

# Romania

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### Cristina Vartopeanu

### Nestor Nestor Diculescu Kingston Petersen Bucharest

The new securities and capital markets law was passed at the end of July 2004, an important legislative step towards harmonization of Romanian legislation in view of Romania's accession to EU.

The new consolidated Capital Markets Law covers, under a single act, securities, financial investment services companies and regulated markets, collective investment undertakings, commodities exchanges and derivative instruments, previously regulated by three separate Emergency Government Ordinances passed in a legislative package in 2002.

The trigger for this legislative overhaul was the need to implement EU Directives on capital markets into domestic law. The Capital Markets Law lays down principles contained, among others, in EU Directive 93/22/CEE on investment services in the securities field, EU Directive 85/611/CEE relating to undertakings for collective investment in transferable securities, EU Directive 98/26/CEE on settlement finality in payment and securities settlement systems, EU Directive 2003/71/CEE regarding publication of prospectuses, and EU Directive 2003/6/CEE regarding Market Abuse.

### Changes to securities, issuers and regulated markets

The Capital Markets Law reintroduced the possibility to increase issuers' share capital by in-kind contributions, evaluated by independent licensed appraisals, provided that the decision has been taken by a 75% majority of the voting rights and that the contributed assets are necessary for the issuer's scope of activity.

To speed up the process of share capital increase while ensuring the protection of minority shareholders rights, new provisions have been introduced to allow an issuers' board of directors be empowered by the general meeting of shareholders to decide on share capital increases, up to a limit established by the shareholders, valid for a year.

To provide increased protection of minority shareholders, the number of board directors to be elected by cumulative vote has been increased from three to five.

A key development introduced by the Capital Markets Law is in connection with squeeze-out and sell-out rights. The provisions relating to these exit strategies allow for the possibility of a shareholder holding more than 95% of issuer's share capital or, if the shareholder has acquired more than 90% of the shares, making the object of a public offering to request the minority shareholders who did not subscribe in the public offering to sell their stock. Symmetrically, a minority shareholder has the right to request the majority shareholder holding more than 95% of the share capital to buy it out for a fair price.

The Capital Markets Law provides for exemptions from the obligation to publish a prospectus when offering shares to certain categories of investors or for certain types of securities, in keeping with EU Directive 2003/71/CEE regarding the publication of prospectuses.

Also, as of the date of Romania's accession to EU, cross-border offerings will be carried out in EU member states by Romanian issuers or by non-residents in Romania in compliance with EU Directive disclosure standards.

The Capital Markets Law allows licensed intermediaries to set up alternative trading systems, offering an alternative for securities that do not meet requirements for being traded on a regulated market.

An important step forward is represented by the obligation under the Capital Markets Law to deposit any class of securities listed on a regulated market (or traded on an alternative transaction system) with a central depository, an entity to be created as a joint-stock company under the authorization and supervision of the National Securities Commission (the NSC) within 18 months of the Capital Markets Law coming into force.

The central depository will also serve as settlement and clearinghouse for all securities transactions, except derivatives transactions. In the transition period before this entity is set up, the existing depositing companies will continue to perform depositing operations, and will submit the registries to the central depository once it exits.

### Undertakings for collective investments in transferable securities

The Capital Markets Law implements the common basic rules

in EU Directive 85/611EEC relating to the authorization, supervision, structure and activities of collective investment undertakings (Ucits). It also provides basic rules relating to private (closed-ended) funds, which are not covered by EU Directive.

### Derivative instruments

The Capital Markets Law lays down the principle that financial collaterals granted under Government Ordinance 9/2002 that implements the Financial Collateral Directive are protected from the effects of the insolvency of the participant in the system.

### Newly issued secondary legislation

Starting as of July 1 2005, a package of four regulations issued by NSC came into force: the Regulation on financial investment services, the Regulation on issuers and market operations, the Regulation on regulated markets and alternative trading systems, and the Regulation on asset management companies, collective investment undertakings and depositories.

Secondary legislation means that fundamentals contained in the Capital Markets Law may now be put into practice, enabling the development of a mature local capital markets, ready to manage the more complex issues posed by a fully integrated financial market.

