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The International Comparative Legal Guide to:

Private Equity 2015

1st Edition

A practical cross-border insight into private equity

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EDITORIAL

Welcome to the first edition of *The International Comparative Legal Guide to: Private Equity*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of private equity.

It is divided into two main sections:

Four general chapters. These are designed to provide readers with a comprehensive overview of key private equity issues, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private equity laws and regulations in 22 jurisdictions.

All chapters are written by leading private equity lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Shaun Lascelles of Skadden, Arps, Slate, Meagher & Flom (UK) LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Overview

1.1 What are the most common types of private equity transactions in Romania and what is the current state of the market for these transactions?

Private equity (PE) interest and the volume of this type of transaction visibly increased in 2014. Acquisitions value range from EUR 2 to 50 million and the business owners have started to shift their focus towards assets/portfolio assessment and exit options.

For 2015, private equity funds active in Romania are interested in areas such as healthcare, banking, retail, IT and agriculture; on the other side, some are considering selling.

1.2 What are the most significant factors or developments encouraging or inhibiting private equity transactions in Romania?

As a general feature, Romania is a market with a potential to significantly, still being a rather emerging market; this potential for growth, combined with the controlled operating framework ensured by its membership to the EU, create an attractive balance for investors.

The increased availability of financing in the past years was also a key driver for PE transactions. Notably, the IT field benefits from a favourable tax regime – being one of the most ascending business areas; also, the major recent decrease of VAT on food and beverages is expected to give a an additional boost to the retail industry.

As for the factors inhibiting PE transactions, the numerous Governmental changes from the past years have led to a public perception of political instability and idle status of some public offices, as well as of legislative unpredictability.

2 Structuring Matters

2.1 What are the most common acquisition structures adopted for private equity transactions in Romania?

In local PE transactions, investors generally seek to gain a majority interest or at least a 30% equity quota.

In the last years, there was a preference for asset deals rather than share deals; purchase of distressed portfolios, as well as of assets/business units from companies under insolvency/reorganisation has significantly increased.

However, as regards publicly traded companies, share deals are predominant, but in many cases such are implemented at the shareholder's level rather than at the company's level (i.e. the buyer acquires interest in the controlling shareholder of the listed company) in order to avoid the market price limitations applicable to listed companies' share price.

Acquisition by corporate merger is quite rarely implemented, while deals involving the merger of insurance and private pensions portfolios have been quite frequent in the past years.

2.2 What are the main drivers for these acquisition structures?

As Romania is still an emerging market economy, the PE investors feel the need to have as much control as possible over the business, hence the trend for 100% majority stakes acquisitions.

The asset deal trend relies on factors such as the increased number of insolvent companies and companies with significant liabilities (which are schoolbook candidates for asset deals), the high volume of defaulting financial portfolios, as well as the polarisation of the insurance and pensions market.

However, tax considerations, as well as timeframe and complexity of the transfer process also significantly influence the business decision for one structure or another, being understood that while a share deal could be completed in one day (for joint stock companies) and in about 40 days (for LLCs), an asset deal could be a much more cumbersome process (e.g. third party approvals are usually needed for contract assignment, observance of the transfer rules for each component of the portfolio is needed, some licences/permits must be renewed, etc.).

2.3 How is the equity commonly structured in private equity transactions in Romania (including institutional, management and carried interests)?

The equity structure is rather basic, generally with one controlling shareholder and several minorities (in publicly traded companies the free float can be quite big).

Granting the employees and management with interest in the company as part of the remuneration/bonus package is not yet a general local practice.

The employees of several major companies where the State used to be a majority shareholder were granted with profit sharing benefits under the collective bargaining agreements and/or under the companies' charters; many of such provisions are still in force.

In case of multinational companies, the offer is annually made by the mother-company and not by the local one, and it can accommodate various forms, depending on the laws and practice of the home state of the respective company (stock options, units allocation, etc.).

Aside from the above situations, management equity benefits are generally awarded in PE transactions concerning rather small companies.

Stock-options granted to a company's personnel are tax free upon grating.

2.4 What are the main drivers for these equity structures?

Generally, investors want to keep as much control as possible, while the local management personnel is rarely placed in a privileged position, such as to ask for this type of uncustomary incentive. Moreover, given the emerging market status of Romania, the monetary compensation is generally viewed as more adequately responding to management team's requirements.

