on the local pharmaceutical distribution market – in a deal estimated to around €40 million.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

i Overview

The tensions between international financial markets undergoing restructuring and local inertia have restricted the Romanian financial sector in recent years.

However, during 2013 enthusiastic restructuring began to be seen. There are three drivers of the recent activity.

First, the banks have finally accepted the failure of certain financing projects and, through foreclosure and liquidation procedures, have tested their real values with the market. This approach generated a series of new work-out deals, sufficient in number and volume so as to enable a benchmark. Work-outs either involved individual projects, or, as in the case of retail financing, client portfolios. The restructuring mood was fostered by an increase in non-performing loans, in both corporate and retail lending.

In spite of the new trend, the banking system is still suffering from the 'over-precaution syndrome', with banks mainly focusing on reducing the credit risk as much as possible, whether in consumer or corporate financing. As such, customer scrutiny procedures and credit-eligibility criteria have been strengthened.

Second, the sellers' expectations decreased, thus leading to a new dynamic and to the disappearance of the lingering concept of 'frozen market', with sellers being forced to adjust their expectations.

Looking past the purely psychological aspect – the drop in enthusiasm and general interest reverberating directly into the evaluations – one would find the origins of this trend in a deterioration of the economic outlook. Then there is the 'deal under distress' scenario limiting the ambit of potential investors, the nature of capital involved and requiring a certain appetite for risk. All these weigh strongly in valuations.

Third, on the backdrop of the Cypriot deposit meltdown, the banking market is facing scepticism and distrust towards saving schemes. Investors' refocus from liquid-asset income generators (deposits, bonds, etc.) to hard-asset income generators (real estate, operating businesses, etc.) is noticeable.

Following a prudent lending strategy, domestic banks focused in 2013 primarily on short-term lending. Although this approach generated an increase in private sector loans with maturity of up to one year, the volume of outstanding credit allowed long-term loans to still hold the main share of the financial market.

ii Debt to equity ratio

One of the negative consequences of the financial tensions in the eurozone was the equity requirements' increase, with full effects in the Romanian market. As such, in corporate financing the level of equity required for investors has been, unsurprisingly, significantly increased by the majority of banks.

Therefore, although banks are still willing to carry on disbursing loans, the number of potential eligible borrowers undoubtedly fell.

iii New trend – a more regulated and stable loan market

The most significant events in the banking sector in 2013 derived from Romania's commitment towards the European Union, the International Monetary Fund and the World Bank on preserving an adequate level of bank prudential indicators.

The set of measures adopted by the Romanian government is intended to improve the confidence level of foreign investors in the Romanian financial market.

The banking legal framework in Romania is generally aligned with the EU regulations and directives. The latest EU legislative package passed by the European Parliament consists of Capital Requirements Regulation No. 575/2013 (CRR) and Capital Requirements Directive 2013/36/EU (CRD IV). While CRR is directly applicable in Romania, CRD IV was transposed by Government Emergency Ordinance No. 99/2006 (GEO No. 99/2006) as further amended and supplemented by Government Emergency Ordinance No. 113/2013 (GEO No. 113/2013).

The National Bank of Romania (NBR) issued a regulation (Regulation No. 5/2013) in order to ease up the applicability of CRR. Nevertheless, the provisions contained by the aforementioned regulation are in line with CRR.

CRR and CRD IV recast and replace the Banking Consolidation Directive 2006/48/EU and the Capital Adequacy Directive 2006/49/EU and implement the new Basel III requirements. This is also the general direction followed by NBR's Regulation No. 5/2013 and GEO No. 99/2006.

GEO No. 99/2006 and NBR's Regulation No. 5/2013 include provisions regarding corporate governance, prudential supervision, systems and controls, remuneration, credit risks adjustments, supervisory reporting requirements and sanctions. They also apply stricter capital quantity and quality requirements compared to the previous regulations, and introduce minimum standards on liquidity risk.

