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Key amendments to the corporate regime, administrative law and capital market regulations

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Changes to the Company Law

The need to amend Company Law No 31/1990 in a manner that would clarify some ambiguous provisions or that would better address the practical needs was particularly stressed by the local business and legal environment. The transposition of certain EU legal institutions into local legislation was also much awaited. Consequently, the Company Law was amended on June 29 2007 by Government Emergency Ordinance No 82/2007 (GEO 82/2007) and, subsequently, on April 30 2008 by Government Emergency Ordinance No 52/2008 (GEO 52/2008).

Most of the amendments brought by GEO 82/2007 concerned the legal regime of company directors. In this respect, details and clarifications were brought on their legal status, diligence and loyalty obligations towards the company and the tax regimes applicable to their income. Also, the obligation to have an independent director in certain joint stock companies (i.e. those compelled to audit their financial statements) was repealed.

As regards limited liability companies, the amendments expressly established that they may increase their share capital in the same manner and from the same sources as joint stock companies, unifying the rules applicable to joint stock and limited liability companies.

GEO 52/2008 transposed into the local legislation Directive 2005/56/EC on cross-border mergers of limited liability companies, along with Directive 2007/63/EC on the requirement of an independent expert's report on the occasion of the merger or division of public limited liability companies. However,

the cross-border mergers of companies headquartered in Romania which hold land plots in Romania are subject to certain constraints. In cases of cross-border mergers involving Romanian companies or European companies headquartered in Romania which own land in Romania, if the resulting company is a foreign one, the operation can only be made within five years of Romania's accession to the EU if non-agricultural land is involved and after seven years as of Romania's accession to the EU if agricultural land is involved.

GEO 52/2008 also provides for rules in respect of the local applicability of Council Regulation No 2157/2001 regarding the statute of the European company; in this respect the rules for incorporation in Romania of a European company and also the requirements for the transfer abroad of the headquarters of this type of company are regulated.

Changes to the Administrative Law

In August 2007, Law 554/2004 on administrative claims was amended by Law 262/2007 with a view to clarifying the existing provisions and giving more flexibility to the administrative procedure.

In this respect, a one-year term was established, during which a public authority may request in court the annulment of an illegal deed such authority has already issued (i.e. which may no longer be revoked as it has already produced legal effects).

As opposed to the initial regulation, the step-by-step administrative procedure to be followed by a claimant before the authority that has issued the challenged administrative deed or before its superior body (prior complaint procedure) and only then before the court is no longer mandatory. The claimant is now allowed to waive the prior complaint procedure by notifying the authority in this respect. Subsequently, the claim may be directly filed in court within 15 days of the notification.

It is also established that the prior complaint procedure may be used (subject to a six-month time bar) in relation to administrative agreements in a manner similar to the prior conciliation procedure applicable in cases of commercial disputes.

Key amendments to the capital market rules

Implemented as a pilot system applicable to the trade in shares of foreign issuers listed on the Bucharest Stock Exchange (BSE) - but with a view to being extended to the entire local market by this autumn - some important amendments to the local trading and settlement system have been enacted.

One key amendment is the repealing of the requirement that the seller must have the shares in its account on the trade date; this has been shifted to the settlement date. As a related risk-management procedure, the sellers may now borrow shares after the trade date, in order to ensure the transaction settlement.

The operation of omnibus accounts and the duties of participants or custodians in relation thereto have also been regulated. In accordance with international rules, the reporting obligations related to the individual holdings in such accounts are limited only to investigations conducted by the National Securities Commission.

The operation of market makers has also been established by the BSE; they are the only ones who are now allowed to sell short.

Given that one foreign issuer already listed on two other EU markets has recently been listed on the BSE, the Central Depository has established electronic connections which allow it to interconnect with other foreign depositories, in an effort to ensure the cross-border delivery of shares. The procedural rules for this type of cross-border operations have been accordingly enacted.