2.5 In relation to management equity, what are the typical vesting and compulsory acquisition provisions?

As mentioned above, there is no actual consistent practice in relation to management equity.

In principle, only the management team of the local subsidiary of publicly traded multinational companies is generally awarded with stock options, shares (or financing for shares purchase) or fund units, under various types of structures as per the national law of the mother company.

In the rare situations when a local manager directly negotiates some equity participation, shares acquisition is based on meeting some business targets during a relevant time period (three to five years).

3 Governance Matters

3.1 What are the typical governance arrangements for private equity portfolio companies?

Notably, as per local companies' regulations, the shareholders cannot get actively involved in the daily business activity, for which the management team is entirely responsible. Hence, the law provides that the shareholders only influence business directions via management appointment, approval of the yearly business plan and budget, approval of high value transactions and of closing/selling/charging business units, as well as approval of various corporate changes with relevance for the business (share capital increases/decreases, amendments to the registered business scope, opening of new branches, share capital increase/decrease, bonds' issuance, merger/spin-off).

Customarily, private equity investors tend to ensure that such have veto rights as regards adoption of sensitive or important matters in relation to the business of the portfolio company. Such veto rights are typically guaranteed through provision in company's articles of association of higher majority rules for adoption of strategic decisions, naturally within the limits expressly allowed by the relevant laws regarding decision adoption at the level of a company incorporated under Romanian law.

3.2 Do private equity investors and/or their director nominees typically enjoy significant veto rights over major corporate actions (such as acquisitions and disposals, litigation, indebtedness, changing the nature of the business, business plans and strategy, etc.)?

An active private equity investor (which holds a significant stake in the portfolio company) will customarily aim to retain some control over the company's business. In case the investor has a majority stake, such veto right is implicitly given by the standard quorum and majority rules for shareholders' decision making. If the investor is a minority one, it may achieve such by ensuing (based on a consent form of the other relevant shareholders) that the company's charter provides some quorum and majority rules that require its participation and vote in case of some key decisions.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

The veto possibility is subject to some limitations mainly deriving from (i) the legal boundaries imposed by law to shareholders' involvement in the daily management (however, a majority shareholder could counter-balance that by implicitly having the possibility to appoint at least the majority of the board members), and (ii) from the maximum thresholds for *quorum* and decision making imposed by law for some types of matters.

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or *vice versa*)? If so, how are these typically addressed?

Notably, a discretionary exercise of the veto rights should also be assessed in light of the general legal requirement for shareholders' conduct, namely to act *bona fide* and to observe the rights and legitimate interests of the other shareholders, as well as those of the company. Moreover, the concept of "protection of minority shareholders' rights" is acknowledged at the level of Romanian corporate practice and the relevant laws do provide for various mechanisms through which the minority shareholders may seek due observance of their rights (by the majority shareholders).

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including governing law and jurisdiction)?

A shareholder agreement is customarily tailored as per parties' understanding and no particular content or form of such is required under the law. This approach is in line with the EU regulations on the law applicable to contractual obligations which, in principle, entitle the parties to choose the law governing the agreement. As regards the jurisdiction clause, such will either be "connected" to the governing law or provide that the competent court of law is one from another jurisdiction or an arbitral tribunal.

However, in order for a shareholders' agreement regarding some key matters pertaining to the company's organisation functioning to be effectively enforceable (by constraining to actual performance instead of mere indemnification in case of a breach), the agreed terms should be duly transposed into the company's charter and become statutory rules.

Also, there are certain aspects regarding a company's corporate aspects and functioning which will at all times be governed by Romanian law, such as: the means of acquiring and losing the capacity of shareholder; the rights and obligations which derive from the capacity of shareholder; the means of appointing the directors; their competences and the functioning of the executive bodies; the rules for amendment of corporate deeds, etc.

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies?

The relevant laws do set forth a series of conditions to be observed by the appointed directors, such as not being previously convicted for money laundering, financing of terrorism, corruption, etc. The membership to the boards of financial institutions is also conditioned by some minimum years of experience and relevant expertise, as well as reputation requirements and, in some cases, by not holding a management position in some other types of financial institutions having a connected activity. In addition, the companies may provide in their charters for the requirement that at least part of the board members be independent (i.e. not previously tied to the company).