By implementing CRD IV through GEO No. 99/2006, the Romanian business environment became clearer and more predictable, as well as in line with the provisions of the EU legislation. This is one of the first steps in supporting the banking union that will soon be operational in the EU.

As a Member State, Romania will further develop its banking legal framework in keeping with the EU regulations and directives.

VII EMPLOYMENT LAW

Further to the notable adjustments made to the labour regulatory framework in 2011 and 2012, Romania moved away from the image of a jurisdiction that is overprotective of employees.

In 2013, there were no significant amendments to the labour regulatory framework. Nonetheless, it is worth mentioning Government Emergency Ordinance No. 83/2012, a regulatory enactment targeting alignment of the existing legal framework with EU trends in fighting gender discrimination. The said enactment purports to do so by means of expanding the scope of gender discrimination acts and adding additional restrictions for layoffs on gender-related criteria.

Some other developments have resulted as a consequence of Supreme Court compulsory decisions. The most relevant among them would be the confirmation of trade unions' capacity to sue employers on behalf of the trade union members, and the confirmation of the possibility for courts of law to replace the sanctions imposed on employees by their employers, in certain conditions.

Generally, an M&A deal in Romania should consider the following minimal aspects as regards labour resources and employment matters.

i Overview

Management of labour resources requires legal intervention at both an individual and collective employment level.

At the individual level, an employer currently has seemingly wide flexibility in opting for a determined-period labour contract or for a temporary work contract and can extend this status quo up to a period of 36 months.

As regards employees' evaluation and redundancy grounds, the newly introduced 'job performance' notion and evaluation criteria were largely welcomed by employers. These new concepts manage to align the previously formalistic provisions with the realities of a demanding and dynamic labour market.

At the collective level, employers benefit from the liberty of opting whether to add an additional level of protection for their employees (i.e., that of a collective bargaining agreement). Thus, although national collective bargaining agreements have been completely eliminated, the industry level agreements are applicable only if the employer company has participated in its negotiation.

ii Scrutiny of employment within M&A

Looking at (individual) employment matters in an M&A transaction in Romania would require particular focus on the following fundamental elements:

a conciliation between individual employment contracts and collective labour relations (if applicable);

b salary practices, in respect of which particular importance should be given to special non-compete clauses and related bonus arrangements imposing payment obligations on the employer, as well as to the 'mandatory' types of add-ons or bonuses; and *c* health and safety compliance, involving mandatory documentation, appointment of specialised personnel or outsourcing to authorised providers, performance of periodic trainings etc.

Within an assessment of the collective employment relations one shall consider at least:
a the forms of employees' representation and affiliations to trade union federations;
b the more favourable provisions secured through collective bargaining agreements at industry level (if applicable); and
c the mechanics for resolution of any collective labour dispute.

Additionally, if the deal is structured as a transfer of an undertaking (TUPE transfer), as regulated through Directive 2001/23/EC (implemented in Romania through Law No. 67/2006), careful attention should be directed towards the particular rights of the transferred employees and the buyer's correspondent obligations.

All things considered, the labour legislative climate in Romania accommodates implementation of different transaction structures, while allowing employers a good degree of flexibility in labour resources integration and management.

VIII TAX LAW

The recent period has continued to be characterised by amendments brought to the general fiscal framework, partially derived from an ongoing initiative of rewriting the Romanian Fiscal Code (the rewritten draft Code is expected to be made public later this year). The matters of particular interest to M&A transactions include: the introduction of fiscal incentives for holding companies and the regime of losses derived from interest expenses and foreign exchange rate differences connected to loans.

i Fiscal incentives for holding companies

The beginning of 2014 has brought much-awaited incentives for holding companies, through the enactment of Government Emergency Ordinance No. 102/2013 for the amendment of the Fiscal Code (in force as of 1 January 2014).

