

Romania



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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 republished and further amended (“**Law No. 31/1990**”), and its shares are traded with the Romanian Stock Exchange (“**RSE**”) which currently also incorporates the former Romanian Over the Counter Stock Exchange (Rom. “**RASDAQ**”), following a merger by absorption.

Based on such reorganisation process, RSE acts as a unique legal entity, incorporated in Romania as a joint stock company. Moreover, the RSE’s constitutive act regulates both RSE and RASDAQ corporate activities.

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

The Romanian Stock Exchange Commission (Rom. “**CNVM**”) oversees the compliance of investors and traded companies with Law No. 297/2004 and its implementing regulations. In this regard, CNVM issues binding pieces of legislation, e.g. regulations, 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 of paramount importance for the implementation of Law No. 297/2004.

Other legislation of relevance for takeovers of Romanian public companies is 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 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.

Furthermore, the mergers and acquisitions of limited liability companies are regulated by the 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 equal legal treatment as the legal treatment applied to by Romanian investors. No restrictions or special rules apply for foreigners willing to buy shares in a Romanian public company.

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 assess the impact of the provisions of Law No. 21/1996 prior to undertaking the takeover transaction to prevent competition issues.

1.5 Does protectionism operate in favour of local owners?

As a general rule, the relevant legislation provides for the equal treatment of investors or owners, irrespective of if they are foreign or Romanians.

1.6 What are the principal sources of liability?

Insider dealing and market manipulation practices are prohibited. CNVM is authorised to oversee and perform investigations related to such unlawful practices. In this regard, 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, 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 120 to EUR 11,600). 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, 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**) public sale offers; **ii**) public purchase offers; **iii**) voluntary takeover offers, and **iv**) 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 assisted 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, if case; and **ii**) a securities agent, who must be authorised by 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 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 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 guarantee of at least 30% of the total value of takeover offer or a bank guarantee covering the total value of the takeover offer must also be filed with the takeover application form.

CNVM must issue an answer approving or denying the takeover offer within 10 working days from the application's filing date. If CNVM approves the takeover request, the bidder can initiate the takeover proceedings, *i.e.* to publish the takeover announcement in 2 national daily newspapers.

Within 3 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. Such time frame ranges from at least 5 working days to a maximum of 12 calendar months.

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 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 cooperation for the successful outcome of the transaction (under law, minority shareholders may challenge before the court resolutions made by the new majority shareholder); and **iv**) obtaining the prior approval of the Romanian competition authority, under Law No. 21/1996, or other approvals required by law to be issued by a regulatory body (if applicable). In a maximum of 7 working days as of the date of the closing of the public offer, the bidder must notify CNVM and the stock exchange of the outcome of the takeover offer.

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

The prior approval of CNVM of the takeover offer is mandatory. In the absence of such approval, or in the case of non-compliance with CNVM terms prescribed under the approval, the takeover offer shall be deemed null and void.

Upon 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 CNVM, and announced to the public in the same form as provided for the initial takeover offer.

Law No. 21/1996 prohibits the fixation of share prices, and prohibits, as unfair 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?

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, 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 obligations to purchase other classes of target securities?

As a consequence of a public offer to purchase addressed to all holders and in respect of all their holdings, a minority shareholder has the right to solicit the bidder that holds more than 95% of the share capital to buy his shares at an acceptable price. Such provision of the Law No. 297/2004 applies separately for each class of securities issued by the target company and the bidder has the obligation to purchase such shares.

2.9 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's board of administrators must inform the target's employees of the offer terms. The target's employees may issue a written opinion. Such opinion shall be attached to the opinion of the target's 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's employees or the company's 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's 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 350 to EUR 700).

2.10 What role do employees play?

Besides issuing a written opinion on the takeover process, as provided at question 2.9 above, the employees of the target company cannot oppose to the takeover.

2.11 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.

2.12 Are there any special disclosure requirements?

Under Law No. 297/2004 and CNVM Rule No. 1/2006, a target may, on its own account, delay making inside information available to the public so as not to harm its own interests provided that **i**) this delay should not mislead the public, and **ii**) the target may ensure the confidentiality of such information.

The target shall inform CNVM as soon as possible of its decision to delay the disclosure to the public of such information. CNVM may force the target to disclose the information in order to ensure the transparency and the integrity of the market.

If a target, or a person who acts on behalf of and for the account of the target, discloses any "privileged information" to a third party during its normal course of business, it must make public that information, simultaneously in the case of an intentional disclosure and promptly in the case of an unintentional disclosure, except when the person who received the information must keep it confidential, no matter if this is required by law, by regulations, instruments of incorporation or a contract. "Privileged information" represents information of a precise nature, which has not been made public, relating, directly, or indirectly, to one or more targets of financial instruments, or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

Moreover, CNVM may authorise the omission from the public offer prospectus of certain information if it considers that **i**) disclosure of such information would be contrary to the public interest; **ii**) disclosure of such information would be seriously detrimental to the target; or **iii**) such information is of minor importance only for a specific admission to trading on a regulated market and is not such as it will influence the assessment of the financial position and prospects of the target.

2.13 What are the key costs?

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

2.14 What consents are needed?

The takeover offer must be approved by the CNVM. A decision is issued by CNVM within 10 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. Also, in case of specialised sector companies, like insurers for example, the approval of the relevant regulatory body is required.

