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Key amendments to the companies regime, public procurement and electricity operators

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Bucharest

Changes to the Company Law

On December 1 2006, Law no 441/2006 significantly amended the Company Law no 31/1990 in view of serving business requirements and implementing EU and OECD standards. A joint-stock company may now be established by a minimum of two shareholders (instead of five as per the former regulation) which need to subscribe a minimum share capital of L90,000.

The amendments bring additional protection to the shareholders by increasing the convening notice term (from 15 to 30 days) and lowering the minimum quorum requirements for the shareholders' meetings. Also, they improve and clarify the manner and cases when the shareholder may receive information on the company.

In view of aligning to international standards, the companies bound to have their financial statements audited may choose between two management systems: the unitary system (whereby the company is administered by a sole director or a board of directors that decides only on key issues and delegates daily management to one or more executives) and the dualist system (whereby the company is managed by a directorate supervised by a supervisory council). Also, at least one member of the board of directors, or respectively of the supervisory council, must be independent and have experience in accounting or financial audit. With certain amendments (i.e. that the delegation of the management prerogative and the indepen-

dence requirements are not mandatory), these may also apply to non-audited joint stock companies.

In order to speed up share capital increase operations, the shareholders may now empower the board of directors or the directorate, for a period of up to five years, to solely decide upon share capital increases up to a value not exceeding half of the existing share capital. Also, to ensure protection against bad company management, the management team is now obliged to conclude a professional liability insurance policy. Finally, the framework regarding legal action that may be brought by the company or the minority shareholders against company's management bodies has been clarified and improved.

Changes to public procurement legal framework

Government Emergency Ordinance no 34/2006 is a new enactment which regulates the award of public procurement contracts, of concession contracts for public work and of service concession contracts. The main purpose of this enactment is to transpose European legislation both in the classic sector (e.g. Directive 18/2004/EC) and the public utilities sector (e.g. Directive 17/2004/EC), by implementing the remedies directives (e.g. Directive 89/665/CEE and Directive 92/13/CEE).

The new legal framework brings together in a sole enactment the regulation of three types of contracts: the public procurement contract, the public works contract and the services concession contract. It also regulates the means of settling disputes for claims filed in relation to such procedures (as opposed to the old legal framework, comprising several and partially inconsistent enactments).

A new feature is the regulation of the so-called sector contracts, defined as those public procurement contracts awarded for activities in the public utility sectors, including water, energy, transportation and postal services. An important provision is that the public pro-

urement procedure is not applicable, under certain specific conditions, in cases where the sector contract is awarded by a contracting authority to an affiliated company.

The unbundling of electricity distribution operators

The new Electricity Law no 13/2007 transposes Directive 2003/54/EC on common rules for the internal market in electricity and Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market.

In accordance with European Community legislation, the new law imposes the unbundling of the electricity distribution operators which are part of vertically integrated undertakings. Such operators must become independent from other activities not relating to distribution, at least regarding their legal form, organization and decision-making process (i.e. it does not require separation of the ownership of assets of the distribution operators from the vertically integrated structure). However, the unbundling requirement is not applicable to small vertically integrated operators meeting certain criteria, such as operators providing services to fewer than 100,000 clients. A similar unbundling obligation also applies to transport and system operators that are part of a vertically integrated undertaking, regarding activities not relating to electricity transport.

The new law also regulates the concept of the last option supplier. This supplier is appointed by the National Energy Regulatory Authority for one to five years to provide electricity to eligible consumers in the licensed area whose contracted supplier may no longer perform its obligations. The last option supplier provides the electricity against regulated tariffs.

