

# The International Comparative Legal Guide to: **Mergers and Acquisitions 2008**

A practical insight to cross-border Mergers and Acquisitions



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### 1 Relevant Authorities and Legislation

#### 1.1 What regulates M&A?

Takeovers of Romanian public companies are regulated under **Law No. 297/2004** on capital markets, as amended (“Law No. 297/2004”), and its implementing regulations.

Law No. 297/2004 implements into Romanian legislation the provisions of the following EU Directives: Directive 93/22/CEE, Directive 97/9/CEE, Directive 85/611/CEE, Directive 98/26/CEE, Directive 2003/71/CEE, Directive 2001/34/CEE, Directive 2003/6/CEE, Directive 2002/65/CEE, and Directive 1993/6/CEE.

A Romanian public company may be subject to the provisions of Law No. 297/2004 if it is incorporated as a joint stock company under the provisions of **Law No. 31/1990** on companies, as amended (“Law No. 31/1990”), and its shares are traded with the Romanian Stock Exchange (“**RSE**”) or Romanian Over the Counter Stock Exchange (Rom. “**RASDAQ**”).

Currently, in accordance with Law No. 297/2004, the RSE and RASDAQ were “unified” under the RSE umbrella. Based on such reorganisation process, the RSE acts as a unique legal entity incorporated in Romania as a joint stock company. Moreover, the RSE’s constitutive act shall regulate both RSE and RASDAQ corporate activities.

However, Romanian public companies shall continue to be traded over the RSE and RASDAQ, in accordance with each stock exchange’s trading criteria.

The Romanian Exchange Commission (Rom. “**CNVM**”) oversees the compliance of investors and traded companies with Law No. 297/2004 and its implementing regulations. In this regard, the CNVM issues binding legislation, e.g. orders, rules and instructions. **CNVM Rule No. 1/2006** on entities issuing securities, and securities operations (“**CNVM Rule No. 1/2006**”), and **CNVM Rule No. 2/2006** on capital markets, are paramount for the implementation of Law No. 297/2004.

Other legislation of relevance for takeovers of Romanian public companies are Law No. 571/2003 on the Fiscal Code, and its implementing legislation, Emergency Government Ordinance No. 92/1997 on the support of direct investments, as approved by Law No. 241/1998, **Law No. 21/1996** on competition (“Law No. 21/1996”), **Law No. 53/2003** on the Labour Code, as amended (“Law No. 53/2003”), or Law No. 31/1990.

#### 1.2 Are there different rules for different types of public company?

Law No. 297/2004 and its implementing regulations apply to public companies traded with RSE and RASDAQ. Romanian public companies traded outside the jurisdiction must comply with the rules and regulations of the jurisdiction where such companies’ shares are traded. Such companies must seek the approval of the exchange commission of the jurisdiction in which the company shares are traded.

Companies that were once publicly traded, but are now no longer traded but still enjoy a wider shareholder base, are not subject to Law No. 297/2004 and its implementing regulations. As a rule, such companies’ shares may be acquired based on the provisions of Law No. 31/1990.

#### 1.3 Are there special rules for foreign buyers?

Law No. 297/2004 applies irrespective of bidder citizenship or place of incorporation. Foreign investors in Romania benefit from the principle of equal treatment, i.e. foreign investors enjoy a similar legal treatment as that enjoyed by Romanian investors. No restrictions or special rules apply for foreigners willing to buy shares in a Romanian public company.

As of 1 January 2007, after Romania’s accession to the EU, in accordance with the provisions of **Law No. 312/2005** on acquiring ownership rights over real estate by foreign individuals and/or legal entities (“**Law No. 312/2005**”), individuals or legal entities of EU or Economic European Space (“**EES**”) nationality are entitled to acquire full ownership rights over real estate in Romania. Such actions are possible without it being necessary to use a Romanian corporate vehicle (by acquiring its shares under Law No. 297/2004, or by incorporating it under Law No. 31/1990).

