# Romania

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## GENERAL

**1. Is it common for employees to be offered participation in an employee share plan?**

There are no express regulations on employee share plans and it is uncommon for Romanian companies to implement them. However, more and more Romanian subsidiaries of foreign companies are seeking legal models under which they can ensure that local employees have access to share plans that apply within their groups.

**2. Is it lawful to offer participation in an employee share plan where the shares to be acquired are shares in a foreign parent company?**

There are no prohibitions or limitations on offering participation in a share plan to Romanian employees where the shares to be acquired are issued by a foreign company or traded on a foreign stock exchange.

## SHARE OPTION PLANS

**3. Please list each type of share option plan operated in your jurisdiction (if more than one).**

Romanian law does not set out rules for any particular type of share option plan and none have emerged in practice. Companies offer their own individual share plans, which must comply with general rules set out in laws such as:

- Law No. 31/1990 on trading companies, as amended (Companies Law). The Companies Law applies only to Romanian companies, not all companies offering shares in Romania.
- Law No. 571/2003 on the Fiscal Code, as amended (Fiscal Code).

**4. In relation to the share option plan:**

- **What are the plan's main characteristics?**
- **Which types of company can offer the plan?**
- **Is this type of plan popular? If so, among which types of company is this plan particularly popular?**

### Share option plan

**Main characteristics.** As there are no specific regulations concerning share option plans, companies that implement these plans usually tailor their provisions to comply with similar plans in their home jurisdictions.

A company usually grants its employees options to acquire a specific number of shares in the company at a price pre-determined by the employer. The price can be set according to the nominal or market value of the shares, or on a different basis.

When the employees exercise their options, they receive the shares in exchange for the pre-determined price.

The employer's shareholders must approve the share option plan in a shareholders' general meeting before the plan is introduced (*Companies Law*). This condition only applies to Romanian companies (*see Question 3*).

**Types of company.** Any joint stock company (that is, a company with a minimum share capital of RON90,000 (about US$38,810) and a minimum of two shareholders) can offer share options to its employees.

In addition, limited liability companies (companies with a minimum share capital of RON200 (about US$90)) sometimes implement share option plans. However, under Romanian law the maximum number of shareholders in a limited liability company cannot exceed 50.

**Popularity.** The popularity of share option plans has increased over the last few years, especially after Romania's accession to the EU.

**5. In relation to the grant of share options under the plan:**

- **Can options be granted on a discretionary basis or must they be offered to all employees on the same terms?**
- **Is there a maximum value of shares over which options can be granted, either on a per-company or per-employee basis?**
- **Must the options have an exercise price equivalent to market value at the date of grant?**
- **What are the tax and social security obligations arising from the grant of the option?**

### Share option plan

**Discretionary/all-employee.** Share option plans are usually offered only to employees occupying management positions. However, there is no restriction on offering share option plans to other categories of employees.

The employer can select a category of employees to whom the share option plan is addressed. However, the different treatment of employees that belong in the same category and that make the same contribution to the company's results may be considered to be discrimination and sanctioned in accordance with the law.

**Maximum value of shares.** There are no legal provisions specifying a maximum value of shares over which options can be granted.

**Market value.** There are no legal provisions concerning the exercise price.

**Tax/social security.** The grant of a share option is not subject to income tax or other taxes or social security contributions.

**6. In relation to the vesting of share options:**

- **Can the company specify that the options are only exercisable if certain performance or time-based vesting conditions are met?**
- **Is any tax or social security contributions payable when these performance or time-based vesting conditions are met?**

### Share option plan

**Exercisable only on conditions being met.** The employer can specify that the options are only exercisable if certain performance or time-based vesting conditions are met. It is the market practice in Romania to impose such conditions.

**Tax/social security.** No tax or social security contribution is payable when the performance or time-based vesting conditions are met.

**7. Do any tax or social security implications arise when the:**

- **Option is exercised?**
- **Shares are sold?**

### Share option plan

**Tax/social security on exercise.** No tax or social security contributions are payable on exercise of an option under a share option plan.

**Tax/social security on sale.** The discount on price granted to the employees under a share option plan is subject to taxation on the capital gain when the employees sell the shares. The capital gain is calculated as the difference between the sale price and the discounted purchase price for which the shares were acquired under the plan.

If the company in which the shares are granted is listed, a 16% tax on the capital gain applies if the shares are sold during the first year after the acquisition. This is reduced to 1% if the shares are sold after the first year.

If the company in which the shares are granted is unlisted, a 16% tax on capital gain applies whenever the shares are sold.

The tax on the capital gain is withheld by the purchaser from the purchase price and paid on behalf of the employee (the seller). If the employee sells the shares to the employer, then the employer withholds the capital gain tax from the purchase price and pays it on the employee's behalf.

No social security charges apply when shares are sold under a share option plan.