Capital markets

Recommended firms
Tier 1
Badea Clifford Chance Musat & Asociatii Nestor Nestor Diculescu Kingston Petersen Tuca Zbârcea & Asociatii
Tier 2
CMS Cameron McKenna Popovici Nitu & Asociatii Schoenherr si Asociatii
Tier 3
Babiuc Sulica Protopopescu Vonica Gide Loyrette Nouel Salans Stoica & Asociatii Zamfirescu Racoti Predoiu

Banking

Recommended firms
Tier 1
Musat & Asociatii Nestor Nestor Diculescu Kingston Petersen
Tier 2
Badea Clifford Chance Bulboaca & Asociatii CMS Cameron McKenna Popovici Nitu & Asociatii Schoenherr si Asociatii Tuca Zbârcea & Asociatii
Tier 3
Gide Loyrette Nouel Stoica & Asociatii Zamfirescu Racoti Predoiu
Tier 4
BPV Grigorescu Studio Legale Sutti Voicu & Filipescu

Mergers and acquisitions

Recommended firms
Tier 1
Musat & Asociatii Nestor Nestor Diculescu Kingston Petersen Tuca Zbârcea & Asociatii
Tier 2
Badea Clifford Chance CMS Cameron McKenna Gide Loyrette Nouel Popovici Nitu & Asociatii Salans Schoenherr si Asociatii
Tier 3
BPV Grigorescu Bulboaca & Asociatii Stoica & Asociatii Voicu & Filipescu Zamfirescu Racoti Predoiu

Project finance

Recommended firms
Tier 1
Nestor Nestor Diculescu Kingston Petersen Tuca Zbârcea & Asociatii
Tier 2
Badea Clifford Chance CMS Cameron McKenna Musat & Asociatii Popovici Nitu & Asociatii
Tier 3
Bostina & Associates Bulboaca & Asociatii Schoenherr si Asociatii

Romania's financial law market has had a turbulent year, with one UK firm arriving and another saying farewell to Bucharest.

In April 2008 Linklaters announced the closure of its Bucharest office along with its Budapest, Bratislava and Prague operations, instead running virtual desks covering the countries from its London base.

But most of the traffic was going the other way, with Allen & Overy, White & Case, DLA Pipers and Garrigues announcing new Bucharest offices this year.

"I don't know what is happening," says one local partner. "Some people are setting up practices because they see Romania as a profitable jurisdiction, while others are taking their business elsewhere because they are afraid of what is happening. It is really confusing!"

The young but strong Romanian capital market has consolidated over the last year, notably since the integration of the Rasdaq

trading system into the Bucharest Stock Exchange in 2005. This led to the launch of Romania's largest IPO so far - Transgaz's €67 million public listing, which is widely seen as a necessary injection of liquidity into Bucharest's otherwise dusty stock market.

The increasing interest of foreign investment funds and the rise of real-estate business targeting public financing will undoubtedly enhance the synergies between M&A and the capital markets, bringing additional transactions, and mandates, into Romania.

Badea Clifford Chance

Badea's two-year association with Clifford Chance has definitely paid off according to clients. "As I see it, they're the leading firm in Romania," says one. "They're just the most professional in their write-ups and the most systematic."

Clifford Chance boosted its Romanian capital markets capabilities this year with the transfer of David Eatough from the firm's London office. The firm acted in four out of the five largest IPOs in the jurisdiction. In one of Romania's largest-ever issuances, the firm assisted Morgan Stanley and UniCredit as underwriters on a \$500 million issuance of GDRs by Vimetco.

In another standout deal, the team assisted ING Bank and Raiffeisen Bank as underwriters on the offer and listing by a retail group on the London, Bucharest and Sofia stock exchanges. The firm is now advising JP Morgan on a €1 billion Eurobond issue in Romania.

Badea Clifford Chance's banking practice has also been strengthened with the addition of Perry Zizzi as partner. Managing partner Daniel Badea and Zizzi advised Eurohypo on the €254 million refinancing and development financing of Iulius Mall Group. The team also advised JP Morgan in the €663 million corporate restructuring of the British Vita Group.

In the project finance market, the firm advised Société Générale in a €60 million loan facility to Hydroconstructia, and advised on a €33 million loan facility for Energomontaj.

The firm has maintained a busy M&A practice this year, assisting Morgan Stanley and Lehman Brothers on investments into the Adama property portfolio, and advising CB Richard Ellis in the €35 million acquisition of property broker Eurisko.