Under Law No. 312/2005, non-EU or non-EES nationals are authorised to acquire real estate in Romania based on the provisions of the international treaties concluded between Romania and such nationals’ country of residence. Law No. 312/2005 provides for certain restrictions in case of establishment of secondary residences/branches, or for the purchase of forests or agricultural land.

#### 1.4 Are there any special sector-related rules?

Change of ownership of Romanian public companies operating under certain regulated industries may require prior approval/authorisation of the competent regulatory agency. Such may be the case for Romanian public companies operating in the mining, oil, insurance or banking sectors. Moreover, in certain

cases, the buyer should envisage the impact of the provisions of Law No. 21/1996 prior to undertaking the takeover transaction.

### 1.5 What are the principal sources of liability?

Law No. 297/2004 prohibits insider dealing and market manipulation practices. The CNVM is authorised to oversee any investigation related to such unlawful practices. In this regard, the CNVM is authorised to: i) access any documents or data; ii) request and receive any information; iii) perform investigations for collecting evidence; iv) request phone records; v) require the cessation of any activity which is contrary to the law; vi) suspend transactions; vii) require law enforcement agencies to seize goods subject of the investigation; and viii) temporarily prohibit the activities of the investigated public company.

As for applicable sanctions, the CNVM may issue a written warning, or a fine. If the subject of the fine is an individual, the fine ranges from RON 500 to RON 50,000 (approx. EUR 149 to EUR 14,925). Criminal charges may also be filed, in certain cases.

If the subject of the fine is a public company, the fine ranges from 0.5% to 5% of the company's paid share capital. In certain cases, companies may also be fined with an amount ranging from half to the entire value of the transaction, provided that such transaction was based on insider dealing and/or market manipulation practices. Together with the fine, the CNVM may also suspend or withdraw the authorisation of the company whose shares were admitted to trade with RSE or RASDAQ, or may temporarily prohibit the performance of certain activities by such a company.

## 2 Mechanics of Acquisition

### 2.1 What alternative means of acquisition are there?

With reference to the acquisition of a Romanian public company, the following public takeover avenues are available under Law No. 297/2004: i) takeover offers; ii) voluntary takeover offers; and iii) mandatory takeover offers.

Alternative means of acquisition of a Romanian public company are: i) the merger procedure provided under Law No. 31/1990; or ii) the enforcement of a pledge agreement having as its object the Romanian public company's shares.

### 2.2 What advisers do the parties need?

In practice, the bidder is supported by: i) a legal adviser, who is in charge of any legal aspects of the takeover transaction, including the performance of a due diligence exercise to estimate the legal prospects of the target; and ii) a securities agent, who must be authorised by the CNVM to perform financial services under Law No. 297/2004.

The assistance of a tax adviser is recommendable, for offering the bidder an accurate tax structure with regard to the outcome of the transaction. Financial institutions, such as investment banks or investment funds, may be involved on the bidder side, in order to provide bidder with the financial resources during the takeover procedure.

Under the CNVM Rule No. 1/2006, assistance of an independent appraisal expert (teaming with a financial auditor and an investment consultant) is required in the case of estimation of the price during a mandatory takeover offer.

### 2.3 How long does it take?

Law No. 297/2004 requires the bidder to file with the CNVM a written takeover application request together with the takeover offer. Supporting documentation related to the price offered by the bidder (cash, securities or both), and a bank guarantee of at least 30% of the total value of the takeover offer must also be filed with the takeover application form.

The CNVM must issue an answer approving or denying the takeover offer within 10 working days from the application's filing date. If the CNVM approves the takeover request, the bidder has 10 working days to initiate the takeover proceedings, i.e. to publish the takeover announcement in two national daily newspapers.

Within three days as of the publication date, the takeover offer becomes official, and must be completed within the timeframe provided with the takeover offer documentation and the takeover announcement. Based on Law No. 297/2004, such time frame ranges from at least 15 working days to a maximum of 50 working days.