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

2.15 What levels of approval or acceptance are needed?

- i. A public sale offer or a public purchase offer refers to the offer of an individual or legal entity, irrespective of its citizenship/nationality, to acquire shares of a Romanian public traded company; such offer must be issued to all of the target's 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 traded 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 comes to hold 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 2 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 upon reach 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 1/4 of bidder/target's total number of voting rights, and the positive vote of shareholders representing at least 2/3 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 1/5 of bidder/target share capital, and the positive vote of shareholders representing at least 2/3 of the share capital.

2.16 When does cash consideration need to be committed and available?

Consideration, irrespective of its form (cash included), needs to be

available after expiration of the takeover offer, but not more than 3 working days after the payment invoicing date. In 7 working days as of the expiration of takeover offer, the bidder must notify CNVM and the stock exchange of the outcome of the takeover.

Moreover, as a condition for obtaining the CNVM approval for the takeover offer, the bidder should file with CNVM the proof of setting up a guarantee for at least 30% of the total value of the offer, in a bank account of the intermediary, amount that shall be held in the account during the entire period of the offer or of a bank letter of guarantee covering the entire amount of the offer, issued in favor of the intermediary.

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 Are there rules about an approach to the target?

In the case of any takeover offer, CNVM requires the bidder to publish a takeover announcement. In view of approving the offer document, the bidder shall submit for CNVM approval an application accompanied by certain documentation related to the takeover details (*i.e.* the draft of the takeover announcement, the bidder's statement on the offered price etc.), the corporate structure of the bidders, as well as the constitutive deeds of the takeover (in case the bidder is a legal entity).

Following the CNVM approval, the takeover announcement shall be sent to the target company, to the regulated market where the securities are listed and shall be published in at least one central daily newspaper and in one local daily newspaper within the administrative area of the issuer.

The public offer for takeover may be initiated after at least three working days from the date of publishing the takeover announcement.

In the case of a voluntary takeover offer, the target board must issue its opinion as to the takeover opportunity, within 5 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 voting rights, 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 How relevant is the target board?

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

3.4 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 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 and copies of the corporate documents which are filed with such register; **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 and is access restricted?

Under Law No. 297/2004, any takeover offer includes a takeover announcement, to be published in 2 national daily newspapers. As such, information related to the takeover must be released to the public, once the takeover offer was submitted with 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 "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 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 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, CNVM may charge the bidder with the offence of making false or misleading statements.

If the takeover information changes, such must be notified with CNVM. Any amendment to the takeover offer must be filed by the bidder with CNVM at least 7 working days prior to the closing date of such offer. The amendment is valid provided that: **i)** it was accepted by 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, CNVM may extend the takeover period by at least 5 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%; 15%; 20%; 25%; 33%; 50%; 75%; or 90%.

5.3 What are the limitations and implications?

As a rule, no limitations apply, and consequently no implications exist, in case an individual/entity accumulates 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 important 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 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 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?

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 to one affiliate.

8 Target Defences

8.1 Does the board of the target have to publicise discussions?

In the case of any takeover offer, 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 5 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 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 a summary of any relevant new law or practices in M&A in Romania.

The area of M&A in Romania has suffered very little improvements over the last year.

Recent practices 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.

The recent CNVM rules regard the simplified procedure for the companies to register the required reports with CNVM by electronic means.

This article was drafted based on legislation available as of January 2012.

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Marius is an associate within the firm and is a member of the Corporate Practice Group.

His area of expertise covers corporate and M&A.

Marius was involved in several investment projects, providing legal counsel, among others, in matters related to the taking over of the business entities by investment funds in various fields, such as industry, insurance, leasing companies etc., the restructuring of business entities, and the structuring of joint-ventures in various fields.

Marius' activity also resides in assisting the firm's clients related to their day-to-day regulatory and corporate issues.

He is fluent in Romanian and English.

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Alexandru is a partner of the firm and is currently head of the Corporate Practice Group (including Labour Law, Competition, Insolvency and IP).

As regards the Corporate and M&A activity, Alexandru was involved in several investment projects, providing legal counsel, among others, in matters related to the taking over of the business entities by investment funds in various fields, the implementation, authorisation and development of Greenfield and Brownfield projects in various areas and industrial parks in Romania, the restructuring of business entities or joint-ventures in various fields. Alexandru also has extensive expertise in the labour law field, representing various clients in labour disputes.

Alexandru studied the Business Law Course of the French-Romanian Institute of Business Law and International Cooperation Nicolae Titulescu - Henri Capitant and a LLM with Suffolk University Boston.

Alexandru is fluent in Romanian and English and conversant in French.



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Pachiu & Associates is a Romanian business law firm.

Bound by Excellence, its purpose is to offer prompt, effective and personalised solutions to all legal matters which domestic and international clients, regardless of their size, are confronted with in Romania. The vision is that knowing and understanding each client and its particular business is essential.

The firm's partners and associates are all well-regarded professionals in their areas of practice. They are assigned between six specialised practice groups, based on their personal competences and natural inclinations: Corporate Practice Group (including Labour, Competition, Insolvency and Intellectual Property sub-practice groups), Energy Practice Group, Finance Practice Group (including Tax and Personal Finance sub-practice groups), Real Estate Practice Group, PPP and Litigation Practice Groups.

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