Capital markets

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

Banking

Recommended firms
Tier 1
Linklaters Miculiti Mihai & Asociatii Musat & Asociatii Nestor Nestor Diculescu Kingston Peterson
Tier 2
Badea Clifford Chance Bulboaca & Asociatii CMS Cameron McKenna Gide Loyrette Nouel Popovici Nitu & Asociatii Schönherr si Asociatii Stoica & Asociatii Tuca Zbârcea & Asociatii Zamfirescu Racoti Predoiu
Tier 3
BPV Grigorescu Studio Legale Sutti

Mergers and acquisitions

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

Project finance

Recommended firms
Tier 1
Linklaters Miculiti Mihai & Asociatii Nestor Nestor Diculescu Kingston Peterson
Tier 2
Badea Clifford Chance CMS Cameron McKenna Musat & Asociatii Popovici Nitu & Asociatii Schönherr si Asociatii Tuca Zbârcea & Asociatii
Tier 3
Bulboaca & Asociatii Bostina & Associates BPV Grigorescu

These are exciting times to be a lawyer in Romania. The market is at its most active ever, and it can only get busier. No wonder then that partners and senior associates are leaving their firms to form new ones to take advantage of the wider market. Adrian-Catalin Bulboaca left Linklaters Miculiti Mihai & Asociatii and formed Bulboaca & Asociatii in early 2007. Daniel Badea went on to set up a practice with Clifford Chance, bringing one more magic-circle firm into the Romanian market. And in 2005, eight lawyers left Musat & Asociatii to establish Tuca Zbârcea & Asociatii, which has emerged as one of the burgeoning outfits in the market.

Now officially part of the EU, Romania seems to be the flavour of the month for the European legal market. The economy is growing steadily, faster than its neighbours like

Bulgaria and Hungary, and the private sector is benefiting tremendously. The country's capital Bucharest is a hub of activity, and the amount of construction that is taking place there is quite staggering. Real estate is a big part of this change, and all the firms are heavily involved in such projects.

Even M&A is growing with spin-offs, joint ventures and buyouts all taking place regularly. Project finance is another growth area. The lack of infrastructure is one of the weaknesses in Romania and it has become very important to build motorways, warehouses, bridges and other transport projects. European companies are looking to the eastern side of the continent with a lot of enthusiasm, and the legal environment is responding to these needs.

"What is going through the legal market is remarkable," said one partner. "The nineties were so slow, and only since 2004 has the Romanian legal market begun to come into its own. At one time, international law firms were not attracted to our country, but now that is changing."

Badea Clifford Chance

Badea Asociatii made official its association with Clifford Chance in 2006, giving it an edge over some of its peers in the market. Daniel Badea, the practice's managing partner, is "the rising star" turned "experienced lawyer" on the Romanian market, and he and his team have proved their credentials in the market in the last couple of years. "He is a great lawyer, and knows how to make the best of his opportunities. Thirdly, he has always had a good contacts book," said one lawyer. Badea Clifford Chance acted for Warburg Pincus in the €101 million acquisition and financing of the Euromedic Group. In other deals, it enabled Permira in obtaining a merger control clearance in connection with the acquisition of a regional chemicals producer and distributor. The firm also assisted TDC and its Hungarian subsidiary HTCC, on the acquisition of Invitel and in Serbia it assisted Cuprom on the privatization of the RTB Bor Group.

In capital markets, the firm advised BNP Paribas and ABN Amro on the €500 million corporate bond issued by BCR. In an innovative transaction, the firm was consulted by Morgan Stanley and CAIB as lead managers in the context of a global depository receipt issue involving a Romanian company. Other significant deals include advising Credit Suisse on exchangeable bonds in Romania and its guidance to JPMorgan on a medium-term notes programme.

The firm also had a strong year in project finance, and has recently been engaged by BNP Paribas on the project financing involv-

ing the construction of an oxygen cracker plant. Bechtel is being helped by Badea Clifford Chance on the development of various sites in connection with the financing and construction of a \$2.5 billion highway in Romania. Credit Suisse is also taking the help on the firm on a complex financing of a Romanian copper company. Finally, the firm acted for APN UKA in the financing and acquisition of the City Mall and it also helped the Accession Fund in the acquisition and financing of the Charles de Gaulle office building in Bucharest.