As per the introduced provisions, the following types of revenue are no longer subject to corporate income tax in Romania (regardless of whether they are derived by Romanian entities or by non-residents):
a revenues obtained from the sale of participation titles held in a Romanian legal entity (or a foreign legal entity resident in a jurisdiction with which Romania has concluded a double taxation agreement). To this purpose, the entity deriving the income must meet two criteria. First, it must have held a participation of minimum 10 per cent in the alienated entity for an uninterrupted period of minimum one year (fulfilled as of transaction date), and secondly, the entity must be a Romanian company or resident in a country with which Romania has concluded a double taxation agreement;
b revenues obtained from the liquidation of a Romanian legal entity (or a foreign legal entity resident in a jurisdiction with which Romania has concluded a double taxation agreement). To this purpose, the entity deriving the income must have

held a participation of minimum 10 per cent in the alienated entity for an uninterrupted period of minimum one year (fulfilled as at the date when the liquidation is initiated);

c dividends obtained from a Romanian legal entity (or a foreign legal entity which is (1) subject to corporate tax in its country of residence and (2) is resident in a non-EU jurisdiction with which Romania has concluded a double taxation agreement). To this end, the entity deriving the income must have held a participation of minimum 10 per cent in the alienated entity for an uninterrupted period of minimum one year (fulfilled as at the date when the dividend is registered, as per accounting norms).

Granted the measure is certainly welcomed and long-awaited, some fine tuning is nevertheless required, as certain inconsistencies and negative effects have been noticed after the initial excitement subsided.

These mainly affect income derived by non-residents from the sale of shares held in real-estate companies (entities in which Romanian real-estate exceeds 50 per cent of total assets), as such income is defined as 'real-estate income' for non-residents and is potentially not subject to the introduced tax relief. This rather seems to be a case of inconsistent implementation and not one of intentional exclusion, as taxation relief has been available anyway under most double taxation agreement (double taxation agreements that do not have a so-called 'real-estate clause' for capital gain purposes).

ii Losses from interest expenses and foreign exchange rate differences connected to loans

According to Government Emergency Ordinance No. 102/2013 for the amendment of the Fiscal Code, a merger in the context of block asset transfers would entitle the surviving entity to take over from the absorbed companies the losses generated by interest expenses and foreign exchange rate differences connected to loans (carried forward as a result of negative or above 3:1 debt/equity ratio).

In addition, spun-off companies are allowed to take over a portion of such losses incurred by the de-merged company, proportional to the assets and liabilities transferred to them, as long as the transferred assets and liabilities transferred to them constitute a functional whole.

The possibility of taking over these losses is a beneficial and welcomed measure, expected to encourage such reorganisation transactions.

IX COMPETITION LAW

The merger control activity of the Romanian Competition Council during 2013 increased in volume by 10.6 per cent. By number of files, the merger control assessments involved prominently the following markets: financial sector (mainly in banking, life insurance and leasing services), energy and retail food market.

With almost two decades of practice and some very intense recent years of following *de facto* the principles laid down in the EU Merger Control Regulation of 2004 and subsequent guidelines, the Romanian Competition Council has reached an era of legal pragmatism and efficiency. M&A activities are thus, if not supported by the regulator, at least not hindered as in certain past years.

At the end of 2012 and in 2013, the Romanian Competition Council conducted several surveys which are expected to have an impact on future merger control assessments of transactions achieved in the relevant sectors. These surveys concern the evolution of the competition on the primary sectors, the market of construction works for roads and motorways, the market for films distribution to cinemas from Romania, and the card payment services market. Moreover, the conclusions of such surveys show that the Romanian Competition Council's scrutiny is shifting to a more profound analysis of the markets and the transactions thereon from an economic standpoint.

i The survey concerning the evolution of the competition on the key sector

Within the 2013 survey on competition in key sectors, the Romanian Competition Council analysed, *inter alia*, the aggregate index of competitive pressure (AICP) for certain industries of the national economy. The Romanian Competition Council found on the one hand that (1) the industries that are the most predisposed towards free competition are the industry of spare parts for automobiles, real estate brokerage services, food retail (supply), en-gross distribution of automobiles and production of drugs. On the other hand, (2) the industries that are held to be the most predisposed towards anticompetitive behaviours include distribution of LPG for cookers, production and sale of natural gases, bank cards, production and sale of cement.