## Banking

### Recommended firms

Tier 1

**Linklaters Miculiti & Asociatii**

**Musat & Asociatii**

**Nestor Nestor Diculescu Kingston Petersen**

Tier 2

**Calin-Andrei Zamfirescu & Associates**

**Stoica & Asociatii**

Tier 3

**CMS Cameron McKenna Cristina Brinzan Law Office**

**Gide Loyrette Nouel**

**Haarmann Hemmelrath**

**Mihaela Grama-Popovici Law Office**

**Schönherr Rechtsanwälte**

**Studio Legale Sutti**

## Capital markets

### Recommended firms

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Tier 3

**CMS Cameron McKenna Cristina Brinzan Law Office**

**Haarmann Hemmelrath**

**Rubin Meyer Doru & Trandadir/Herzfeld & Rubin**

## Mergers and acquisitions

### Recommended firms

Tier 1

**Linklaters Miculiti & Asociatii**

**Musat & Asociatii**

**Nestor Nestor Diculescu Kingston Petersen**

Tier 2

**Babiuc Sulica & Associates**

**Stoica & Asociatii**

**Calin-Andrei Zamfirescu & Associates**

Tier 3

**CMS Cameron McKenna Cristina Brinzan Law Office**

**Gide Loyrette Nouel**

**Haarmann Hemmelrath**

**Mihaela Grama-Popovici Law Office**

**Rubin Meyer Doru & Trandadir/Herzfeld & Rubin**

**Schönherr Rechtsanwälte**

## Project finance

### Recommended firms

Tier 1

**CMS Cameron McKenna Cristina Brinzan Law Office**

**Linklaters Miculiti & Asociatii**

**Musat & Asociatii**

**Nestor Nestor Diculescu Kingston Petersen**

**Schönherr Rechtsanwälte**

### **Babiuc Sulica & Associates**

Babiuc Sulica & Associates is a mid-sized Romanian law firm with a solid reputation in the mergers and acquisitions market. Its 12 specialized attorneys represent a wide range of clients in corporate, M&A, tax, secured and unsecured transactions, investment law, commercial litigation and employment law issues.

This is a multi-lingual firm – its attorneys are fluent in at least one foreign language each – and in the past two years it has hired a number of young and highly educated new team members. Over half of the team hold foreign and domestic post-graduate degrees.

The firm's most important recent projects include an €82 million (\$101.3 million) debt restructuring agreement for a large Japanese investment corporation, and the establishment and provision of permanent operational support for the Romanian subsidiary of the largest Czech second-hand automobile distributor.

The firm was also involved this year in the preparation of a comprehensive set of corporate and departmental bylaws and regulations for one of the largest Romanian food distribution corporations. In addition, the firm is retained in a day-to-day advisory capacity by the Romanian subsidiary of a large US insurance corporation, and the Romanian branch of an international Jewish organization.

#### **Key contact partners**

Tripon Catalin  
Radu Protopopescu  
Adriana Puscas

### **Calin-Andrei Zamfirescu & Associates**

Calin-Andrei Zamfirescu & Associates recently confirmed its status as a leading Romanian law firm when it advised HVB Bank Romania in relation to amending the constitutive acts regarding consumer credits, and on a court matter involving the bank's recovery of certain loans. One of the senior advisors on this deal is the head of the banking practice, Stan Tirnovanu, described by one market commentator as "one of the best banking lawyers in the Romanian legal market."

With three partners and 18 associates, Calin-Andrei Zamfirescu & Associates maintains a healthy market presence in Romania, and the firm's bilingual lawyers are able to operate in English or French. Clients praised the firm's provision of "precise legal advice in due time," and its "high quality legal services". From among the team, Cosmin Vasile earns plaudits for his abilities as "a very results-oriented lawyer."

This year the firm was involved in drafting the internal norms for granting mortgage credits to individuals, and drafting and analysing outsourcing contracts for Finans Credit Ipotecar, and acted for Raiffeisen Bank, providing legal opinions regarding various letters of guarantee and debt recovery matters.

Two partners and five associates dedicate themselves to mergers and acquisitions work. Stan Tirnovanu heads the firm's M&A operation, who one market commentator singled

out for being "client oriented" and for possessing an "ability to offer quality services." He is highly active on most deals in this jurisdiction, including the €7.5 million (\$9.24 million) acquisition of a pharmaceutical company, in which the firm advised Pharmaplant Biogalenica. He also acted on the recent acquisition of a large state-owned company in the natural resources field, while his esteemed colleagues Daniela Gramaticescu and Amalia Stoica advised Finans Credit Ipotecar on an acquisition project regarding a financing company.

