



**ROMANIA**

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The membership of the European Union, the state development plan, the macroeconomic stabilisation, the privatisation program and accelerated economic growth make Romania one of the most attractive and competitive investment locations for all types of services and business areas.

Germany is one of Romania's most important business partners. At the end of 2012 the total level of German investment in Romania was at least 6.5 billion euros (which amounts to 11 % of the total volume of foreign investment). Foreign direct investments in Romania amounted to 2.1 billion euros in 2012. That is a considerable decrease over the last four years. Only in 2008 foreign investments amounted to 9.5 billion euros.

There are currently more than 19,000 German companies in Romania. Germany was one of the most important trading partners of Romania with an export volume of 8.8 billion euros and an import volume of 9.1 billion euros in 2012. A large part of the German investments is made by small companies.

The most important investment areas are the automotive industry, metallurgy, the wholesale trade, construction, manufacturing, plastics, textiles, the retail trade, IT and financial services.

In the first eight months of 2013 foreign direct investments went down. The investment volume decreased by around 36 % compared to the same period in 2012. The investment locations preferred by German investors in Romania are in the northern and western counties where there is easy access to German-speaking workers. Some of the most popular investment areas are manufacturing, construction, building materials and the retail trade.

According to the Romanian regulation no. 122/1990, foreign companies are allowed to found representative offices in Romania. A representative is not an independent legal entity of the parent company, but instead acts with appropriate authorisation in the name of and on behalf of the parent company. A representative office may not achieve turnover, whereby the only source of revenue is through funds transferred to Romania by the parent company in order to cover its local expenses.

A foreign company can exercise its business activities in Romania through a subsidiary or a branch office. While a subsidiary has its own legal personality and is considered to be a Romanian legal entity, the branch office is only an extension of the parent company and therefore has no own legal personality and no financial independence. The new Romanian civil code adopted by law no. 71/2011 foresees in accordance with the usual international practice that the activity of a company is regulated through the founding memorandum of association.

Exemption from double taxation for resident taxpayers is possible due to a tax co-operation agreement. Romania has double taxation agreements with over 80 countries around the world. The majority of these agreements are based on the OECD model agreement in order to avoid double taxation on income and assets.

Many foreign companies have selected Romania for their investment projects and are already benefitting from a wide range of business possibilities such as favourable production conditions, the availability of qualified personnel, the geographical closeness to central Europe and the size of the sales market as second largest country in Eastern Europe. Numerous new studies place Romania among the top 5 European locations for all types of global service activities.

According to the emergency regulation of the Government ordinance no. 34/2006 and the emergency regulation of the Government ordinance no. 54/2006, public work and goods and/or services which are owned by the state or one of its administrative units require a concession. Such concession rights can be acquired through a public tender or through direct negotiations for a time period of up to 49 years. In this time period the recipient of the concession must make investments and cultivate the real estate for which the concession was issued. A concession contract can at the most be extended by up to half of the original contract duration.

In exceptional cases under certain conditions and only for a limited time period the authorities can grant the public interest-oriented legal entity or public services the right to use public property without charges.

Since entry to the EU at the start of 2007, Romania has had access to instruments of the structural and agricultural funds. The structural and agricultural funds from the European Union pursue two linked objectives. The first is to promote the poorer regions of Europe and the second is to support the integration of the European infrastructure in particular in the area of transport.

Activities which can be promoted by EU funds include the acquisition of fixed assets (buildings, plants), the acquisition of intangible assets (patents, brands and know-how), research and development, IT development, human resources, participation at trade fairs and exhibitions and the standardisation and certification von companies.

Recent studies indicate that the outsourcing of certain activities to local business process outsourcing (BPO) companies represents a successful business strategy for investors in Romania because the local workers are well familiar with the local conditions, have the required skills

and language knowledge, and are easily accessible. Since personnel are one of the most important factors for a successful business development, the shortage of qualified skilled workers is the biggest challenge for the foreign investor. This is particularly true for German companies which build their success on highly qualified and well educated personnel.