### 2.4 What are the main hurdles?

In practice, the main hurdles tend to be: i) the performance of the due diligence exercise, as most Romanian public companies are derived from former State-owned companies, where the estimation of the legal status of their assets and share capital often proves to be a challenge; ii) the preparation of the supporting documentation to be filed with the CNVM, together with the takeover application request and the takeover offer; iii) compliance with the target/bidder minority shareholders' requests, in order to seek their co-operation for the successful outcome of the transaction (under law, minority shareholders may challenge before court resolutions made by the new majority shareholder); and iv) obtaining the prior approval of the Romanian competition authority, under Law No. 21/1996 (if applicable). In a maximum of 7 working days as of the date of the closing of the public offer, the bidder must notify the CNVM and the stock exchange of the outcome of the takeover offer.

### 2.5 How much flexibility is there over deal terms and price?

Under Law No. 297/2004, the prior approval of the CNVM of the takeover offer is mandatory. In the absence of such approval, or in the case of non-compliance with the CNVM terms prescribed under the approval, the takeover offer shall be deemed null and void.

Upon the CNVM's approval of the takeover offer, the bidder must publish the takeover announcement in two national daily newspapers. As of the takeover publication date, the takeover terms become mandatory.

Law No. 297/2004 provides the principle that all target shareholders must be treated equally, and must receive takeover information in equal terms. Any advertising of the takeover offer must be previously authorised by the CNVM, and must concur with the information provided in the takeover announcement.

Any amendment to the takeover offer must be filed with the CNVM, and announced to the public in the same form as provided for the initial takeover offer. For further details, please see question 4.4 below.

Law No. 21/1996 prohibits the fixation of share prices. Moreover, Law No. 297/2004 prohibits as an unfair practice the practice by individuals and/or legal entities of one or more Romanian public companies to directly or indirectly agree on the fixation of company share prices, or to maintain company share prices at an abnormal or artificial level.

## 2.6 What differences are there between offering cash and other consideration?

Under CNVM Rule No. 1/2006, the price of a takeover offer must be in cash, securities, or a combination of both cash and securities.

The difference between offering cash and other consideration consists in the fact that when the price is offered using securities, the bidder must provide target shareholders: i) with a cash estimation, in order for sellers to opt between receiving securities or a cash equivalent; and ii) with corporate details of such securities, for information purposes.

## 2.7 Do the same terms have to be offered to all shareholders?

Yes. Under Law No. 297/2004, all target shareholders must receive equal access to takeover information, i.e. the same takeover information and terms must be offered to any of such shareholders.

## 2.8 Are there any limits on agreeing terms with employees?

Under CNVM Rule No. 1/2006, in the case of a voluntary takeover offer, the target board of administrators must inform target employees of the offer terms. Target employees may issue a written opinion. Such opinion shall be attached to the opinion of the target board of administrators, and shall be submitted to the bidder for review.

Under Law No. 53/2003, in the case of “transfer of the ownership right over a company”, the company employees or the company union must be informed of the legal, economic and social implications of such transfer. The term “transfer of the ownership right over a company” may include the acquisition by a bidder of the company shares, upon performance of a takeover procedure under Law No. 297/2004.

Upon performance of the transfer, the bidder must take over all existing target employees. Such employees cannot be dismissed on an individual or collective basis as a result of the occurrence of the transfer.

In addition to the provisions of Law No. 53/2003, **Law No. 67/2006** on the protection of employees in the case of total or partial transfer of a company (“Law No. 67/2006”) also applies.

Law No. 67/2006 was adopted based on EU Directive 2001/23/CE. Under Law No. 67/2006, the bidder: i) cannot claim individual or collective dismissal of employees based on the occurrence of the takeover; ii) must take over all individual and collective labour agreements concluded between the target and its employees; and iii) may renegotiate the target’s collective labour agreement after one year as of the takeover date.

Moreover, 30 days prior to the takeover date, the bidder must inform the target’s employees in writing of: a) the envisaged takeover date, including the reasons for the takeover; b) the legal, economic and social consequences of the transfer; c) the decisions made concerning the employees; and d) the working conditions to be provided upon takeover.