"They're very well-organised and resourced; they've just got a great client service-oriented approach," says one client.

Leading lawyers

Daniel Badea
Nadia Badea

Bulboaca & Asociatii

After less than two years in the market, Bulboaca & Asociatii has already taken several important roles advising numerous banks in Romania.

In the capital markets, the firm specialises in structured finance and securitisation. One of the firm's highlights was advising ING Bank in the €100 million structuring of a trade receivables purchase programme for an international company in December 2007.

The firm also has a strong banking practice, with one notable role advising Bank Austria Creditanstalt in a €120 million financing facility to a Romanian pharmaceuticals group. Bulboaca also advised MKB Hungary and MKB Romexterra Bank in the €60 million refinancing of its debt ahead of its acquisition of a real-estate plot in Arad, and the development of a mixed retail project.

M&A department head Adrian-Catalin Bulboaca is highly regarded by the market. "I've been working with Mr Bulboaca for well over 10 years now and I've always been very very, very pleased with his work," says one client, adding: "He's just fantastic."

In February 2008, Bulboaca and his team advised OTP Hungary in the \$900 million disposal of one its insurance arms to France's Groupama. Bulboaca also advised Raiffeisen Investment Romania in the sale of telecoms company Proton to Vodafone Romania.

Bulboaca also leads the firm's project finance team, and his reputation in this field brings plenty of positive market attention. "I stayed with him when he moved from Linklaters a couple of years ago. He's just a top, top lawyer," says one client.

One of the firm's highlights in the projects market saw Adrian-Catalin Bulboaca advise Deutsche Bank in an €86 million facility agreement to 62 local governments for the construction of a gas pipeline.

Leading lawyers

Adrian-Catalin Bulboaca

CMS Cameron McKenna

CMS Cameron McKenna's Bucharest office has built a strong practice across all disciplines of finance - in particular, it frequently represents banks in the financing of real-estate acquisitions. One such deal was advising the Bank of Cyprus in the €110 million refinancing of the Marriott Hotel Bucharest. The firm also advised the National Bank of Greece Group on a syndicated €75 million facility to Global Finance for the development of the Global City office development in Bucharest.

Simon Dayes heads up the project finance department, which has also had a solid year in the Romanian market. The highlight saw

Dayes advise Erste Bank in the \$177 million financing of five oil rigs in the Black Sea and the Persian Gulf for GSP Drilling.

The firm's M&A department has been strengthened with the addition of partners Loredana Ralea and Horea Popescu, together with six new associates. One of the firm's highlights was advising Advent International in its €123 million acquisition of Romanian pharmaceuticals manufacturer LaborMed Pharma. The firm also advised private-equity house 3i in its purchase, with its regional partner 3TS, of the Unirea Medical Center and cleaning company Romprest.

In addition, CMS acted in one Romania's largest public takeovers on the Bucharest Stock Exchange, when it represented Cadbury in the €100 million acquisition of Kandia-Excelent from Austria's Meinel Bank.

Leading lawyers

Simon Dayes

Gide Loyrette Nouel

Gide Loyrette Nouel's banking and finance practice has consolidated its position in the real-estate financing market, advising several lenders on a number of notable deals.

On the banking side, one of the firm's highlights was advising KBC Bank on the financing and refinancing of the project costs for the restoration and construction of a monument in Bucharest. In addition, the firm acted for the borrower - Bluerose Ro Corporation - in the financing of the acquisition of real-estate assets.

On the M&A side, the firm has focused partly on the insurance sector, advising French insurer Groupama in two large transactions: the €350 million acquisition of Asiban, and the €90 million acquisition of Banca Transilvania Asigurari.

The firm's project finance team has a strong track record, especially in PPPs. The firm's most notable work this year was advising Iberdrola in the €2.5 billion financing for the construction of the Cernavoda nuclear power plant.

Leading lawyers

Jean-Jérôme Khodara

Bruno Leroy

Cristina Togan

Musat & Asociatii

"They are good at a lot of things," says a client of Musat & Asociatii. "We tend to deal with them on an emergency basis when something has gone wrong, and they are always accessible, which is very good. They understand urgency."