Leading lawyers

Daniel Badea
Nadia Badea

Bulboaca & Asociatii

Bulboaca & Asociatii was formed on January 1 2007 when Adrian-Catalin Bulboaca, regarded as one "one of the country's top banking lawyers", left Linklaters. Since then, Adrian and his team of 15 lawyers have made a decent start. At the time of writing, Adrian was advising Deutsche Bank in a credit facility for 62 Romanian local governments to assist them in the construction of a regional gas pipeline. Because of the name partner's reputation, a number of big clients have shipped over to his firm. The firm is also in the process of advising Goldman Sachs on issues relating to a credit facility that will be made available to a large pharmaceutical company trading in Romania. It has also been advising these two clients on securities and derivative transactions as well.

Raiffeisen Romania and Alpha Bank Romania are being assisted by the firm in connection with a credit facility to a project company for the development of a residential complex in north Bucharest.

The firm is building a strong corporate practice, and since its inception it has advised Raiffeisen Investment in the sale of one of the largest GSM mobile distributors in Romania. Another highlight is the firm's role in the joint ventures of Martifer to enable the group to acquire agricultural companies and subsequently develop wind farms. Lastly, Bulboaca & Asociatii was acting for a UK investment fund in the acquisition of a controlling stake in a Romanian company.

Leading lawyers

Adrian-Catalin Bulboaca

Gide Loyrette Nouel

Gide Loyrette Nouel consolidated its practice in 2007 by taking part in some of the country's biggest deals. Traditionally, the firm is

known to have a long list of French clients, but that is beginning to change, and its Bucharest office now has a number of Romanian and international companies to its name, as can be seen by some of the firm's recent deals.

In the banking and finance sector, the firm had an active year. Most notable was its role on one of the largest real-estate financing transactions in Romania. It acted for five Romanian and international banks in the development of four projects – a commercial gallery, a shopping mall, a furniture store and an office building. The total value of the deal was estimated to be €230 million. The firm also advised a Romanian bank on its first issuance of notes, for an amount of €200 million, on the Luxembourg Stock Exchange.

Gide Loyrette Nouel is making inroads in privatization and in the last 12 months the firm acted for Iberdrola in its bid to acquire a stake in Electrica Muntenia Sud, a Romanian electricity company. And following the acquisition by E.ON Ruhrgas of Distrigaz Nord in 2005 it has helped the group on post-privatization work including the unbundling of distribution and supply activities in Romania. In other M&A deals, the firm advised RCI Banque in relation to the acquisition of a leasing company and also acted for Norbert Dentressangle in the acquisitions of Transcondor and Northern Distribution & Logistics. Furthermore, Saint Gobain consulted the firm when it acquired two Romanian companies for the production of glass products which was followed by a merger.

Leading lawyers

Jean-Jérôme Khodara
Bruno Leroy
Cristina Togan

Linklaters Miculiti Mihai & Asociatii

Linklaters is the most prominent of all the international firms in Romania and peers believe that it has a "good balance of lawyers with international and local expertise". Michael Tétreault Schilling, a partner of its Bucharest office, seems to be one of the most popular lawyers in the country and along with Theodore Cominos has worked hard to get the firm on the map in Romania.

Adrian-Catalin Bulboaca, who was one of the architects of the firm's success in banking and finance, left the firm in 2006 to form Bulboaca & Asociati. Competitors believe this may have some effect on the practice, although few doubt it has the resources to survive without him.

Linklaters certainly has a strong track record in this category. In the last 12 months

it advised the Export-Import Bank of Korea in a \$400 million financing which also included taking over the security of container ships being constructed by Daewoo Mangalia Heavy Industries in Romania. Citibank also sought the firm's counsel in its capacity as arranger of an \$80 million facility to Borusan Holding, a Turkish industrial machinery producer. The firm also guided Alpha Bank Romania in the \$19 million financing for the acquisition of five buildings in Bucharest.

