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ESTABLISHING A BUSINESS ENTITY IN ROMANIA

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ESTABLISHING A BUSINESS ENTITY IN ROMANIA

"Establishing a Business Entity in Romania"
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1. Types of Business Entities

When entering the Romanian market, foreign investors have the option of incorporating a new legal entity with a Romanian legal personality, or setting up a unit of a foreign mother company, which will not have a Romanian legal personality:

Under Romanian law, companies with a Romanian legal personality may have the following forms:

- Limited liability companies (*societati cu raspundere limitata*);
- Joint stock companies (*societati pe actiuni*);
- Limited partnerships (*societati in comandita simpla);*
- Limited partnership by shares (*societati in comandita pe actiuni*);
- Partnerships (*societatea in nume colectiv*).

Foreign investors also have the option of incorporating a European company (*Societas Europaea*), with its headquarters in Romania.

The most common types of companies under Romanian law are limited liability companies (*societati cu raspundere limitata*) and joint stock companies (*societati pe actiuni*)

Foreign mother companies may establish units without a legal personality in Romania, such as:

- Branches (*sucursale*);
- Representative offices (*reprezentante*).

1.2. Limited liability companies

Limited liability companies (LLCs) are one of the most commonly used corporate forms under Romanian law. LLCs are founded by the signing of a constitutive act by the shareholder(s). Shareholders in limited liability companies may be foreign or Romanian individuals or legal entities and their number cannot exceed 50. The sole shareholder can have in its turn as sole shareholder a limited liability company, while one person maybe sole shareholder in more than one limited liability company.

It should be noted that in limited liability companies with sole shareholders, the sole shareholder – natural person may simultaneously act as shareholder, director and employee of the company.

The contributions of the shareholders to the share capital of limited liability companies may consist of cash and contributions in kind (movable or immovable assets); there is no minimum share capital required, however, it is recommended that at least RON 1 per shareholder be submitted. Shares in limited liability companies cannot consist of freely negotiable bonds. The share capital must be paid entirely upon the incorporation of the limited liability company.

The liability of the shareholders is up to their participation in the share capital of the limited liability company.

The purpose of business of a Romanian LLC acting as subsidiary of a foreign mother company may be larger than or different from that of the mother company.

The duration of the LLC may be undetermined.

1.3. Joint stock companies

Joint-stock companies must have at least two shareholders, either natural persons or legal entities, Romanian or foreign.

The company may be dissolved should the number of shareholders become fewer than two, and should no regularization be implemented within nine months. A joint-stock company shall not be dissolved if the number of shareholders is re-established up until the moment when the resolution of the competent courts becomes definitive.

The minimum share capital for a joint-stock company is RON 90,000. In addition, every two years, the Government may modify this amount, taking into consideration the exchange rate, in order for the said amount to represent the equivalent in RON of EUR 25,000.

Some of the contributions to the share capital of joint-stock companies must necessarily be made in cash, but the relevant legislation does not set forth a minimum. Contributions in kind may be made, but contributions to capital by way of provision of services are not accepted. Contributions by way of assignment of claims are admitted, except for joint-stock companies which proceed to public offerings.

The law requires at least 30% of the share capital to be paid up upon incorporation, but a distinction is set as to the payment terms of the balance of share capital depending on the nature of share capital contributions, as follows:

a) in the case of shares issued in exchange for contributions in cash, the balance of the share capital shall be paid within 12 months as of the company's registration;

b) in the case of shares issued in exchange for contributions in kind, the balance of the share capital shall be paid within a maximum of two years as of the company's registration.

The share capital is divided into shares having a par value of RON 0.1.

Shares, which can be either registered or bearer shares, have an equal par value and confer equal rights on shareholders, except for non-voting preference shares. Preference shares cannot represent more than one quarter of the share capital and shall have the same par value as ordinary shares.

A joint-stock company can hold up to 10% of its subscribed share capital during a period of up to 18 months. Those shares however do not entitle it to participate in the distribution of dividends, and the voting rights thereto are suspended.

The duration of the joint stock company may be undetermined.