If the takeover requires decisions to be made in relation to a dismissal of employees, the bidder must agree with target employees over the terms of such dismissal, 30 days prior to the takeover date. Non-compliance with such provisions is fined with RON 1,500 to RON 3,000 (approx. EUR 447 to EUR 895).

## 2.9 What documentation is needed?

Under Law No. 297/2004 and CNVM Rule No. 1/2006, the documentation needed for a valid takeover offer includes: i) the

takeover application request; ii) the takeover offer; iii) the takeover announcement; iv) CNVM approval; v) the bidder’s statement on the takeover price; vi) a bank guarantee proof; vii) a representation agreement concluded by bidder with the securities agent; viii) the bidder’s statement on the affiliates and the status of conflicts of interests; ix) the bidder’s written certification over the authenticity of filed documents; x) if the bidder is a legal entity: proof of the bidder’s registration with the Register of Commerce in the jurisdiction of incorporation, the bidder’s constitutive act and additional acts thereto, proof of the bidder’s shareholders’ structure, the resolution of the bidder’s shareholders’ general assembly/bidder’s board of administration authorising the issuing of the takeover offer over the target company; and (xi) if the bidder is an individual, proof of identity.

All documents must be filed in Romanian (originals or certified copies). Translations must be certified by a public notary.

## 2.10 Are there any special accounting procedures?

Under Law No. 297/2004 and CNVM Rule No. 1/2006, the assessment of the takeover price includes the estimation of certain accounting data.

As such, the takeover price must be at least equal to either: i) the highest price paid by bidder for the target’s shares in the last 12 months prior to the filing with the CNVM of the takeover offer; ii) the average share price in the last 12 months prior to the filing with the CNVM of the takeover offer; or iii) the net active value per share (Rom. “*activul net pe actiune*”), as such was calculated based on the bidder’s last financial statement. Such calculation is used for the assessment of the takeover price in the case of a public takeover offer or voluntary takeover offer.

The takeover price in the case of a mandatory takeover offer must be at least equal to the highest price paid by the bidder for the target’s shares in the last 12 months prior to the filing with the CNVM of the takeover offer. If such data is not available, the assistance of an independent appraisal expert is required to estimate the applicable price.

## 2.11 What are the key costs?

A takeover offer includes the following key costs: i) the advisers’ fees; ii) CNVM fees; and iii) bidder internal costs.

## 2.12 What consents are needed?

The takeover offer must be approved by the CNVM. A decision is delivered by the CNVM within ten working days as of the registration of the takeover application request, together with supporting documentation.

Where applicable, the consent of the Romanian anti-trust authorities is required prior to performance of the takeover.

Moreover, the consent of the bidder’s shareholders or bidder’s board of administrators is required prior to commencement of the takeover proceedings.

## 2.13 What levels of approval or acceptance are needed?

i) A takeover offer refers to the offer of an individual or legal entity, irrespective of its citizenship/nationality, to acquire shares of a Romanian public company; such offer must be issued to all target shareholders, provided that they enjoyed equal receipt of the offer terms and conditions.

ii) A voluntary takeover offer refers to the offer of an individual or legal entity, irrespective of its citizenship/nationality, to acquire shares of a Romanian public company representing more than 33% of such company's voting rights.

iii) A mandatory takeover offer refers to the offer of an individual or legal entity, irrespective of its citizenship/nationality, which directly or indirectly already holds more than 33% of voting rights in a Romanian public company, to acquire the remaining shares of such company. Such acquisition must be performed not more than two months after the moment upon which such threshold of more than 33% was reached. Under CNVM Rule No. 1/2006, if an individual or legal entity acquires more than 33% of target voting rights prior to the date of entering into force of Law No. 297/2004 (i.e. July 29, 2004), a mandatory takeover offer shall be launched to reach or exceed 50% of target voting rights.

As for the levels of acceptance or approval of the bidder/target board of directors or shareholders' resolutions, the provisions of the bidder/target's constitutive acts should provide such details.