The firm's recent capital markets work includes its advice to ING Bank in the listing of A&D Pharma on the London Stock Exchange, the first for a Romanian company. A&D Pharma is a Dutch holding which owns the largest integrated pharmaceutical wholesale and retail business in Romania.

The firm also advised Korean company Doosan Heavy Industry and Construction in its \$26 million acquisition of IMGB, a large casting and forging plant in the region. Finally, Linklaters acted for Dawnay Day Europe in its first deal in Romania, when it acquired a part of the Macromall Commercial Centre in Brasov for €19 million.

Leading lawyers

Theodore Cominos
Michael Tétreault Schilling

Musat & Asociatii

Musat & Asociatii has gone through enormous changes in the firm since it entered the market during a period of liberalization at the start of the nineties. At that time, along with Nestor Nestor Diculescu Kingston Peterson, it pioneered a new wave of independent firms and built up a strong practice. These two firms still have a dominant share of the country's business, but the market is growing and their hegemony is being challenged by younger local practices and international firms.

On the banking front, Musat & Asociatii advised Invitel in the subordination of its subsidiary Euroweb Romania after it was granted a €165 million facility agreement. The firm also advised Raiffeisen Zentralbank Österreich in a €50 million syndicated loan to Motoractive for financing leasing operations. Another key client of the firm is the European Investment Bank, which it advised on a €50 million loan granted to the Romanian Commercial Bank. At the time of writing, the same client referred to the firm in connection with a €120 million loan facility for the Bucharest Municipality for urban development purposes.

The firm also advised Fortis Bank on the establishment of its branch network in Romania. Nokia has been working with the

firm on a €200 million investment which is to be used for the establishment of a mobile phone manufacturing plant in Cluj.

On the capital markets front, it was retained by the National Securities Commission to provide advice on the initial public offering (IPO) of Alumil Rom Industry for listing on the Bucharest Stock Exchange. Iuliana Craiciu, who now heads the capital markets department, was promoted to partnership in early 2007. She and her team acted for Axa, a regular client of the firm, on various capital markets issues. Musat & Asociatii was also retained by GHCL, an Indian group, in its successful share acquisition of Bega Upsom, a Romanian soda-ash producer.

In a headline-grabbing deal, it advised Enel in its €820 million acquisition of Electrica Muntenia Sud, an electricity distribution company in Romania. It also received press attention for its deal for KBC Group on the €75 million acquisitions of Romstal Leasing and Swiss Capital. Lastly, it advised OTP Bank in a €43.7 million project finance arrangement for Atlas Telecom Network Romania to develop a new telecoms network in the country.

The firm still garners much respect from its competitors and clients. Gheorge Musat, its managing partner, is particularly well regarded. "He is a great lawyer; he has built up a solid practice. He has taught us a lot," said one rival lawyer.

Leading lawyers

Catalin Baiculescu
Gelu-Titus Maravela
Gheorge Musat
Miruna Suci

Nestor Nestor Diculescu Kingston Peterson

Nestor Nestor Diculescu Kingston Peterson was a running-mate of Musat & Asociatii in the early stages of the liberalized market. The firm was set up in February 1990 by Ion Nestor and his wife Manuela Nestor and the couple's first office was their kitchen. The firm now has over 80 lawyers and is one of the largest and most successful firms in Romania. "The market has become bigger, giving opportunities to other firms," said a competitor of the firm, "but it still has a strong presence in the market, and no one can doubt that."

Clients also praised the firm and its lawyers. One said: "They are of real high-quality; some of them are bloody good. Secondly, the market is fragmenting, but because of the way Ion Nestor runs his firm it

hasn't affected Nestor Nestor Diculescu Kingston Peterson all that much."

Managing partner Ion Nestor is very popular in the market and many lawyers, whether they are young or experienced, hold him in the highest regard. "He has set the standard for how law firms should be managed in Romania," said one rival partner. "He leads from example," added another.