1.4. Branches

Branches lack a legal personality of their own, being economically and legally dependant on the parent company. They have their own registered seat and conduct business operations on behalf of the parent company, on the basis of a mandate granted by the latter, but they may also conclude transactions on their own behalf. Branches must be registered with the trade registry from the country in which they will operate, upon the corporate decision of the mother company. No constitutive act is necessary, due to the lack of legal personality; however, the mother company must establish a head of the branch by its corporate decision.

There are no requirements with regard to any "endowment capital" in the case of a branch; in addition, there is a restriction as to the business purpose of a branch set up in Romania, which must have the same business purpose as that of the foreign parent company, or a part of the activities thereof.

The duration of a branch cannot exceed the duration of the mother company, as sustained

by the relevant corporate documents of the latter.

1.5. Representative offices

Representative offices lack legal personality and act on behalf of the parent company, lacking a patrimony of their own. Their registration is subject to authorization by the Ministry for Entrepreneurship and Tourism, upon the corporate decision of the mother company, and the establishing of a head of the representative office, on the basis of a power-of-attorney.

Representative offices may be set-up and perform their activity in Romania subject to a yearly functioning tax of EUR 1,000. The duration of the representative office in Romania can by no means exceed the duration of the foreign mother company and it is granted in accordance with the taxes that are paid proportionally with the envisaged duration.

The only activities that a representative office may carry out are covered by the business purpose of the mother company, specifically: issuing/receiving offers and orders, negotiating, but not concluding contracts on behalf of the mother company (without a special mandate from the latter), undertaking marketing and advertising activities, carrying out any other ancillary or preparatory activities, promoting and/or supporting the business of the mother company.

2. Steps and Timing to Establish

2.1. Incorporation of entities with a Romanian legal personality

Irrespective of the corporate form chosen (limited liability company or joint stock company), the following formalities need to be complied with in order to set up a joint-stock company:

- reserving the corporate name at the Trade Registry (which is granted instantly, either online or in hard copy);
- drafting the constitutive act;
- deposit of the share capital;
- signature of the constitutive act;
- registration with the Trade Registry;
- incorporation;
- issuing of an incorporation certificate which shall mention the assigned Trade Registry number and the sole registration code.

The incorporation and the granting of the certificate regarding the authorization of the activities declared by the company shall be effective within three days from the date the application was filed with the Trade Registry, if the complete required documentation is submitted.

The company is a legal entity from the date of its incorporation in the Trade Registry.

Joint-stock companies can be set up as closely held companies or by way of public offering. Specific formalities are required to set up joint-stock companies by way of public offering.

The subscription of shares shall be made in one or several copies of the issue prospectus.

The company can be set up only if the full share capital was subscribed and each subscriber has paid in cash half of the subscribed shares value. The other half shall be paid within 12 months from the incorporation date.

The constitutive meeting will have to verify the existence of the payments, to approve the constitutive act and to appoint the members of the Board of Directors or of the Supervisory Board, as well as the auditors.

Subject to the provisions regarding the issue prospectus formalities, the development of the constitutive act of a joint-stock company set up by way of public offering is no different from the one of a closely held joint-stock company, described above.

Companies set up by way of public offerings have to observe the capital market specific regulations.

2.2. Setting up a branch in Romania

In order to set up a branch of a foreign legal entity in Romania, no corporate name reservation from the Romanian Trade Registry and no constitutive act of the branch are necessary. The decision of the corporate body of the foreign legal entity competent to set up secondary units, according to the relevant foreign legislation or the constitutive act, the power-of-attorney granted to the head of the branch, together with relevant documentation, are submitted to the Trade Registry.

The registration of the branch is granted within three business days as of the submission of the full documentation.

2.3. Setting up a representative office in Romania

The setting up of representative offices in Romania is performed by registration with the Ministry for Entrepreneurship and Tourism.

A standard request which will contain information regarding the registered seat, the business purpose of the representative office, its duration, the number and positions of the persons envisaged to be hired by the representative office and the power of attorney granted to the person mandated to represent the company in Romania, together with other documents are submitted to the Ministry for Entrepreneurship and Tourism.