In order to compensate for this weakness, German companies fall back on local dual systems – an efficient method to combine theory and practice. This procedure is supported from the start by Rödl & Partner Romania as we have correctly identified the trend for the coming years and given young people with theoretical education but without work experience the possibility of applying their knowledge in professional practice.

## Legal forms of business and founding of a company

The regulated legal forms existing in Romania are comparable with those in Germany. The legal forms defined by law are the company with limited liability (Societate cu raspundere limitata, S.R.L.), the joint stock company (Societate pe actiuni, S.A.), the general partnership (Societate in nume colectiv, S.N.C.), the limited partnership (Societate in comandita simpla S.C.S.) and the limited partnership with shares (Societate in comandita pe actiuni, S.C.A.). The trading companies named above are legal entities and acquire their legal capacity only after they have been registered in the commercial register. In terms of tax treatment no differentiation is made for Romanian trading companies between partnerships and joint stock companies. For this reason the company with limited liability (SRL) is preferred by foreign investors in Romania.

### The company with limited liability (Societatea cu răspundere limitată - SRL)

In practice, this company form is the most common legal form for smaller and medium-sized foreign investors. An SRL may acquire own rights and obligations and its own assets. Acquisition of land by the new company is only possible after the registration of the subsidiary with the appropriate commercial registry office. An SRL may have a maximum of 50 shareholders. The shareholders may be Romanian or also foreign natural persons and/or legal entities. The minimum share capital of the SRL amounts to RON 200 (approx. 45 euros). The capital must be divided into company shares with the same money value which must not be less than the amount of RON 10. The share capital of the SRL must be fully paid in for the founding of the company. The contributions of the shareholders may also be made to a limited extent through assets in kind. Services in the form of work are not permissible as a contribution. The company shares can usually be transferred to co shareholders without restriction. The transfer of shares to third parties requires a three quarters majority, whereby the right of first refusal for the co-shareholders is regulated by the memorandum of association. An SRL is founded by the memorandum and articles of association. The

liability risk of shareholders is in principle limited to the assets of the SRL. A personal liability of shareholders is excluded in principle. The shareholders are liable only for the amount of the paid-in company capital. The company acts as a legal entity through the organs of the shareholders' meeting and the managing director or managing directors. As a result of the authority granted to managing directors by the shareholders through the memorandum of association or through shareholder resolutions, the managing directors take on liability, whereby non-compliance can have a significant negative on their assets, or, in individual cases on their freedom. In principle, the managing directors are liable for the fulfilment of all obligations which are legally determined or listed in the memorandum of association. The founding of a sole trader SRL by a natural or legal entity is permissible provided the sole trader SRL is not a shareholder of a second sole trader SRL (so-called two-layer sole trader SRL). A natural or legal entity may only be a sole shareholder of a single SRL.

### **The joint stock company (Societatea pe acțiuni – SA)**

The Romanian SA is comparable to the German joint stock company (AG). The founding of an SA must be made by at least two natural persons or legal entities. If the number of shareholders is below the minimum number over a time period of nine months, any interested party can apply to the court to dissolve the company. The minimum share capital of a Romanian joint stock company amounts to at least RON 90,000 (approx. 20,500 euros). For the founding of the company at least 30 % of the subscribed share capital must be paid in in cash or assets in kind. The remaining cash contributions must be contributed within twelve months after registration of the company in the commercial register and the remaining assets in kind within two years. Regarding the management of an SA a choice can be made between the two systems of the uniform system and the dual system. In the memorandum of association one of the two systems must be defined. The responsibility for the company management can be changed at any time by a resolution of the general meeting. The uniform system consists of a board of managing directors (Consiliul de administrație) and the dual system consists of the executive board (Directoratul) and the supervisory board (Consiliul de supraveghere). The dual system corresponds to the German legal regulations regarding the administration of a joint stock company consisting of an executive board and a supervisory board. The shareholders are only liable to half of the amount of their subscribed company capital.