Notably, the private equity investors must be aware that, once appointed, the directors will mandatorily act solely in the best interests of the company, and not those of the particular shareholder that has appointed them. Hence, no disclosure of data and no exercise of duties in favour of such shareholder should be made by the respective directors.

During the exercise of their mandate, the directors must comply with a series of rules and limitations provided by the corporate laws.

The corporate laws require the directors to be insured for professional liability and customarily such is paid by the company.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

Directors have the duty to solely act in the interests of the respective company while in office and not those of a particular shareholder that has ensured their appointment, or of a company where they also hold an office or have an interest. Considering such, the directors need to ensure that all of a company's shareholders are equally informed on the company's business and that no aspects are brought to the knowledge of solely one/several shareholders based on the fact that such were nominated by those particular shareholders. In the case of public companies, this is rather easily ensured given the applicability of insider trading and data disclosure rules provided by capital markets laws. A similar approach is recommendable in the case of non-listed companies, in the sense that any reports/data/individual pieces of information are provided to all shareholders at the same time and by using the same means.

To be noted, under the corporate laws, a director/member of the supervisory board – natural person or, the representative of the director, legal entity – is allowed to concomitantly exercise at most five mandates of director and/or member of the supervisory board in joint stock companies which have their registered seat in Romania. This interdiction is not applicable in the cases when said director/member of the supervisory board is the owner of at least a quarter of the total number of shares or is a director/member of the supervisory board of the company which holds the aforementioned quarter of the total number of shares.

As per the applicable laws, a director is also always required to declare when it has a conflict of interest and has a personal obligation to avoid conflicts of interests. In case of financial companies, there are strict and detailed rules on such a full interest disclosure having to be made when appointed in office. The companies could also include in their charter special rules for conflicts of interests identification and disclosure.

4 Transaction Terms: General

4.1 What are the major issues impacting the timetable for transactions in Romania, including competition and other regulatory approval requirements, disclosure obligations and financing issues?

The structure of the transaction itself, as either a share deal or an asset deal may have great impact on a transaction's timeline; asset deals being generally lengthier by their nature. Nevertheless, even in a share deal, the parties may contractually agree to certain preconditions to the transaction's completion, which may significantly impact on the timetable (e.g. remedying some issues, obtaining/renewing certain business licences, amending some contracts, etc.).

As for regulatory approvals, the merger control clearance from the Competition Council may delay the implementation of a transaction by approximately two to three months (depending on the complexity of the matter); such clearance is needed in case of acquisitions where the aggregate turnover of the involved undertakings exceeds EUR 10 million and at least two of such undertakings had a turnover, which resulted from operations in Romania, exceeding EUR 4 million.

Regulatory approvals may also be needed in case the transfer entails the assignment of certain licences/permits. Transactions in regulated sectors, such as the financial field, usually require prior clearance from the relevant supervisory authority; normally, such is needed in case of mergers and acquisitions of a significant interest (usually more than 10%) (e.g. clearance from the National Bank of Romania – for transfers in banks and financial non-banking institutions; the Financial Supervisory Authority – for transfers in investment firms, insurance companies, pension companies, asset management companies, etc.).

4.2 Have there been any discernible trends in transaction terms over recent years?

There have been no such discernible trends in recent years.

5 Transaction Terms: Public Acquisitions

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

Public-to-private transactions may take different forms under Romanian law. Such could be, mainly, a private equity acquisition in

a state-owned company (privatisation), a joint private-public sharing in a mixed company and the classic public-private partnership (PPP) or concession.

In principle, privatisations may be conducted based on a competitive, transparent and non-discriminatory procedure, the process being highly regulated and scrutinised. One downside of such process is that it can be quite lengthy and bureaucratic.

As for the PPP, although such option is regulated under the current legal framework, no significant project was implemented in practice under such regulation, as it was considered unattractive to investors. A new PPP Bill has recently been passed by the Parliament of Romania which would bring significant clarifications, changes and improvements to the current existing framework and which is currently under a re-assessment procedure.

A public-to-private transaction can also take the form of a concession. There are two types of concession contracts under the general legal enactment regulating public procurement: (i) public works concession contracts; and (ii) services concession contracts. Other certain specific concessions are also regulated in specific sectors (e.g. public utility services).

A PPP/concession project would generally involve the contribution of both partners (in kind and/or of a financial nature).