The firm has also had an exciting year on the project finance front, and the head of this practice, name partner Calin Zamfirescu, is admired by peers and clients for the quality and professionalism of his advice. In one high-profile deal, he provided Bucharest Distribution Park with negotiation assistance and representation on the Bucharest Distribution Park project. This innovative Romanian project incorporates the development of an international-standard, high-end logistics facility, state-of-the-art transport facilities and modular office accommodation.

Other highlights saw the firm act for Finansbank Romania in relation to signature rights relating to a promissory note, provide a legal opinion to Bayerische Hypo-und Vereinsbank in regards to granting a state-guaranteed loan to CFR Calatori, and act for HVB Bank Romania in relation to financing packages arranged for certain Romanian municipalities.

#### **Leading lawyers**

Daniela Gramaticescu  
Tiberiu Savu  
Stan Tirnovanu

#### **Key contact partners**

Stan Tirnovanu  
Calin Zamfirescu

### **CMS Cameron McKenna Cristina Brinzan Law Office**

CMS Cameron McKenna Cristina Brinzan Law Office continues to maintain a solid presence in the Romanian legal market, one client praising the firm for "always performing efficiently and correctly."

The firm has advised Société Générale on two occasions in the recent past. In the first, it provided advice in relation to the financing of Unit 2 of the Cernavoda nuclear plant, which benefited from a Romanian sovereign guarantee. And in the second, it acted for the French bank in relation to the acquisition of the Romanian Bank for Development, which marked the first bank privatization in Romania.

In a €60 million (\$73.9 million) transaction, the firm acted for Citibank in relation to a partial risk guarantee transaction in connection with the privatization of two electricity distribution companies. "Highly skilled lawyer" Ana Radnev was intrinsic to the CMS Cameron McKenna team advising on the deal, and she has been highly visible on a number of other important mergers and acquisitions this year.

With two partners and four associates dedicated to mergers and acquisitions work, the firm has had an extremely busy and successful year. In one deal highlight, the firm advised E.On Energie in connection with the privatization of two electricity distribution companies, worth a total of €100 million. The firm also acted for Winstershall on the privatization of Distrigaz Nord, one of the two Romanian gas distribution companies.

The “very professional” Dan Mares recently was involved in advising DBG Eastern Europe and Enterprise Investors on an investment in Flanco International, one of Romania’s leading consumer goods retail businesses. Other clients of the firm include Nestlé Romania and FMO, EFG Eurobank, DBG Eastern Europe and Enterprise Investors.

#### Leading lawyers

Cristina Brinzan  
Ana Radnev  
Paul Stallebrass

#### Key contact partners

Cristina Brinzan  
Paul Stallebrass

#### Gide Loyrette Nouel

This year, Gide Loyrette Nouel’s banking practice has added Alexandra Ovedenie from HVB Romania to its distinguished team. She joins a group that is held in high regard by clients, one of which commented that the firm “did a very good job, and was very professional.” This French firm can conduct business in its native tongue, English, Spanish and Hungarian, and its peers suggest that this key player is well placed in the market to target clients from its home territory.

One such client is Société Générale, Gide Loyrette Nouel providing legal counsel to the French bank this year in regards to a \$50 million uncommitted letter of credit facility secured by stocks of crude and refined oil. And in April 2005, Gide Loyrette Nouel provided its legal expertise to Societé Générale again, this time in relation to its €20 million (\$24.6 million) syndicated credit facility granted for the financing of DIY stores in Romania.

In June 2004 the firm turned its hand to liquid assets, providing advice to Apa Nova Bucuresti in relation to a joint venture between water treatment firm, Compagnie Générale des Eaux, and the Municipality of Bucharest, in respect of a €74 million project financing package for a portable water treatment plan.

Bruno Leroy is Gide Loyrette Nouel’s resident partner in Romania, and continues to be visible on the firm’s major transactions. On one €65 million banking deal, Leroy led the team acting for Groupe Soufflet, in relation to a framework agreement entered into with the European Bank for Reconstruction and Development. Gide Loyrette Nouel also advised on loans to the group’s subsidiaries operating in various eastern European countries, including Romania.