The functioning authorization is issued within 30 days as of the day the relevant complete documentation is submitted.

3. Governance, regulation and ongoing maintenance

3.1. Corporate governance

As previously mentioned, the most widely used corporate forms in Romania are limited liability companies and joint stock companies.

3.1.1. Limited liability companies

The mandatory corporate bodies of a Romanian LLC are the general meeting of the shareholders (GMS) and one or more directors, which may be organized into a board of directors

Decisions of a GMS in an LLC are passed by complying with the rule of double majority: (a) absolute majority of the number of the shareholders and (b) absolute majority of the shares. However, these requirements do not have a mandatory nature, and they may be obliterated by the provisions of the articles of association. Each share gives right to a vote.

However, for GMS decisions that pertain to the amendment of the constitutive act of the LLC, the unanimous vote of the shareholders is required, unless the law or the constitutive act provide otherwise. The transfer of shares to third parties must be approved by at least three-quarters of the share capital.

Directors in LLCs are appointed by the shareholders (either through the initial constitutive act or by a subsequent decision of the general meeting of the shareholders), for a limited term, either with full powers to represent the company, or with joint powers with other directors and/or other mandated persons. LLCs can have one director, and in case of plurality, the directors may be constituted into a board of directors, while the constitutive

act may provide for special rules with regard to the adoption of decisions therein.

The revocation of the directors of an LLC is performed: (i) by the vote of all shareholders, if they have been appointed by the constitutive act, or (b) by the absolute majority of the share capital, if they have been appointed by a subsequent GMS decision, unless the constitutive act requires otherwise.

3.1.2. Joint stock companies

The general meeting of the shareholders (GMS) is a mandatory corporate body for all joint stock companies, whereas its management differs according to the distinction between the unitary and dualist management system.

GMS are ordinary ("OGM") or extraordinary ("EGM"), based on the issue with which they deal.

The quorum and majority rules in relation with the OGM are as follows:

a) For the first call, shareholders holding at least one-quarter of the aggregate number of voting rights must attend the meeting and the decisions must be adopted by the majority of the votes cast. However, the constitutive act may provide for a higher quorum and majority requirements;

b) For the second call, there are no quorum requirements, and the decisions must be adopted by the majority of the votes cast. The constitutive act may not provide for a minimum quorum or higher majority rules.

The quorum and majority rules within an EGM are as follows, unless the constitutive act provides for a higher quorum or majority rules:

a) For the first call, shareholders holding at least one-quarter of the aggregate number of voting rights must attend the meeting and the decision must be adopted with the majority of the votes of the attending or represented shareholders;

b) For further calls, shareholders representing at least one-fifth of the aggregate number of voting rights must attend the meeting and the decision must be adopted with the vote of the majority of the votes of the attending or represented shareholders.

Exceptionally, decisions having as their object (i) a change in the company's main purpose of business, (ii) a decrease or increase of the share capital, (iii) a change of the legal form, (iv) the merger, the division or the dissolution of the company, must be adopted by a majority of at least two-thirds of the voting rights of the attending or represented shareholders. The constitutive act may stipulate a higher quorum or majority rules.

As for the administration of joint stock companies, the unified system means the administration of the joint-stock company is carried out either by a sole Director or by several Directors members of a Board of Directors. The Directors are appointed and revoked by the General Meeting of Shareholders (the "**GMS**") at any time, by secret vote. Nevertheless, in case of abusive revocation, the Director has the right to obtain recovery of damages.

In the dualist system, the administration of the joint-stock company is carried out by a Management Board (*Directorat*) and Supervisory Board. The Management Board (*Directorat*) is constituted by one or several members, their number always being odd. When the Management Board (*Directorat*) is composed of one member, such member is appointed as Sole General Manager.

The Supervisory Board appoints the members of the Management Board (*Directorat*), one of

whom will be the President of the Management Board (*Directorat*). The members of the Management Board (*Directorat*) may not be at the same time members of the Supervisory Board or employees of the company.