### **The general partnership (Societatea în nume colectiv – SNC)**

The founding of an SNC must be made by at least two natural persons or legal entities. It mainly corresponds to the concept of the German open trading company (OHG). The founding of an SNC does not require a minimum amount of share capital. The shareholders can be natural persons or legal entities. The shareholders assume unlimited liability with their private

assets for all obligations and company debts. The contributions of the shareholders can also be paid in to a limited extent with assets in kind. Services in the form of work may only count as a contribution under certain conditions.

### **The limited partnership with shares (Societate în comandită pe acțiuni – SCA)**

The founding of an SCA must be made with at least five natural persons or legal entities. The minimum share capital amounts to RON 90,000 (approx. 20,500 euros) and is divided into shares.

### **The limited partnership (Societatea în comandită simplă – SCS)**

The limited partnership corresponds to the concept of the German limited partnership (KG). In a way similar to German law, it has one or more limited partners whose personal liability is respectively limited to the amount of the contribution and who are not actively involved in the company management. A minimum amount of share capital is not required for the founding of an SCS.

### **Liquidation of the company**

It is possible to legally dissolve a trading company when the previously defined contract duration has ended, when the agreed company purpose has been reached or is impossible to reach, or due to the nullity of the company or the opening of insolvency proceedings over the assets of the company or one of its shareholders. The liquidation of the company can also be made voluntarily through a shareholders' resolution. Furthermore, the dissolving of a company can be ordered by a court if the company has no management bodies, if no registration is determined or if the capital contributions are not paid in. A particular reason to dissolve a joint stock company is represented by non compliance with the legally required minimum number of two shareholders through notice of termination, death or incapacity of a shareholder.

### **Foreign exchange law**

Foreign exchange transactions are regulated by the national bank of Romania (BNR). The deposits or foreign exchange revenues as a result of the proceeds of sales of goods, services and work may only be carried out in the national currency (RON), whereby as a general rule amounts in euros are contractually regulated in euros as a benchmark. Foreign natural and legal entities may maintain foreign exchanges in RON or foreign currencies and transfer dividends, revenues from the sale of company shareholding or shares abroad without restrictions.

## Real estate and acquisition of land

As from January 1, 2014 the Romanian legal regulations allow foreign natural persons and legal entities to acquire agricultural areas. However, until today an indirect acquisition of any real estate property was possible by foreign legal entities through the founding of a Romanian company. This also applies when the company is exclusively in foreign hands. At the present time there is a draft legislation which is designed to limit the acquisition of agricultural land by foreign private persons.

## Labour law and dismissal protection

The Romanian labour law is characterised by numerous legal regulations. The contractual freedom of the parties in the negotiation of the individual employment contracts is restricted by a series of rules providing protection for employees. The employment contract must be registered online one day before the start of the employment at the appropriate employment office. The employer is obliged to draft an employment contract in writing. The obligation of a formulation in writing is also valid for changes or additions to the employment contract. The legal working time amounts to 8 hours per day and 40 hours per week, whereby there is an upper limit of 48 hours. The minimum amount of holidays defined by law is 20 working days, whereby the usual market rate of 21 working days should be observed. The remuneration in Romania is defined by the employment contract and/or tariff agreements, whereby the agreed wages may not fall below the legally defined minimum wage.

The gross minimum wage for the year 2014 amounts to RON 850. From July 1, 2014 the amount of the gross minimum wage will be increased to RON 900. A company founded according to Romanian law is obliged to pay the wages in Romanian Leu (RON), although the wages can also be specified in a foreign currency. Furthermore, it is possible to arrange the remuneration of an employee as a salary plus performance-linked components. Special payments can also be made in the form of food vouchers by the employer. The notice of termination of an employment contract must be made in writing with a period of notice of at least 20 working days or 45 working days for management personnel. Notice of termination made by the employer is bound to strict conditions and the decision for termination must be in a special form and have certain characteristics. During the trial period the employment contract can be cancelled without notice by both parties in a written notification.