In the case of a merger, both the bidder and target shareholders' extraordinary general assemblies must adopt a resolution ratifying the merger. If the bidder or target is a Romanian joint stock company, unless their constitutive acts provide differently, under Law No. 31/1990 such resolutions must be adopted with the presence of shareholders representing at least 3/4 of bidder/target's share capital, and the positive vote of shareholders representing at least 1/2 of the share capital. Such thresholds apply for the first call of such shareholders' general assemblies.

At a second call, unless the constitutive acts provide differently, such resolutions must be adopted with the presence of shareholders representing at least 1/2 of bidder/target share capital, and the positive vote of shareholders representing at least 1/3 of the share capital.

#### 2.14 When is the consideration settled?

Consideration shall be settled after expiration of takeover offer, but not more than three working days after the payment invoicing date. In seven working days as of the expiration of takeover offer, the bidder must notify the CNVM and the stock exchange of the outcome of the takeover.

### 3 Friendly or Hostile

#### 3.1 Is there a choice?

Hostile takeovers targeting a Romanian public company are permitted under Law No. 297/2004.

#### 3.2 How relevant is the target board?

As a rule, the target board cannot influence nor prevent the carrying on of the takeover offer.

In the case of a voluntary takeover offer, the target board must issue its opinion as to the takeover opportunity, within five days of the receipt of the takeover preliminary announcement. As of the moment of receipt of such announcement, the target board must freeze any corporate activity of the target, except activities connected with the ordinary course of business. The board opinion must address: i) the takeover grounds; ii) its point of view related to the outcome of the takeover, including the impact of the takeover over target employees; and iii) the strategy for the target's future activity.

In the case of a voluntary takeover offer, the board may also convene a shareholders' general assembly to inform target

shareholders of the takeover offer. If a "Significant Shareholder" (i.e. an individual or entity controlling at least 10% of target share capital, or having significant influence over target shareholders or the target board) of the target requests the board to convene a shareholders' general assembly, the board shall be required to proceed in this regard.

In the case of a mandatory takeover offer, the target board must suspend bidder voting rights related to the shares already held by bidder in the target, until takeover completion.

#### 3.3 Does the choice affect process?

Hostile takeovers mean that the bidder will rely only on target information available from public sources, e.g. reports submitted by target board to the CNVM, stock exchange reports, or register of commerce databases. However, under applicable legislation, the choice between either a friendly or hostile takeover is not likely to affect its process.

### 4 Information

#### 4.1 What information is available to a buyer?

Assuming the target provides no access to information, the following information is available to the bidder: i) target corporate information available upon request from the register of commerce where the target is incorporated, including the target's constitutive act; ii) target share information, available upon request from the stock exchange where the target is listed; iii) resolutions of the target shareholders' general assembly, as available upon publication in the Romanian Official Gazette, Part IV; iv) target information, as listed with CNVM registers; and v) target corporate information, as available from the Ministry of Finance website.

#### 4.2 Is negotiation confidential?

Under Law No. 297/2004, any takeover offer includes a takeover announcement, to be published in two national daily newspapers. As such, information related to the takeover must be released to the public, once the takeover offer was submitted with the CNVM for approval.

Law No. 297/2004 prohibits the target board members or target executives from disclosing to third parties, e.g. the bidder, information on the target which had not already become public (i.e. "privileged information"). As a result, confidential negotiations involving the bidder and target representatives cannot approach issues related to the target's "privileged information".

#### 4.3 What will become public?

Assuming the takeover transaction does become public, the information which must be available relates to the information from the takeover announcement.

The takeover announcement must include: i) the bidder and target's name and headquarters address; ii) the number of shares envisaged by the takeover offer; iii) the price; iv) the name of the securities agent involved on behalf of the bidder; v) the number of target shares already owned by bidder; vi) details of bidder affiliates; vii) details on how to access the offer documentation; and viii) the duration of the takeover. Such takeover announcement must be authorised by the CNVM, prior to its release to the public.