The firm's highly-regarded equity capital markets team is led by Iuliana Craiciu, who is regularly praised by clients. "She is a very good advice lawyer. She knows our business well and she is very commercial. She's good at finding solutions," says one.

Craiciu advised the Romanian subsidiary of Genpact in its €600 million IPO on the NYSE. Craiciu also assisted Africa Israel Investments, which invests heavily in Romanian real estate, in the preparation of a €650 million prospectus for a capital-raising on the Tel Aviv Stock Exchange.

In January 2008, the firm promoted M&A partner Catalin Baiculescu to a role as co-managing partner. Baiculescu is involved in many of Musat & Asociatii's key deals, one of which was advising Sider Sipe in the €120 million sale of Ductil Steel to a European investor.

But the firm's standout instruction came from Italian energy group Enel, which sought Musat & Asociatii's counsel in relation to the €3.5 billion privatisation project for the development of the Cernavoda nuclear power plant, which was initiated by the Romanian Ministry of Economy and Finance. The firm is also providing advice on regulatory issues and acted on Enel's €820 million acquisition of Romanian energy company Electrica in May 2008.

On the banking side, Musat & Asociatii advised the Canadian Imperial Bank of Commerce in a \$1 billion facility to Celestica, and advised in the €820 million acquisition of Electrica.

Other notable roles include advising Gabriel Resources in a €500 million credit facility from Barclays for the exploration of the biggest gold and silver mining site in Europe - Rosia Montana. This project is considered by the market as one of the biggest foreign investments in Romania to date.

Leading lawyers

Catalin Baiculescu

Iuliana Craiciu

Gelu-Titus Maravela

Gheorghe Musat

Miruna Suci

Nestor Nestor Diculescu Kingston Petersen

Nestor Nestor Diculescu Kingston Petersen was hit this year with the departure of partners Cristina Filip (energy), Francisc Peli (real estate) and Carmen Peli (M&A), to form a new firm named Peli Filip.

Nestor has already changed its partnership structure for two practice areas from August 2007, transferring management responsibilities and projects to new practice area co-ordinators.

But the firm's capital markets practice was kept very busy this year. It assisted Raiffeisen Capital & Investment as underwriter in Transgaz's €67 million IPO on the Bucharest Stock Exchange in December 2007.

The firm is also advising Eurobank in the €13 million IPO of a Romanian issuer on the Bucharest Stock Exchange, and is advising two international credit institutions in a securitisation warehousing scheme.

The firm's banking and project finance team has been particularly affected by the departure of Cristina Filip. "Filip is one of the best energy lawyers in Romania," says one client. "But she left the firm to start her own practice, and her absence will not go unnoticed."

Among Nestor's highlights in this area was advising ING Bank as syndication agent in a €300 million refinancing facility to a group of Romanian companies. The firm also provided Romanian counsel to RBS and BNP Paribas in relation to a €300 million financing facility to a group of companies in Romania. In addition, Nestor advised GTC Real Estate Investments Romania in the €65 million financing for the development of two residential park projects, Felicity and Rose Garden.

One standout M&A deal for the firm was acting as lead counsel to Ford Motor Company in its €732 million acquisition of Automobile Craiova - one the largest Romanian M&A deals for this year. The firm also advised OMV-Petrom in its €328 million acquisition of an oil service and maintenance business from PetromService.

Leading lawyers

Ion Nestor
Manuela Nestor
Alina Radu

Popovici Nitu & Asociatii

"Popovici Nitu & Asociatii is a very good firm - very professional and client-oriented," says a client of the firm. "We've worked with them for the past three to four years and we've always been very happy with them."

The firm retains its second-tier position in banking after a string of significant transactions with Red Capital. The firm advised on financing and refinancing issues for a €200 million real-estate development, advised in the €60 million refinancing for a project in Lasi, and acted in relation to a €40 million development and construction financing facility.

The firm also advised Immoeast in two deals involving the development of shopping centres in Romania - the €90 million financing from Hypo Real Estate for the refinancing of the Polus Cluj shopping centre, and a €50

million credit line from Bank Austria Creditanstalt for the refinancing of the Armonia Arad shopping centre.