The firm advised Vodafone Romania in its investment in a number of commercial papers issued by a foreign company. It has also been working with Raiffeisen Capital & Investment in relation to Transgaz's IPO on the Bucharest Stock Exchange, and assisting Plaza Center on the Romanian aspects of its IPO on the London Stock Exchange.

In M&A, Nestor Nestor Diculescu Kingston Peterson advised Tiriac Group in its partnership with the HVB Group after its merger with Bank Austria Creditanstalt and the Tiriac Group. The firm also advised Trinity Industries when it was bought out by International Railway System, a company looking to gain a foothold in the railway industry in Romania. And the firm represented the Romanian-American Investment Fund in its sale to General Electric Capital Corporation.

With the number of malls and office parks popping up in Romania's cities, any firm whose strength lies in real estate has a clear edge over its competitors, and Nestor Nestor Diculescu Kingston Peterson is one such example. In project finance, the firm advised EFG Telesys Finance and National Bank of Greece in relation to a loan from Neocity Group to develop a shopping mall. Elsewhere, it assisted North Asset Management in the refinancing of the Retail Park Sibiu. It guided GTC Real Estate Investments Romania on the financing on the development of several offices, shopping malls and residential projects. Furthermore, the firm acted for Portland Trust in relation to the sale of the Bucharest Business Park and assisted Sonae Sierra in its acquisition of the River Plaza Mall in Ramnicu Valcea.

Leading lawyers

Ion Nestor
Manuela Nestor
Francisc Peli
Alina Radu

Popovici Nitu & Asociatii

Popovici Nitu & Asociatii was one of the first firms to set up a partnership in the early nineties and has a strong reputation. The firm has experienced the Romanian legal services market mature over the years and is revered by many of its competitors. It recently assisted

Ralfi and Domenia Credit, both part of GE Money, in connection with various loan facilities exceeding €200 million.

The firm retains its first-tier position in capital markets after a string of significant transactions, representing such clients as Alumil Rom Industry before the National Securities Commission and the Bucharest Stock Exchange in the successful finalization of its IPO in February 2007. Bogdan Stoica, one of six partners at the firm, advised Amylum Romania in connection with a successful squeeze-out project implemented on Rasdaq, part of the Bucharest Stock Exchange. Another highlight for the firm was its assistance to Primex in the acquisition of an interest in Electronica and the delisting of PC Boards from Rasdaq.

In M&A, the firm participated in the global joint venture of Nokia and Siemens and helped Oresa Ventures in its exit from La Fantana Romania and La Fantana Serbia. It also helped the same client in its acquisition of Gemini Capital Consult and its partial divestiture from Flamingo International.

Popovici Nitu & Asociatii is also greatly respected for its project finance work, grabbing headlines when it advised the Romanian Ministry of Public Finance under the Phare Project, a regeneration programme consisting of five public-private partnerships (PPPs). Other projects in this sector include its assistance to Credinvest and Alpine Bau in the development of the second motorway between Bucharest and Ploiesti in a \$130 million PPP. The firm also advised Hewlett-Packard in its investment in the Global E-Business Operations Centre.

According to a lawyer, Popovici Nitu & Asociatii has a "solid real-estate and capital markets" practice. Partner Florian Nitu, who comes highly recommended, advised Erste Bank in relation to a facility granted to the European Future Group to develop a residential complex in Brasov. The practice has also been representing CPB in various sector financings granted to Romanian developers.

Leading lawyers

Florian Nitu
Ernest Popovici

Schönherr si Asociatii

Schönherr si Asociatii is still regarded as a growing firm which is beginning to make its mark on the market. And that it definitely did so in the last year with some standout deals. The first of these was its advice to Petrom in the acquisition of OMV Bulgaria, OMV Romania and OMV Serbia, and included the transfer of 174 operating filling stations. This complex €228 million deal was closed in

August 2006 and displayed the firm's potential. At the time of writing it was advising the same client in its 55% acquisition of Shell Gas Romania. Managing partner Markus Piuk also acted for Danfoss Denmark in the acquisition of a 100% interest in a Romanian heating equipment company, Schmidt-Bretten.