Although it is not the firm’s most dominant practice area (in Romania, at least), Gide Loyrette Nouel had a successful year in

the capital markets sector, acting as legal advisor to key client Société Générale in connection with an international employee share offering in June 2004.

Gide Loyrette Nouel has also been visible in the mergers and acquisitions market this year, in one high-profile transaction providing E.On Ruhrgas, part of one of the world’s largest utilities group, with exclusive legal counsel in connection with a €304 million acquisition. In this transaction E.On Ruhrgas acquired 51% of the share capital of Distrigaz Nord by purchasing existing shares held by the Ministry of Economy and Commerce of Romania. At the end of 2004 the firm acted as legal counsel to French insulation company, Saint-Gobain Isover, in regards to the purchase of the shares of a Romanian insulation company, and of a company operating an industrial park. And in a \$9 million cash and common stock deal, the firm advised Ixia, a leading global provider of IP network testing solutions listed on Nasdaq, on its purchase of the shares in G3 Nova Technology.

#### Leading lawyers

Bruno Leroy  
Christian Mindru  
Andreea Toma

#### Key contact partner

Bruno Leroy

#### Linklaters Miculiti & Asociatii

Acting in conjunction with Linklaters’ other international offices, Linklaters’ Bucharest office has been involved in a number of complex cross-border financings this year, and it continues to lead the corporate and commercial field in Romania.

There has been a noteworthy addition to the highly regarded team this year in the form of Graham Conlon, who transferred over from the firm’s London office. He brings a wealth of M&A, project finance, energy and competition experience to Linklaters Miculiti & Asociatii, adding value to what is already regarded as one of Romania’s most eminent firms.

In one of the highest-profile finance deals in Romania since 2000, the firm advised Bear Stearns International on the provision of debt financing to the Romanian Ministry of Transportation for the construction of the Brasov-Bors motorway in Romania. The financing was designed to assist the borrower in the construction of a strategic motorway linking Romania to the EU. The widely admired Michael Tétreault Schilling, managing partner of Linklaters’ Bucharest team, played a pivotal role in the €44 million (\$54.2 million) deal, as did the head of the banking and finance team, Adrian-Catalin Bulboaca.

Recently the firm also advised on Commerzbank’s first Romanian financing, made available to the Romanian Ministry of Environment and Waters Management to facilitate its acquisition of a Deswat; the financing has the backing of the US Export-Import Bank. Helping to advise on this \$49 million deal

was rising star Mihai Ristici, who has worked on a number of impressive transactions during his time as a member of Linklaters' banking and finance team. Mihai has advised some of the largest international banks and multilateral financial institutions, as well as a number of important Romanian entities on a wide variety of financing transactions.

The firm has been retained by a number of distinguished banks this year, in one \$120 million transaction the firm acted for Credit Suisse First Boston, advising on debt financing provided to the Romanian Railway Company, CFR, for the refurbishment and modernization of its infrastructure. In a further high-profile deal worth €86 million, the firm acted for Deutsche Bank in relation to the provision of financing to 59 Romanian local authorities to assist them in the construction of a gas distribution network.

Linklaters has benefited substantially from the increase in the number of privatizations that are taking place in Romania, recently becoming involved in the country's largest. Marian Duran, head of the Bucharest corporate practice, led the team that advised Credit Suisse First Boston and the Romanian Ministry of Economy and Commerce on the €1.4 billion privatization of Romania's national petroleum company, Petrom. The deal represented a big step towards the modernization of the Romanian economy, and was particularly complex, involving the simultaneous sale of shares and subscription for new shares.

In another of central and eastern European region's landmark privatizations, at the time of writing the firm was advising the Romanian government on the privatization of Romania's two national gas distribution companies, Distrigaz North and Distrigaz South. A large team of lawyers was involved in this \$500 million deal, including the co-head of the south-eastern European practice group, Todd Shollenberger.

Recently the firm has also been involved in advising a consortium of seven leading private equity funds on the leveraged acquisition of Bulgaria's leading mobile telecoms operator, MobilTel. At €1.1 billion, this transaction marked the largest leveraged acquisition in eastern Europe to date. Other deal highlights saw the firm act for OTP Bank on its €50 million acquisition of the Romanian bank, RoBank, and advising Delphi in relation to the €10 million financing of a greenfield project in Ineu.