With respect to the food retail sector, the Romanian Competition Council holds that, even if in the past two years a series of economic concentrations occurred in this industry, competition is still high and the concentration level of the industry has remained relatively low (the first five retailers holding together a market share of approx. 30 per cent). Moreover, it is worth mentioning that the Romanian Competition Council included in the economic concentrations analysis conducted in the retail sector, primarily food, the use of certain economic analysis methods, i.e., *ex ante* (GUPPI) and *ex post* (the 'Difference in Differences' method). Also regarding the food sector, the Romanian Competition Council undertook for the first time a post-acquisition analysis on the actual impact on the market, as a result of the economic concentration (cleared in 2010) whereby Lidl took over a 103-store network. Within such analysis, the Romanian Competition Council analysed the market structure, the market shares and their evolution, as well as the parties' behaviour towards prices and the category of private labels by reference to the general trend of the market.

As regards the automotive industry, the Romanian Competition Council holds that the market shares of the main undertakings have registered significant fluctuations from one year to another. Therefore, a high degree of competition is present on the market, allowing one to consider that a concentration performed on such market should not raise any competition issues.

ii The survey concerning the market of construction works for roads and motorways

The market of construction works for roads and motorways was held as being characterised by rigidity, a decrease in offers, being penetrated by just a few new players, a growth tendency of the market concentration degree, and the maintenance of the top five players' high market shares.

iii The survey concerning the card payment services market

The Romanian Competition Council's conclusions depend on the several sub-markets present on the card payment services market. Thus:

a the market for card issuance is characterised by a weak concentration, indicating no issues with respect to competition, especially because of the large number of competitors active on such segment;

b the market for acquisition of cards has a concentration potentially higher than the market for issuance, yet the dynamic of the concentration indicator shows an important decrease for the period 2009–2011, mainly due to the decrease of leaders' share, corroborated with the growing dynamic of the competitors that subsequently entered the market, reducing the concentration potential; and

c inter-brand competition seems to have slowed down, considering most of the banks issue both Visa and MasterCard devices, and the purchasing/acquiring banks, in their turn, accept both these brands.

X OUTLOOK

While the turmoil eventually enabled the path to growth in 2013, forecasts for 2014 remain cautiously optimistic.

By reference to macroeconomics and fundamental parameters, the M&A market looks set for further recovery, but the real stake is attracting additional fresh capital.

Advancement of the Romanian M&A market is tightly linked to the European economy and significantly depends on the local ability to increase attractiveness by comparison to neighbouring eastern European markets.

So far, energy and natural resources, real estate and agribusiness, as well as certain sector privatisations appear to be more appealing to new investors.

Indeed, local energy and natural resources are already well-known and expected to continue to attract new capital. Despite the pressures, and only remotely affected by the latest developments and ambiguity around the state assistance package scheme, investors cannot ignore the massive resources Romania enjoys.

As regards real estate, the sector that has suffered perhaps the most severe blow, it has had and is expected to further generate in 2014 some of the strongest market experiences.

The agribusiness sector will continue to grow organically and new acquisitions are likely to happen, from PE leveraging of land to conglomerates involving chain food processors and manufactures, related logistics and distribution networks.

The market may receive a new impetus, should the government strive to finalise the failed privatisations of strategic companies such as Romanian Post Company, National Railway Freight Transportation Company CFR Marfa, Cuprumin (Romania's largest copper mine) or Oltchim (petrochemical plant), potentially by using the stock market and IPO instruments.

Appendix 1

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