## SHARE ACQUISITION OR PURCHASE PLANS

**8. Please list each type of share acquisition or purchase plan operated in your jurisdiction (if more than one).**

Romanian law does not provide rules for any particular types of share acquisition or purchase plans. However, these plans must comply with the general law (*see Question 3*).

**9. In relation to the share acquisition or purchase plan:**

- **What are the plan's main characteristics?**
- **Which types of company can offer the plan?**
- **Is this type of plan popular? If so, among which types of company is this plan particularly popular?**

### Share acquisition or purchase plan

**Main characteristics.** There are no express legal provisions concerning share acquisition or purchase plans. However, a company can offer employees plans that enable them to acquire shares in the company in exchange for a pre-determined price.

**Types of company.** Any joint stock company can offer share purchase plans to its employees.

In addition, limited liability companies sometimes implement share purchase plans. However, under Romanian law, a limited liability company can have no more than 50 shareholders (*see Question 4, Share option plan: Types of company*). Therefore, the use of these plans in limited liability companies is restricted.

**Popularity.** It is difficult to assess the popularity of share acquisition or purchase plans. As with share option plans, Romanian subsidiaries of foreign companies implement share acquisition or purchase plans following models similar to those used within their company groups.

**10. In relation to the initial acquisition or purchase of shares:**

- **Can entitlement to acquire shares be awarded on a discretionary basis or must it be offered to all employees on the same terms?**
- **Is there a maximum value of shares that can be awarded under the plan, either on a per-company or per-employee basis?**
- **Must employees pay for the shares and, if so, are there any rules governing the price?**
- **Is any tax or social security contributions payable when the shares are awarded?**

### Share acquisition or purchase plan

**Discretionary/all-employee.** A company has full discretion to award its employees a right to acquire shares through an acquisition or purchase plan. However, it must apply the same treatment to all employees that belong to a specific category and that make equal contributions to the company's results (*see Question 5, Share option plan: Discretionary/all-employee*).

**Maximum value of shares.** There are no restrictions on the value of shares that can be awarded.

**Payment of shares and price.** The employer usually withholds the price for the acquired shares directly from its employees' salaries. However, under the Romanian Labour Code the employer must obtain the express prior consent of employees before making any deduction or withholding from their salaries.

**Tax/social security.** No tax or social security charges are payable when the shares are awarded.

**11. In relation to the vesting of share acquisition or purchase awards:**

- **Can the company award the shares subject to restrictions that are only removed when performance or time-based vesting conditions are met?**
- **Is any tax or social security contributions payable when these performance or time-based vesting conditions are met?**

### Share acquisition or purchase plan

**Restrictions removed only on conditions being met.** The employer can award the shares subject to performance or time-based vesting conditions.

**Tax/social security.** No tax or social security contribution is payable when the plan's performance or time-based vesting conditions are met.

**12. What are the tax and social security implications when the shares are sold?**

### Share acquisition or purchase plan

If the company offering the share acquisition plan is listed, a 16% tax on the capital gain applies if the shares are sold during the first year after the acquisition. The tax is only 1% if the shares are sold after the first year.

If the company offering the share acquisition plans is not listed, a 16% tax on the capital gain will apply whenever the shares are sold.

The capital gain subject to taxation is calculated as the difference between the sale price and the discounted purchase price of the shares under the plan.

No social security charges apply to the sale of the shares granted under the plan.

The tax on capital gain is withheld by the purchaser from the purchase price and paid on behalf of the employee (the seller). If the employee sells the shares to the employer, then the employer withholds the capital gain tax from the purchase price and pays it on the employee's behalf.

## PHANTOM OR CASH-SETTLED SHARE PLANS

**13. Please list each type of phantom or cash-settled share plan operated in your jurisdiction (if more than one).**

Romanian law does not provide rules for any particular type of phantom or cash-settled share plans.

**14. In relation to the phantom or cash-settled share plan:**

- **What are the plan's main characteristics?**
- **Which types of company can offer the plan?**
- **Is this type of plan popular? If so, among which types of company is this plan particularly popular?**

### Phantom or cash-settled share plan

**Main characteristics.** Although there are no express legal provisions concerning phantom or cash-settled share plans, a company can offer such a plan to its employees. When the award vests or is exercised, the company pays the employee a cash award that reflects the company's share value growth.

**Types of company.** Any type of company can offer a phantom or cash settled share plan.

**Popularity.** It is difficult to assess the popularity of these plans. As with share option plans and share acquisition plans, Romanian subsidiaries of foreign companies implement phantom share plans following models similar to those used within their company groups.