# Practical examples

## Auditing

### Background facts:

A branch office of a company from Germany operates in Romania in the field of the retail trade. Due to the field of activity (small products with a high value), unusable products are often discovered.

From a financial accounting point of view, the company has decided to write off these products without debiting the employee for the current value as required by law.

The company separately stores a significant quantity/value of products which cannot be sold. These cannot be disposed of because the sales manager has not yet given authorisation and if a product is missed during the counting, the storekeeper is deemed guilty for the missing value.

### What can be done now?

The auditing assistant from Rödl & Partner who participated in the inventory determined that according to environmental law the company must pay for the costs because the company treated the unusable products as household waste.

After an analysis of the working papers in the area of inventories, in his management letter the auditor from Rödl & Partner recommended to the company to conclude a contract with a recycling company able to legally remove the unusable products from the economy cycle.



This decision in turn resulted in a change to the tax treatment because the influence on sales tax and on the profit/loss was therefore considerable. The "household waste" goods which originally were labelled as "missing" in the inventory, were changed into a "deductible expense" and the "acquired input tax", the profit tax and the cash flow of the company were positively influenced by this change.

This also removed the risk of a penalty for non-compliance of the environmental protection regulations, which in Romania can be substantial.

### What should one have done differently from the beginning?

The managing director should have informed the financial accounting department as to how to treat the unusable products and on the other hand the financial accounting department should have informed the managing director about the environmental risks (with a high risk of a penalty). In this way the administrator could have benefited from this "fine-tuning" if the corresponding measures had been implemented.

In addition to the audit report regarding the audit of the annual financial statement one should pay particular attention to the management letter.

## Auditing

### Background facts:

A Romanian company with foreign share capital has a natural person from Switzerland and company from Germany as shareholders. The field of activity of the company is trading with cereals and seeds. The facts shown below are the result of the audit of the annual financial statement for the current year which was carried out by the auditing department of Rödl & Partner Audit in Romania. The company was not audited by us or by a different auditor in the previous year.

The auditor from the auditing department of Rödl & Partner was presented with the annual financial statement of the previous year together with the proof of submission of the annual financial statement to the financial authorities. The annual result of 1.5 million RON corresponds to the profit/loss carried forward in the list of balances and accounts of the current year.

The draft of the annual financial statement, the basis for the annual audit, was made available to the auditors from Rödl & Partner by the company and recorded a result of the previous

year of 1.5 million RON, identical with the result from the list of balances and accounts of the previous year.

In the annual financial statement of the previous year which Rödl & Partner received from the company before its official disclosure, the result of the previous year was recorded as 950,000 RON and was therefore different to the result of the draft of the audited annual financial statement and the official data from the website of the financial authorities.

### What can be done now?

An audit was made of the financial statement of the previous year with the list of balances and accounts (the original balances of the current year) and of the data from the website of the financial authorities which had received the annual financial statement of the company.

It was established that the responsible person for financial accounting of the company had intentionally provided Rödl & Partner with incorrect results and two different results of the previous years. The retained income from the list of balances and accounts of the current year of 1.5 million RON was different to the result at the financial authorities (950,000 RON). Rödl & Partner had no possibility of auditing and confirming the original balances of the current year through alternative audit actions and in this case did not issue an unqualified audit opinion.

Rödl & Partner Audit recommended that the company management should enter into a contract with a financial accounting firm.

### What should one have done differently from the beginning?

The financial accounting department should have informed the company management about the disclosure of the incorrect results on the website of the financial authorities and the complete and correct representation of the financial results of the company. The company management, however, was incorrectly informed about the result of the previous year.

Even though the auditing department of Rödl & Partner as auditor was not able to issue an unqualified audit opinion, the company now has professional financial accounting services and data which completely and correctly represents the financial results of the company.