One of the main challenges of a PPP/concession project is represented by the financing structure and the accommodation of the lender's interests in the framework of a public procedure. Although the project's financing is the responsibility of the private partner, in an emerging market the financing banks will want to protect their interests and therefore require different guarantees. One example of such would be the compensation to be paid by the contracting authority at termination due to the private partner's fault that could not be less than the outstanding loan amount. Another example would be the step-in right of the financing banks which is also a challenge in a PPP/concession project.

Also, another important challenge in respect of a PPP/concession project is the risk sharing, having a direct impact on its bankability.

5.2 Are break-up fees available in Romania in relation to public acquisitions? If not, what other arrangements are available, e.g. to cover aborted deal costs?

No break-up fees are generally available under Romanian law in relation to public acquisitions. It is common rule that public acquisitions are made based on competitive procedures in which any interested entity fulfilling the conditions imposed by the public authority/entity for such acquisition may submit a tender. It is also common practice that all costs related to the preparation of the tender are borne exclusively by the tenderer.

Nevertheless, in case of specific procedures (e.g. competitive dialogue), the public partner may grant to the participants to such procedure, except for the winning tenderer, certain incentives in respect of their participation in the procedure.

6 Transaction Terms: Private Acquisitions

6.1 What consideration structures are typically preferred by private equity investors in Romania?

The consideration is calculated typically as a multiple of EBITDA, and a price adjustment mechanism is put in place based on audited accounts. The buyers would prefer that the payment is made in instalments, subject to the achievement of certain targets/non-occurrence by a specific deadline of some events of default or some identified business risks.

There are also cases when sellers obtain that the payment is made in full upon completion of the transaction, when the related participation in the target company is also transferred. In such cases, the completion and related payment would take place after the fulfilment of the conditions precedent, such as obtaining any regulatory approvals for the transaction, or complying with certain actions required to remedy certain past breaches or ensuring the business's sustainability.

6.2 What is the typical package of warranties/indemnities offered by a private equity seller and its management team to a buyer?

Typical warranties are granted particularly in relation to the legal status of the transferred business/components thereof, and in relation to the accuracy of the company data that was made available to the investor in a due diligence process.

Statements from the management of the transferred business are a rather uncommon practice and mostly typical for privatisations.

Contractual amendments of the statutory prescription (statutes of limitation) terms in relation to the legal actions available to the buyer for the seller's contractual breaches are quite rarely agreed upon.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

Typical covenants from the seller's side may include the obligation to ensure, prior to transaction's completion, the assignment/extension of some key contracts, remedying of some legal matters, renewal/retention of licences and permits, etc. Also, confidentiality, non-compete and non-solicitation obligations can typically be found in transactions deeds. Personal indemnities/covenants from the management are very uncommon.

6.4 Is warranty and indemnity insurance used to "bridge the gap" where only limited warranties are given by the private equity seller and is it common for this to be offered by private equity sellers as part of the sales process?

While some insurance products against contractual breaches are available, their use is not the general norm in the business.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

The typical limitations refer to both time – given that the sellers will seek to limit their responsibility from one to three years – and amounts – given that the liability will be limited to net proceeds payable solely in case of specifically identified (material) breaches. In addition, various limitations are provided in view of the business being sold, such as intellectual property and employment risks. The limitation of management's liability is not customary.

6.6 How do private equity buyers typically provide comfort as to the availability of equity finance and what rights of enforcement do sellers typically obtain if commitments are provided by SPVs?

Private equity transactions usually provide for partial payments made in escrow accounts or in some cases bank guarantee letters. In case of SPVs, the sellers would require that the availability of the funds be ensured for the SPVs based on existing financing arrangements with the final investors, or preliminary bank commitments may be also provided.

6.7 Are reverse break fees prevalent in private equity transactions to limit private equity buyers' exposure? If so, what terms are typical?

These types of fees are not customarily used in local transactions.

7 Transaction Terms: IPOs

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

The conduct of an IPO is strictly regulated by capital market laws and the offer documentation, including the prospectus, must be approved by the local regulator – the Financial Supervisory Authority.

Customarily, an IPO will entail the disclosure, by the company, of various information, as required under the specific rules imposed by the relevant stock market. Moreover, should the IPO be conducted through local stock exchange markets, given the rather low liquidity of such, the private equity investor must take into consideration the fact that the success of such will largely depend on the market conditions and, respectively, the local investors' appetite in acquiring the offered stock.