The members of the Supervisory Board are appointed by the GMS, with the exception of the first members, which are appointed in the constitutive act. The Supervisory Board is comprised of between three and eleven members. The members of the Supervisory Board may be revoked at any time by the GMS by a resolution adopted by a majority of at least two-thirds of the votes of the attending shareholders. The members of the Supervisory Board may not be members of the Management Board (*Directorat*) or employees of the company.

3.2. Reporting requirements

Romanian legal entities are required to submit annual financial statements to the Ministry of Finance within 150 days after the closing of the financial year. The format of the financial statements to be submitted (i.e., either extended or simplified) depends on the category of entity (micro-entities/small entities/medium and large entities) which is established based on key indicators from the financial statements of the previous financial year. Branches and other sub-units of a non-resident legal entity residing in the EEA are not required to submit annual financial statements; however, they are required to submit some financial reports within 150 days after the closing of the financial year.

Financial statements of medium and large entities are subject to statutory financial audit. Also, entities that meet at least two out of the following criteria for two consecutive years are also subject to financial audit: (i) total assets: RON 16 million; (ii) turnover: RON 32 million; (iii) average number of employees: 50.

3.3. Requirements for local shareholdings/directors

For shareholders, directors may be either natural persons or legal entities and there are no requirements in respect of their nationality.

Furthermore, persons who, according to the law, do not have legal capacity, or have been convicted of certain crimes (such as fraudulent management, breach of trust, forgery, use of forgeries, embezzlement, bribery, transgressions of the legislation concerning money-laundering), cannot be founders, shareholders, directors or members of the board.

Companies that are in the performance of their function in a Romanian company's corporate body must be represented by an authorized individual representative who must fulfil the abovementioned requirements as well.

3.4. Protection of minority shareholders

The issue of minority shareholders is especially posited in the case of joint stock companies, given that in the case of LLCs, the general rule of double majority provides for sufficient protection.

For example, shareholders holding separately or collectively at least 5% of the JSC's share capital may introduce on the agenda of the shareholders' meeting new items; they may ask the board of directors or the statutory director to summon an extraordinary general meeting to discuss issues proposed by them.

If the articles of association provide for a percentage lower than 5%, then the articles of association shall apply.

4. Foreign Investment, Anti-Avoidance rules, Residency and Material Visa Restrictions

4.1 Anti-avoidance rules

Under the current provisions, "the excess debt cost" is defined as the difference between the

debt costs incurred and the interest revenues and other assimilated revenues incurred by the limited liability company/branch. The excess debt costs are deductible within a threshold of EUR 1,000,000/year.

The excess debt costs above this EUR 1,000,000 threshold may benefit from an extra deduction limited to 30% of the accounting profit adjusted downwards with the non-taxable revenues and upwards with the corporate income tax expenses, the excess debt costs and deductible tax depreciation. If the base computed as described before is zero or negative, the excess debt costs are non-deductible in the current period, but they can be carried forward for an unlimited period of time and they can be deducted in the next periods applying the same mechanism as described.

4.2 Related parties' transactions

According to Romanian transfer pricing (TP) legislation which mainly follows the OECD TP Guidelines, transactions carried out with related parties (including also Romanian related parties) shall reflect the arm's length principle. Otherwise, if the tax authorities were to consider that intercompany transactions do not reflect the market prices, they would adjust the corporate income tax position of the taxpayer. The adjustment will lead to additional corporate income tax liabilities along with late payment interest and penalties (0.03% per day).

According to the current rules, large taxpayers carrying out intercompany transactions that exceed certain thresholds are required to prepare the transfer pricing file by 25 March of the next year and to make it available to the tax authorities, within 10 days after a written request. Taxpayers not exceeding the abovementioned thresholds, as well as medium-sized and small taxpayers are also required to prepare transfer pricing files, but under less time pressure and only for tax audits. For them, TP files must be submitted within 30 days (the deadline may be extended up to 90 days) upon a written request from the authorities. Masterfiles drafted at the group level are not accepted and will not replace the local transfer pricing documentation.