In capital markets, it advised Banca Comerciala Romana in the issuance of a leu-denominated bond listed on Bucharest Stock Exchange. Elsewhere, the firm worked with Julius Baer Investment Management on matters relating to Romanian capital markets and compliance issues. The firm also represented Uniqa Insurance Group in relation to qualified stakes in two listed Romanian insurance companies.

The European Bank for Reconstruction and Development consulted the firm in the acquisition of a 9.9% stake in the Moldovan and Romanian operations of the German energy group E.On.

Leading lawyers

Matei Florea
Markus Piuk

Stoica & Asociatii

Set up in 1995 by Cristiana Stoica and Valeriu Stoica, Stoica & Asociatii has built up a solid practice, which now consists of eight partners and 25 lawyers. The firm is growing organically and plans to hire more lawyers towards the end of 2007. It is renowned for its litigation practice but also has a burgeoning financial and corporate department.

The firm advised ING Bank when it granted a \$325 million loan to two Romanian triple-pay services, RCS and RDS, in March 2007. It also acted for Primavera Development in a €41 million loan for a real-estate development in northern Bucharest.

Stoica & Asociatii helped Arena City Centre, one of the largest malls in eastern Romania, secure a €42.5 million loan from HVB Bank. The firm also assisted Affichage Holding and its Romanian subsidiaries in the acquisition of shares in the companies of The Romanian Billboard Network. Insurance is another speciality of the firm's, and it has recently acted for Citadel and Coface in this field.

Leading lawyers

Radu Rizoiu
Cristiana Stoica
Valeriu Stoica

Tuca Zbârcea & Asociatii

Tuca Zbârcea & Asociatii is one of the most dynamic firms in the Romanian legal market

at the moment. It was formed in the spring of 2005, when eight lawyers left Musat & Asociatii, and has built a really successful practice in such a short period. It is the first time that a relatively new firm has made such an impact on the Romanian market, and according to the firm, it is trying to change the tide of the market by distinguishing itself from the traditional firms. According to peers, it is an emblem of a younger generation of ambitious and driven Romanian lawyers.

One rival stated that the firm consists of "a very good team of lawyers but it is still in the process of building a successful track record". But the firm has made a good start and with the market growing, Tuca Zbârcea & Asociatii is already a key player.

The firm's banking department advised Eximbank on the norms for granting credit facilities to refinance commercial banks in order to support the development of Romanian small and medium enterprises. It also acted for BNP Paribas in connection with the €300 million financing for Smithfields Foods in Europe.

Tuca Zbârcea & Asociatii has a strong capital markets practice headed by the "hard-working" Stefan Damian, who is the firm's deputy managing partner. He, along with Silvana Ivan and Patricia Enache, advised Erste Bank on its listing on the Bucharest Stock Exchange. This was the bank's third listing on an EU regulated market, following offerings on the Vienna and Prague stock exchanges. The same team acted for the establishment of a property fund which included the takeover of assets and a securities portfolio, along with the listing of the fund on the Romanian and international stock exchanges. Another transaction that won the firm accolades was its assistance to RomReal in its listing on Oslo Axxess, which was a first for a Romanian company. On the debt side, Tuca Zbârcea & Asociatii acted for the Romanian Municipality when it issued a municipal bond with a 20-year maturity, which was financed through a bridge loan and two subsequent series of bonds.

In M&A the firm has been working on a privatization strategy for Daewoo Automobile Romania. Following Mittal Steel's merger with Arcelor, Tuca Zbârcea & Asociatii has helped the world's largest steel producer in its restructuring process, along with preparing merger and de-merger scenarios and share transfer operations.

Finally, Armedica used the firm's help in connection with the acquisition of the DITA chain of drugstores, which was the second-largest transaction in the local drug distribution market in 2006.

Leading lawyers

Stefan Damian
Florentin Tuca
Gabriel Zbârcea