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

The local IPOs conducted in recent years have typically provided for 30-day lock-up periods. Nevertheless, given that no legal requirements/limitations are provided in this respect, other periods could be set in view of the specifics of a particular IPO.

7.3 To what extent can rights in pre-existing shareholders' agreements survive post-IPO?

It is not prohibited to have pre-existing shareholders' agreements in a public company/post-IPO. However, such cannot be imposed upon the newly-entered shareholders and the effectiveness of pre-existing agreements may be significantly altered by the swift change in the voting rights following an IPO.

Notably, the charter of a public company cannot comprise limitations to the transferability of the shares (e.g. blocking periods for shares sale, rights of first refusal, drag along/tag along, etc.). However, some limitations may be contractually and separately agreed by shareholders.

8 Financing

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in Romania and provide an overview of the current state of the finance market in Romania for such debt.

The use of debt finance to fund private equity transactions is not frequently found in relation to operations directly targeting Romanian companies. Typically, the leveraged buy-out is structured at the level of the holding company (which may be established in another jurisdiction), when the debt finance is made available to the holding company and not for the target Romanian company. Lenders are reluctant in financing buy-outs of Romanian companies, due to the legal restrictions on financial assistance which impacts the provision of financing as well as the related security structure, and would provide asset financing instead (short-term loans to finance and/or refinance the acquisition and development and/or long-term investment loans with amortisation) or to finance the working capital requirements through short-term revolving loans.

The financing structure for private equity transactions would imply the following components: the holding company structure in the case of leveraged buy-outs; the mix of the leveraged finance with the asset finance; and working capital credit lines at the level of the Romanian target. In this context, structuring the transaction to allow debt finance is critical. For this reason, staple financing is a method that started being used on the Romanian market as well, especially when the bank acts in the transaction both as consultant (through their investment banking division) and as arranger and lender for the acquisition.

The bank debt is most commonly used for such financing structure in Romania. The mezzanine financing is also used to finance Romanian transactions, especially for highly leveraged companies, although the banks as senior lenders would prefer to obtain a ring fenced position for their financing. Institutional lenders, such as EBRD and IFC, are also present in Romanian transactions and would co-invest in the target Romanian company. The issuance of bonds or the public offering of shares on primary or secondary markets has been rarely used as a form of equity financing so far, but it may become increasingly attractive especially for companies in a sound financial position, which have strong and long-term sustainable earnings growth or are capable of becoming profitable in the short-term.

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

There are two key restrictions in structuring debt financing of private equity transactions in Romania: (i) the prohibition in giving financial assistance; and (ii) ensuring the economic benefit for the assistance provider.

The Romanian Company Law prohibits joint stock companies from providing loans or creating guarantees to finance the subscription or the acquisition of their own shares. There are few exceptions in the Companies Law to this prohibition, which may be available in a buyout transaction: (i) the prohibition only applies where there is an acquisition of shares in a Romanian joint stock company; and (ii) the target company may give security in connection with a working capital facility or investment loans made available to it. No "whitewash" procedure or similar procedures are in place to allow the provision of financial assistance.

9 Tax Matters

9.1 What are the key tax considerations for private equity investors and transactions in Romania?

Private equity investors will find Romania an attractive market for investing due to its numerous advantages.

The corporate income tax rate is 16%, being one of the most attractive in the European Union.

One of the advantages for considering investing in Romania is the extensive Double Taxation Treaties network.

Worth being mentioned is that, as an EU Member State, Romania has implemented all the taxation-related EU directives and regulations.

Other key consideration is the favourable geostrategic position: CIS, the Balkans, Middle East and North Africa, crossed by three pan-European transport corridors (4, 7 and 9). Also, Romania has the largest and deepest maritime port in the Black Sea, the maritime port located in Constanta.

9.2 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors or transactions and are any anticipated?

A reduced VAT rate will be implemented for food products starting in the second half of 2015.

Moreover, a draft version of a Fiscal Code, to be implemented starting in January 2016, was published by the Ministry of Finance. This draft legislation will bring, upon its implementation, major changes to the domestic tax legal frame (e.g. reduced VAT rate, no tax on dividend distribution).