**15. In relation to the grant of phantom or cash-settled awards:**

- **Can the awards be granted on a discretionary basis or must they be offered to all employees on the same terms?**
- **Is there a maximum award value that can be granted under the plan, either on a per-company or per-employee basis?**
- **Is any tax or social security contributions payable when the award is made?**

### Phantom or cash-settled share plan

**Discretionary/all-employee.** A company has full discretion to award a phantom or cash-settled award to its employees. However, it must apply the same treatment to all employees that belong to a specific category and that make equal contributions to the company's results (*see Question 5, Share option plan: Discretionary/all-employee*).

**Maximum value of awards.** There is no maximum award value.

**Tax/social security.** There are no tax implications when the award is made, but only when it is paid out to the employees (*see Question 17*).

**16. In relation to the vesting of phantom or cash-settled awards:**

- **Can the awards be made to vest only where performance or time-based vesting conditions are met?**
- **Is any tax or social security contributions payable when these performance or time-based vesting conditions are met?**

### Phantom or cash-settled share plan

**Award vested only on conditions being met.** Phantom share awards can be structured to vest only when performance or time-based conditions are met.

**Tax/social security.** No tax or social security contribution liability arises when vesting conditions are met.

**17. What are the tax and social security implications when the award is paid out?**

### Phantom or cash-settled share plan

Cash awards fall into the category of either salary or auxiliary income for the employee. Salary consists of the cash amount that the employee receives for his work (for example, overtime bonuses). Auxiliary income consists of any other cash payments paid by the employer (for example, a car allowance).

Salary and auxiliary income are both subject to 16% income tax and social security contributions. They are due from the employee, but withheld and paid by the employer on the employee's behalf.

## GUIDELINES

**18. Are there any institutional, shareholder, market or other guidelines that apply to any of the above plans, and which types of companies are subject to them? What are their principal terms?**

There are no specific guidelines that apply to employee share plans.

## EMPLOYEE REPRESENTATIVES

**19. Is consultation or agreement with, or notification to, employee representative bodies required before an employee share plan can be launched?**

A company's management does not have to obtain the agreement of employee representatives before deciding to launch a share plan.

However, a company must inform and consult with employee representatives when, among other situations, decisions that are likely to lead to substantial changes in work organisation or contractual relationships with the employees are to be taken. Implementing a share plan may be considered to trigger changes in contractual relationships. Therefore, the company should consult employee representatives before introducing the plan.

## EXCHANGE CONTROL

**20. Do exchange control regulations prevent employees sending money from your jurisdiction to another to purchase shares under an employee share plan?**

Romanian foreign exchange legislation does not restrict Romanian-resident employees from acquiring or holding foreign securities.

Employees can pay the purchase price for the shares in foreign currency and transfer the subscription payment abroad.

**21. Do exchange control regulations permit employees to repatriate proceeds derived from selling shares in another jurisdiction?**

Romanian exchange control regulations permit employees to repatriate proceeds derived from selling shares in another jurisdiction.

## INTERNATIONALLY MOBILE EMPLOYEES

**22. What is the tax position when:**

- **An employee who is resident in your jurisdiction at the time of grant of a share plan award leaves your jurisdiction before any taxable event affecting the award takes place?**
- **An employee is sent to your jurisdiction holding share plan awards granted to him before he is resident in your jurisdiction?**

### Resident employee

A Romanian resident employee who leaves the country before a taxable event affecting the award takes place is not liable under Romanian law to any income tax or social security contributions when that taxable event takes place.

### Non-resident employee

If awards have been already granted to a non-resident employee before he is sent to Romania no tax or social security contributions will apply in Romania.

## PROSPECTUS REQUIREMENTS AND OTHER CONSENTS OR FILINGS

**23. For the offer of and participation in an employee share plan:**

- **What prospectus requirements (if any) must be completed and by when? What exemptions (if any) are available?**
- **What other regulatory consents or filings (if any) must be completed and by when? What exemptions (if any) are available?**

### Prospectus requirements

Generally, under the Romanian capital market regulations, all sales or offers of securities on the capital market require the drafting of a prospectus.

Law No. 297/2004 on capital markets, as amended, transposes into Romanian law the provisions of Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading.

The prospectus must contain information concerning the issuer and the securities to be offered to the employees. In particular, it should contain all information which, according to the particular nature of the issuer and of the offered shares, is necessary to enable the employees to make an informed assessment of the:

- Assets, liabilities, financial position, profit and losses and prospects of the issuer.
- Rights attached to the securities.

Listed companies fall under the capital market regulations, so all share option plans which offer shares in a listed company to employees must comply with the prospectus requirements.

### Other regulatory consents or filings

There are no other regulatory consents or filings.

## DEVELOPMENTS AND REFORM

**24. Please briefly summarise:**

- **The main trends and developments relating to employee share plans over the last year.**
- **Any official proposals for reform of the law on employee share plans.**

### Trends and developments

There have been no recent trends or developments relating to employee share plans.

### Reform proposals

There are no proposals for reform of the law relating to employee share plans.

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