#### 4.4 What if the information is wrong or changes?

Under CNVM Rule No. 1/2006, when submitting the takeover documentation to the CNVM, the bidder must produce a statement certifying that all data and documents submitted with the offer “reflects the bidder’s actual details”. If such information is wrong, the CNVM may charge the bidder with the offence of making false or misleading statements.

If the takeover information changes such change must be notified with the CNVM. Any amendment to the takeover offer must be filed by the bidder with the CNVM at least seven working days prior to the closing date of such offer. The amendment is valid provided that: i) it was accepted by the CNVM; ii) it does not present less favourable takeover terms; and iii) an announcement of such amendment was issued under the same conditions as the takeover announcement. Based on such amendment, the CNVM may extend the takeover period by at least five business days from the date of publication of the amendment to the takeover closing date.

## 5 Stakebuilding

### 5.1 Can shares be bought outside the offer process?

Under Law No. 297/2004, any person may launch a counter-offer for the acquisition of target shares, provided that: i) the counter-offer refers to the same shareholders/amount of shares; and ii) the counter-offer price exceeds the takeover price by 5%.

The counter-offer must be launched at maximum 10 days after the date when the takeover offer became public.

### 5.2 What are the disclosure triggers?

The target, CNVM and the stock exchange must be informed in the case of a takeover or the selling of shares issued by a public company, provided that such takeover or selling determines that voting rights controlled by an individual or legal entity in the target shall reach, exceed or lower to any of the following thresholds: 5%, 10%, 20%, 33%, 50%, 75% or 90%.

### 5.3 What are the limitations?

As a rule, no limitations apply for an individual/entity to accumulate shares in a Romanian public company. However, it is recommendable for the bidder to overview the provisions of the target’s constitutive act, in order to find out whether certain specific limitations apply in this regard.

## 6 Deal Protection

### 6.1 Are break fees available?

Although not prohibited, break fees or inducement-fees commitments are not very common in practice.

### 6.2 Can the target agree not to shop the company or its assets?

As under Law No. 297/2004 counter-offers are permitted in a takeover proceeding, the target cannot retain an offer on an exclusive basis.

### 6.3 Can the target agree to issue shares or sell assets?

Provided that the target shareholders’ extraordinary general assembly adopts a resolution authorising the issuance of shares or the disposal of crown jewel assets to the benefit of a preferred bidder or other third party, such issuance of shares or selling of assets is possible.

### 6.4 What commitments are available to tie up a deal?

A target board may undertake unofficial measures to assist a preferred bidder, such as arranging confidential discussions with the target board and target shareholders, arranging meetings between bidder representatives and target shareholder representatives, or informing target employee representatives of the benefits of the takeover offer promoted by the preferred bidder.

## 7 Bidder Protection

### 7.1 What deal conditions are permitted?

As for deal conditions, it is imperative for the bidder to comply with the CNVM’s rules. As such, the bidder must, among other conditions: i) comply with the takeover terms, once the takeover offer became public; ii) prescribe the takeover price upon Law No. 297/2004 requirements (see question 2.10 above); and iii) maintain takeover offer as valid for 15 to 50 days.

### 7.2 What control does the bidder have over the target during the process?

During the takeover offer, the bidder shall rely on the target information available from CNVM sources, target sources, public authorities and registers data, and data or conclusions provided by the target’s due diligence exercise.

### 7.3 When does control pass to the bidder?

The bidder can take day-to-day control of the target as of the closing date, i.e. the date when the takeover offer was either accepted by the target shareholders, or when the target’s floating shares were duly acquired by the bidder. In practice, it is recommendable for the bidder to register the acquisition shares with the CNVM register, and with the register of commerce where the target is incorporated, immediately after completion of the takeover. As such, the bidder shall be able to enforce towards any third party the fact that upon closing, it actually gained control of the target.

### 7.4 How can the bidder get 100% control?

Under Law No. 297/2004, upon successful compliance with the takeover offer, the bidder which acquired shares representing either more than 95% of the target share capital, or more than 90% of the target shares, may issue a final takeover offer for the target’s remaining shares. However, such bidder must bear in mind the fact that under Law No. 31/1990, the target must have at all times a minimum of two shareholders, in order to qualify as a valid joint stock company. In practice, the bidder may acquire up to 100% of the target’s remaining shares, and then transfer at least one share each to four of its affiliates.