#### Leading lawyers

Adrian-Catalin Bulboaca  
Marian Dinu  
Michael Tétreault Schilling

#### Key contact partners

Adrian-Catalin Bulboaca  
Marian Dinu  
Michael Tétreault Schilling

#### Musat & Asociatii

With eight partners and 55 associates, Musat & Asociatii is one of Romania's largest firms, and conducts business in English,

French, German and Italian. Clients are highly complimentary about the firm's banking practice, which is touted as the epitome of "professionalism, availability, quality and good human interaction."

Other clients describe the firm as "timely, creative and efficient," and highlight the abilities of Horatiu Dumitru, Bogdan Mihai and Luminita Ivanciu, who are recommended "for their deep knowledge in corporate law and commercial agreements issues, for timely and creative solutions considering the particularly difficult Romanian legal environment".

Catalin Baiculescu is the head of the firm, and is praised by clients for his extensive knowledge and legal skills in the area of corporate and commercial law. Highly visible in the market, he recently advised Transfond on all legal matters relating to the implementation of the electronic banking payment system. He was also the firm's central advisor to Standard Chartered Bank in relation to a €20 million (\$24.7 million) loan agreement granted to Banca Comerciala Romana in June 2005.

An aggressively expanding Musat & Asociatii has secured a vast amount of new blood this year, hiring 14 new lawyers to invigorate the banking department (eight of whom hailed from top Romanian legal firms). One of the new hires, Nicolae Tanasoiu, is particularly notable; Tanasoiu was previously a partner at Babiuc Sulica & Asociatii. He is joined by another well-regarded lawyer, Irina Daneila Lazarescu, who moved over from Nestor Nestor Diculescu Kings Petersen, where she was a senior associate.

Name partner Gheorghe Musat and Ana-Maria Placintescu, recently sank their teeth into a raft of top-flight capital markets mandates. Among these, the pair played a key role advising Banca Transilvania on a share capital increase, with the contribution of the European Bank for Reconstruction and Development. In September 2004, the head of the firm's capital markets practice, Gelu-Titus Maravela, was retained by Exselent in relation to its merger with Kandia, advising the company on all the issues regarding the regulatory impact on the transaction.

Musat & Asociatii's capital markets department has employed five new associates this year, and the practice now consists of 12 associates and two partners. The well-regarded Miruna Suciuc is one of the partners, recently advising LNM Holdings UK in relation to the voluntary and mandatory offers of the largest Romanian steel producer, Ispat Sidex Galati, in view of its delisting and withdrawal from the market. At the time of writing, the firm was involved in an ongoing capital markets deal, providing Romgaz Medias with legal assistance in connection with listing its shares on the Bucharest stock exchange as a first step towards privatization.

Musat & Asociatii has been highly active in mergers and acquisitions this year, and has hired 11 new lawyers to join the team, including Horia Chioseau from Squire Sanders & Dempsey-Voicu & Filipescu. The department recently advised Enel Distribuzione on the €112 million privatization of two of Electrica's subsidiaries, and advised SBS on two matters: the €22.5 million acquisition of Romania's leading

FM radio station Kiss FM and the FM radio station Radio Star, as well as in relation to SBS's €7.8 million increase of its stake in the Romanian television station Prima TV.

Most recently, in June 2005, the firm acted for PepsiAmericas, the world's second-largest manufacturer, seller and distributor of Pepsi-Cola beverages, in respect to its \$51 million investment in the Quadrant-Amroq Bottling Company, a holding company that, through subsidiaries, produces, sells and distributes Pepsi and other drink products throughout Romania. Musat & Asociatii was also able to benefit from the steady rise in global convenience food sales in 2004, advising PepsiCo and Frito-Lay on its €20 million acquisition of the Romanian chips, snacks and popcorn producer Star Foods.

Musat & Asociatii has been exceptionally active in the project finance sector of late, acting on a number of high-profile deals over the past year. It has been expanding in this area, hiring seven new associates to bring the total number of lawyers dedicated to project finance at the firm to 25.

One project finance highlight saw the talented Ion Dragne advising Raiffeisen Zentralbank Osterreich in connection with several loan agreements granted to Romanian public authorities, to the total value of €70 million. The firm also acted for the European Bank for Reconstruction and Development in connection with several loan agreements, including a €50 million loan granted to Banca Comerciala Romana and a €40 million loan to Banc Post.