## Tax Consulting

### Background facts:

A Romanian company ROM operates in the area of processing metal products and acquired goods from the Swiss parent company CH. The transport was made in the name of and at the cost of CH. The release of the goods into free circulation was made either in Austria or Romania itself.

As far as the import process took place in Austria, a transportation company acted as fiscal representative for the Swiss company CH. The further transport from Austria to Romania was declared as an intra-community supply of goods from CH in Austria. As far as the import process took place in Romania, the customs declarations were made by the Romanian company.

However, ROM did not maintain proper records of which deliveries were to be assessed as an intra-community acquisition and which deliveries were to be assessed as an import. Furthermore, a number of invoices and documents were mislaid. A rough examination clearly indicated that a part of intra-community acquisitions were declared in Romania as imports in the sales tax return.

Due to the fact that the ROM company was insecure about how many of the declarations had to be corrected, the company contacted the experts of Rödl & Partner.

### What can be done now?

The tax consultants of Rödl & Partner worked together with representatives of the financial accounting departments of the Romanian and Swiss company to examine the documents and the transactions and established that from the point of view of the CH company through their fiscal representative in Austria approx. 20 % of the declarations concerning the acquisitions should have been declared as intra-community acquisition of goods by CH using the intra-community tax code of Austria. As a result it is necessary to submit corrected sales tax returns and also corrected summarising information and intrastate declarations.

ROM corrected the declarations accordingly as it is not sufficient merely to take action to avoid such errors in future.

The likelihood of the Romanian financial authorities taking action in such cases is very high. According to the prevailing legal regulations in Romania, the non-submission of the corrected

declarations regarding the acquisitions or the submission of incorrect amounts leads to very high financial penalties. Such a case can also lead to proceedings for tax evasion which is not only punished by financial penalties but also punishable by imprisonment.

### What should one have done differently from the beginning?

The intra-community sales tax regulations are a sensitive subject and require competent consultation. If at the start ROM had sought consultation from Rödl & Partner or had commissioned Rödl & Partner to manage the financial accounting, the effects of the post declarations could have been avoided.

## Law

### Background facts:

The German company X GmbH would like to found a sole trader GmbH in Romania. The sole shareholder of X GmbH is a German legal entity. The necessary constitutional documents were submitted to the responsible commercial registry office. As the parent company, the X GmbH, is a sole trader and holds 100 % of the shares to be founded, the application to register the Romanian sole trader GmbH was rejected. The parent company X GmbH was not aware that the founding of a Romanian sole trader GmbH has to be adjusted to the two-layer principle.

### What can be done now?

With the founding of a Romanian sole trader SRL certain legal restrictions have to be taken into account with regard to the shareholders. It should be observed that the application documents are complete and in compliance with the Romanian legal regulations. For the founding of a Romanian sole trader special attention is given to the sole shareholder. In this context it must be taken into account that a sole trader SRL cannot be a shareholder of a second sole trader.

This general restriction is valid regardless of whether the shareholder is a Romanian or a foreign legal entity (i.e. the prohibition is valid for Romanian and also, for example, at German company level). The non-observance of the above-mentioned legal conditions regarding shareholders can lead to the penalty of having the application refused or lead to a forced dissolution of the SRL. Furthermore, a natural or legal entity can only be a sole shareholder with a single SRL.

In practice, as a possible solution to manage this legal restriction, a foreign sole trader is selected as a shareholder of a Romanian SRL who has 99 % of the share capital and in addition a foreign natural person or legal entity selected with a minimum holding of 1 % (or even 0.1 %) of the share capital. The minimum holding can, for example, be taken over by a managing director of the SRL in trust.

### What should one have done differently from the beginning?

The founding of a company in Romania is governed by legal regulations which have to be discussed and taken into account beforehand with the preparation of the necessary documents. We therefore recommend that before a Romanian company is founded an exact examination is made of the local legal conditions and the shareholder structure of the foreign shareholders.