## 8 Target Defences

### 8.1 Does the board of the target have to tell its shareholders if it gets an offer?

In the case of any takeover offer, the CNVM requires the bidder to publish a takeover announcement. Virtually any target shareholder may acknowledge the details of the offer.

In the case of a voluntary takeover offer, the target board may convene a target shareholders' extraordinary general assembly to inform shareholders of the board opinion in relation to the takeover offer. If a target's Significant Shareholder so requests, the board must convene the shareholders' extraordinary general assembly in five days as of the request day.

### 8.2 What can the target do to resist change of control?

Under Law No. 297/2004, the target board may issue a statement related to its opinion on the takeover, for the use of the CNVM, the bidder, and the stock exchange where the target's shares are listed. The target board may also inform target employees of the offer details. However, the target board cannot openly oppose the takeover, but may restrict or prohibit the access of the bidder's advisers to the target's premises/facilities/information. If part of the target's employees own shares in the target, the bidder should undertake direct negotiations with such employees-shareholders, to persuade them of the benefits of the takeover offer.

### 8.3 Is it a fair fight?

Law No. 297/2004 provides no specific rules designated to create a level playing field between a preferred bidder and a hostile bidder. However, the strict statutory provisions related to takeover proceedings are likely to offer a minimum level of protection for hostile bidders, as such provisions guarantee hostile bidders the right to submit an offer regardless of the target's co-operation or non-co-operation with such bidders.

## 9 Other Useful Facts

### 9.1 What are the major influences on the success of an acquisition?

The factors that are most likely to influence the outcome of a takeover offer process are: i) the obtaining of valuable information on the target; ii) the bidder's relationship with the target board and the target's main shareholders; iii) the target employees' attitude towards the takeover; iv) price; and v) compensation packages in the case of future collective dismissals of employees.

### 9.2 What happens if it fails?

As a rule, the failure of a takeover offer or of a mandatory takeover offer does not prevent the bidder from issuing another offer focusing on the same target.

However, Law No. 297/2004 provides a limitation in the case of a voluntary takeover offer. In such case, the bidder or its affiliates cannot issue another takeover offer focusing on the same target for one year as of the closing date of initial offer. The reason for this is that under Law No. 297/2004, during a voluntary takeover offer, target board must freeze any target corporate activity (except day-to-day businesses). If the target has to face continuous voluntary takeover offers, such would imply a de facto continuous freezing of all of the target's corporate activities.

## 10 Updates

### 10.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in M&A Law in Romania.

Trends and developments in M&A Law in Romania involve efforts of domestic companies acting in various industries, such as pharma, IT and telecoms, to be listed for financing purposes with foreign stock exchanges, such as the London stock exchange.

Moreover, more and more M&A projects involve Romanian or foreign companies acting in the real estate construction and development fields.

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Pachiu & Associates is a business law firm established by Romanian attorneys. Firm lawyers are graduates of leading universities from Romania or abroad, and are all members of the Bucharest and Cluj Bar Associations and National Romanian Bars Association. More than half of the lawyers are senior members of the Bar Associations. All lawyers are fluent in Romanian and English. Some lawyers are fluent in German, Spanish and French. The firm provides for a full range of commercial and corporate legal advice. The firm has extensive expertise in matters related to corporate governance, corporate disputes, securities, mergers and acquisitions, bankruptcy, commercial contracts, offshore and tax structures, labor law, real estate, anti-trust law, intellectual property, banking and project financing, secured transactions, cross-border transactions, public acquisitions, procurement, and litigation. Apart from its consistent mergers & acquisitions and cross-border transactions practice, the firm developed a strong tax practice. Any type of transaction is always duly considered from a tax point of view. The firm maintains a close relationship with some leading multinational law firms and other small and medium-sized law firms from abroad, to ensure efficient liaison with important foreign business centres and jurisdictions.