4.3 Permanent establishment

According to the Romanian Fiscal Code, a permanent establishment (PE) represents the "place through which the activity of a non-resident is carried out directly or through a dependent agent". More specifically, a PE includes a place of management, branch, office, factory, shop, workshop, as well as a mine, oil or gas well, quarry or other place of extraction of natural resources. A permanent establishment includes also a building site or construction or installation project or any related supervisory activity only if it lasts more than six months. Double Tax Treaties may provide for different time rules for the creation of a permanent establishment.

Since a PE means a taxable presence of a non-resident in Romania (i.e., with no legal presence), the PE shall register with the tax authorities as a corporate taxpayer prior to engaging in income generating activities. Alternatively, the PE could take the form of a branch, which needs to be registered with the Romanian Trade Registry. Repatriation of profits to the non-resident does not fall into the category of dividend payments and it is not subject to Romanian withholding tax.

Permanent establishments are required to compute, declare and pay 16% corporate income tax. Depending on the tax avoidance method provided by the applicable double tax treaty, the profits earned in Romania will be either disregarded in the country of the "parent" company or the tax paid in Romania will be credited against the tax liability arising in that other country, according to the payment

certificate issued by the Romanian tax authorities.

4.4 Withholding taxes

According to the Romanian Fiscal Code, withholding tax is levied on certain revenues earned by non-residents from Romania, as follows: dividends, interest, commission fees, royalties, management/consulting services irrespective of the place of rendering, service fees related to services performed in Romania (excluding international transport services), gambling revenues, etc.

The withholding tax rates applicable in Romania are: (i) 5% for distributed dividend, increasing to 8% starting from the 1 January 2023 (ii) 10% for interest, royalties, commission fees, management and consulting fees (irrespective of the place where the services are actually rendered), service fees related to services performed in Romania, liquidation proceeds; (iii) 1% for gambling revenues (in the case of revenues up to RON 66,750) – for gambling revenues earned starting from the 1 August 2022, the tax rate will increase to 3% for amounts up to RON 10,000, RON 300 + 20% for revenues between RON 10,000 and RON 66,750, and RON 11.650 + 40% for revenues above RON 66,750; (iv) 50% for revenues paid to a bank account of a state with which Romania has not concluded an information exchange instrument if such revenues are generated by way of an artificial transaction.

Reduced withholding tax rates are applicable under the existing double tax treaties. The provisions of the double tax treaties are applicable upon the presentation of a valid tax residency certificate issued by the tax authorities of the residence country of the income recipient. Corporate tax exemptions may also be applied as long as the conditions set by the *EU Parent-Subsidiary* and *Interest-Royalty* Directive are fulfilled.

4.5 Avoidance of double taxation

Romania has concluded and signed approximatively 90 double tax treaties providing tax relief either based on the tax credit mechanism or the exemption mechanism.

As previously mentioned, according to Romanian tax law, the provisions of the double tax treaty become active as long as the income recipient provides the income payer with the valid tax residency certificate issued by the residence country tax authorities.

4.6 Harmonization with EU tax legislation

The European Directives in the area of direct taxes have been transposed into Romanian domestic legislation as follows:

- According to the EU Parent-Subsidiary Directive, a 0% withholding tax applies in Romania on dividends to be paid to an EU recipient (legal entity, profit taxpayer), provided that the recipient has continuously held at least 10% of the shares in the dividend paying company for at least 1 year (uninterrupted).
- According to the EU Interest and Royalties Directive, interest/royalty payments to be made by a Romanian income payer to an EU recipient (legal entity, profit taxpayer) would be exempt from Romanian withholding tax provided that the non-resident has held at least 25% of the shares in the Romanian company for an un-interrupted period of at least two years. Certain conditions should also be fulfilled in order for the tax exemption to apply (e.g., the loans should not qualify as hybrid or profit participating loans).

The provisions of the EU Directives transposed into the Romanian legislation will apply so long as the income recipient provides a valid tax

residency certificate and a sworn statement attesting the fulfilment of conditions.