In addition to the development of the Fiscal Code, a new draft of Fiscal Procedure Code has been published (also envisaged to be implemented starting in January 2016). This will also significantly change the current approach.

With respect to tax rulings and clearances, there are no major changes in the fiscal legal framework.

10 Legal and Regulatory Matters

10.1 What are the key laws and regulations affecting private equity investors and transactions in Romania, including those that impact private equity transactions differently to other types of transaction?

In terms of public-private transactions, the main law regulating concession contracts is the Government Emergency Ordinance No. 34/2006 on the award of public procurement contracts, public works concession contracts and services concession contracts, as approved, with amendments and completions, by Law No. 337/2006, subsequently amended and supplemented.

In the PPP field, currently the main legal enactment is Law No. 178/2010 on public-private partnership.

In addition, the following legal enactments are also relevant: Companies Law No. 31/1990; Capital Markets Law No. 297/2004; Emergency Government Ordinance No. 99/2006 on credit institutions and capital adequacy; and Emergency Government Ordinance No. 88/1997 on companies' privatisation.

10.2 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

As per recent amendments, the threshold of legally permitted participation in the share capital of a market operator has been raised to 20% (from 5%). Also, it is highly anticipated that there will be a rise in the threshold of permitted participation in the share capital of financial investment companies (SIFs), which were set-up pursuant to specific legislation and are currently functioning in the form of five major investment companies which are active players on the capital markets and which own high net assets.

10.3 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors' approach to private equity transactions (e.g. diligence, contractual protection, etc.)?

Romania has in place extensive legislation protecting against/sanctioning of corruption and bribery. Moreover, in the past years, the activity of the special prosecution authority in this field – the National Anti-corruption Department (NAD) – has evolved significantly. NAD's measures have created a deterring effect as regards corruption/bribery practices.

In the past years, investors' due diligence and caution in relation to anti-corruption/bribery practices has increased significantly, especially in areas such as healthcare and energy. Granting of contractual warranties in relation to compliant conduct is not generally used, being typically required when the buyer is part of a multinational group subject to anti-corruption policies or is a U.S. resident.

10.4 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies; and (ii) one portfolio company may be held liable for the liabilities of another portfolio company)?

In principle, neither the investors/shareholders will be held liable for the liabilities of the company, nor the affiliated companies thereof.

Nonetheless, exceptions from the corporate veil protection are provided in the cases of insolvency and insolvability, in view of the fact that in certain circumstances a shareholder could be held liable if it is ascertained its active and decisive role in worsening the company's financial situation.

11 Other Useful Facts

11.1 What other factors commonly give rise to concerns for private equity investors in Romania or should such investors otherwise be aware of in considering an investment in Romania?

Traditionally, Romania has been considered quite a bureaucratic country and it may be that, in some fields, public authorities reply rather slowly to the various applications/inquiries received; however, actions for solving this issue have already been taken by the Government and improvements are starting to be seen.

Another potential concern for private equity investors in Romania could be the insufficiently developed/maintained infrastructure in some regions of the country; in any case, according to the Government's strategy and investment priorities for 2015, it is likely that capital spending in infrastructure will improve, with several major infrastructure projects (especially motorways) expected to be completed in the near future.

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Ţuca Zbârcea & Asociaţii is a full-service firm in Romania, employing cross-disciplinary teams of lawyers, insolvency practitioners, tax consultants, IP counsellors and EU structural funds consultants. It cooperates on a regular basis with various local law firms throughout Romania while operating a secondary law office in Cluj-Napoca (Romania) and a representative office in Madrid (Spain). More so, the firm sealed a "best friend agreement" with Ţurcan Cazac from the Republic of Moldova.

Ţuca Zbârcea & Asociaţii covers all major areas of practice, including M&A, corporate/commercial, banking & finance, capital markets, litigation & arbitration, real estate, employment law, intellectual property, competition, PPP/PFI and concessions, and environmental law. The firm's client portfolio comprises international corporations, financial institutions, as well as 'Fortune 500' category companies. It is also working with local public authorities and bodies.

Our team advises private equity and venture capital sponsors on their fund establishment and investment activities, including start-up investments, development capital and leveraged buyouts. We offer our clients the benefit of a full-service practice including financing and securities matters, while also assisting on the everyday stage of an investment cycle.

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