In M&A, the firm participated in a €240 million deal, advising Immoeast in its acquisition of Armonia Arad, Radius Baia Mare and Harbourside Constanta. In another standout deal, the firm advised Labormed Pharma in its €120 million sale to Advent.

Popovici Nitu & Asociatii is also well-regarded for its project finance work. A recent highlight was acting ArcelorMittal in its €2 billion joint venture with Nuclearelectrica and other partners to construct a nuclear power plant.

"They always give us a good performance, particularly with respect to drafting and negotiations," one client says.

Leading lawyers

Florian Nitu
Ernest Popovici

Schoenherr si Asociatii

Matei Florea heads a sound banking and finance team, which has attracted a number of mandates from high-profile clients in the past year.

Florea worked alongside Ioana Florescu to advise Volksbank Romania in the €41 million financing for the development of a shopping centre in Pitesti. Says one client of Florescu: "She is very good; she always reacts at short notice. If you give her something late on Friday, it will be done for Monday."

The firm's M&A team also has a great reputation among peers and clients. "We've been very satisfied with them," says one client. "We have used them for a number of years now, and they have always been very quick, very diligent and really very prudent."

The firm's most important M&A mandate for this year saw the firm advise Advent on its €700 million acquisition of the Takko Group. Schoenherr also represented Heineken on its €150 million takeover of Bere Mures.

On the project finance side, the firm's most notable instruction was a role advising Nuclearelectrica on the €2.2 billion financing for its development of two nuclear power plants in Romania.

"They get right to the heart of the matter, which their experience allows them to do," says a client. "They are very much like a western law firm."

Leading lawyers

Matei Florea
Markus Piuk

Tuca Zbârcea & Asociatii

Tuca Zbârcea & Asociatii's capital markets practice is highly praised by the market, especially since it is a regular source of counsel for the Bucharest Stock Exchange and the Central Depository.

The firm's equity capital markets department has been strengthened with the internal promotion of Cristina Metea to the partnership. One most notable deal in this area saw the firm provide EU passporting advice to Société Générale in its €5.5 billion capital increase in February 2008 to cover the losses incurred by rogue trader Jérôme Kerviel.

On the debt side, the firm advised the Romanian municipalities in several long-term municipal bonds in November 2007. April 2008 was a busy month for the firm in structured finance: it advised the Credit Europe Bank in the establishment of a forward-rate derivative, and La Caixa on over-the-counter derivatives transactions with local corporations.

Tuca Zbârcea's banking team this year advised Provident Financial IFN Romania on its facility agreement with Citibank Romania, and assisted Erste Bank to find solutions to various issues surrounding its portfolio of bad consumer loans.

Consolidating on its strong government connections, the firm advised the Romanian government in the two-stage privatisation of Daewoo Automobile Craiova. This includes a \$60 million transfer of a block of Daewoo shares to the Romanian government, and the €700 million sale of Daewoo Automobile Craiova to Ford Romania.

Tuca also acted for Edmond de Rothschild Banque in its €1 billion acquisition of 8,000 housing units in Romania from a group of Israeli investors.

The firm's projects work is also noted by the market. The firm assisted Czech power company CEZ in the acquisition of the €2.2 billion Nuclearelectrica energy project. Tuca is also advising the Romanian Ministry of Transport in the €1.5 billion motorway project between Comarnic and Brasov, and acting for the National Company of Motorways and National Roads in the €2 billion concession contract for the Bucharest ring-road.

In addition, the firm has a role in a €5.5 billion PPP project, although the details were confidential at time of press.

Leading lawyers

Radu Rizoiu
Cristiana Stoica
Valeriu Stoica

Other notable firms

Linklaters' withdrawal of its physical presence from four countries in central and eastern

Europe has left the Bucharest office to merge with its counterparts in Slovakia, the Czech Republic and Hungary to form a breakaway regional firm, as yet unnamed.

The new firm's practice will contain many lawyers from the former Linklaters Miculiti Mihai & Asociatii practice, and should start with a superb reputation in Romania and beyond, given its reputation in the market and the calibre of its mandates.