#### Leading lawyers

Catalin Baiculescu  
Gheorghe Musat  
Miruna Suci

#### Key contact partners

Catalin Baiculescu  
Gelu-Titus Maravela  
Gheorghe Musat

#### **Nestor Nestor Diculescu Kingston Petersen**

Nestor Nestor Diculescu Kingston Petersen retains its status as a leading Romanian financial law firm this year, assisting a large number of foreign and local banks with commercial lending, regulatory and corporate activities in Romania. Clients of the firm include some of the largest financial institutions in the world, as well as some of the most frequent Romanian borrowers. Those clients praised leading lawyer Ion Nestor for his "exceptional legal abilities," and Alina Radu, who has been looking after the privatization of Romania's largest bank for the past three years, was singled out as a rising star who is solely dedicated to banking work. The firm was unfortunate to lose well-regarded senior associate Irina Daneila Lazarescu (she moved to rival firm Musat & Asociatii), but the depth of the firm's talent should mean that her loss will not affect the firm's standing in the market.

The firm has recently handled mandates from Credit Suisse First Boston, Banque Paribas and, most recently, Merrill Lynch, in respect of structuring debt and equity offerings in Romania.

At the time of writing, Nestor Nestor was acting for OMV in relation to its attempted acquisition of 51% of Petrom, the national oil company.

Unsurprisingly, privatizations have formed a large part of the firm's work over the past year. In the highest-profile of these, the firm acted for the Romanian government in relation to the sale of Electrica Banat and Electrica Dobrogea to Enel. Other privatizations saw the firm retained by Allen & Overy as Romanian counsel to Bank of America Securities in connection with the privatization of SC Electrica Moldova and SC Electrica Oltenia, two Romanian electricity distribution companies. Nestor Nestor Diculescu Kingston Petersen also acted for Heineken when it acquired the Romanian operation of Brau Union.

#### Leading lawyer

Ion Nestor

#### Key contact partner

Ion Nestor

#### **Studio Legale Sutti**

Founded in 1996, Italian firm Studio Legale Sutti is now one of the largest practices in Romania, and has a strong reputation in Romania for the quality of its banking work. Although the firm is, for obvious reasons, particularly attractive to Italian clients wanting to do business in Romania, it also provides advice to a strong German contingent, a number of local firms and international organizations.

One of these international organizations, the European Bank for Reconstruction and Development, recently retained the firm to conduct legal due diligence in connection with a proposed \$25 million loan facility. In another mid-level transaction, Studio Legale Sutti advised Egnatia Bank Romani on the termination protocol of a lease agreement for the bank's headquarters. The firm also advised HSH Nordbank in connection with a \$30 million loan granted to Damen Shipyard, and acted for BNP Paribas in connection with its proposed \$150 million takeover of a Romanian bank.

The number of mid-size finance transactions closed by the firm continued to soar this year, as the firm strengthened its foothold in the Romanian market. It advised on two aircraft finance deals, acting for British Petroleum in connection with both the notification to the Competition Council for Air BP Romania, and Tarom's exclusive sale and purchase agreement for aircraft fuel. In addition to this, the firm acted for ABN Amro with respect to the \$15 million acquisition financing of two new ATR 42-500 aeroplanes for Tarom.

The firm also advised the Telesystem International Wireless Corporation in connection with the proposed \$20 million share transfer of its equity participation in the first Romanian GSM operator, and acted for the Romanel Group in relation to the first three-way merger of Romanian private companies (Romanel International Group, Romanel Universal Company and Romanel International Impex), worth €60 million.

Like Romania's other leading firms, Studio Legale Sutti has taken full advantage of the plethora of privatizations that have taken place in Romania recently. Among the year's highlights, the firm advised Hochland in connection with its \$25 million privatization by way of an asset sale of the Sighisoara and Targu-Mures milk plants, acted for Max Aicher on the \$70 million privatization of Lamdro Turnu Severin, and was retained by Sket Walzwerkstechnik in relation to Industria Sarnei Cluj County's \$10 million privatization.

At the time of writing, the firm was also acting for the Romanel Group in relation to the privatization of SC Frial, SC Forestar and SC Amco valued at \$25 million.

**Key contact partner**

Stefano Sutti