4.7 Further corporate tax exemptions

In the area of corporate income tax, the following tax incentives are available:

- Holding related tax incentives:
  (i) Dividends received from a non-EU corporate income taxpayer are non-taxable, as long as there is a double tax treaty concluded between Romania and the respective non-EU country and certain conditions are fulfilled (i.e., the Romanian taxpayer has held at least 10% of the share capital of the non-EU taxpayer for an uninterrupted 1-year period);
  (ii) Revenues derived from the disposal of shares held in a Romanian legal entity or in an entity residing in a state with which Romania has concluded a double tax treaty are non-taxable, as long as the income recipient has held at least 10% of the share capital of the non-EU taxpayer for an uninterrupted one-year period.
- Tax exemption on reinvested profit – Companies which reinvest their profits in new technical equipment, computers, invoicing machines, software (including the right of use) used for business purposes may apply the tax exemption on the reinvested profit. There are specific conditions that must be fulfilled as far as the duration of use of such equipment subject to reinvested profit is concerned. Starting from 1 January 2023, the tax exemption on reinvested profit will also be applicable for investments in assets used for production and processing activities as well as for assets characterized by re-digitalization.
- Profit tax exemption applicable to taxpayers which exclusively carry out innovation and R&D activities during the first ten years of activity.

The abovementioned tax incentives are available only for corporate income taxpayers and not for taxpayers applying the microenterprise tax regime. In Romania, in the area of corporate tax, there are two applicable regimes: the standard corporate income tax regime and the microenterprise tax regime. According to the standard corporate income tax regime, the taxable profit is computed based on the following formula: total revenues – (ii) non-taxable revenues – (iii) total expenses + (iv) non-deductible expenses. The microenterprise tax regime has been substantially reshaped, with the changes coming into effect from 1 January 2023. Until now, companies reporting a turnover lower than EUR 1,000,000 on 31 December were required to shift to the microenterprise tax regime (i.e., the turnover tax rate depending on the number of employees; 1% for the minimum of one employee, 3% for no employees). Once the threshold was exceeded, the taxpayer was required to switch to the standard corporate income tax regime. Even if the microenterprise tax regime was the default regime at incorporation, The taxpayer was able to choose from the beginning the standard regime when the following conditions were fulfilled: a share capital of a minimum of RON 45,000 and a minimum of two employees.

Starting from 1 January 2023, companies reporting a turnover lower than EUR 500,000 at 31 December and meeting the other requirements stipulated by the Fiscal Code – have at least one employee, do not generate consultancy and/or management income of

more than 20% of the total revenues, have shareholders/associates who do not hold more than 25% of the shares in more than three Romanian legal entities that qualify for the microenterprise income tax regime –will be able to opt for the microenterprise tax regime. This will mean a turnover tax rate of 1%, regardless of the number of employees. Moreover, the microenterprise tax regime will be an optional one, companies being able to choose from the beginning the standard income tax regime, even if they qualify for the microenterprise tax regime.

4.8 Residency and visas

The majority of immigration regulations are contained in: Emergency Ordinance no. 102/2005, Emergency Ordinance no. 194/2002, Regulation (EU) No. 492/2011 on the freedom of the movement of workers within the Union and Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009, establishing a Community Code on Visas (Visa Code). The basic rules are as follows**:**

4.8.1 Residency of EU nationals, citizens of European Economic Area member states and citizens of the Swiss Confederation

EU nationals, citizens of European Economic Area member states and citizens of Switzerland (hereafter "**Nationals**") have in principle free access to the labour market of Romania, under the same conditions as Romanian nationals and to economic activities under the law applicable to Romanian citizens.

The entry of Nationals into Romania is visa-free and is admitted exclusively on the basis of a national identity document, a passport or of another valid travel document. Concurrently, Nationals can leave Romania by producing the same documents as those presented upon their entry.

The exit of Nationals from Romania can only be denied in two cases: (i) they are defendants in criminal cases and a preventive measure has been taken against them in compliance with the provisions of the Romanian criminal procedural code and (ii) they are criminally convicted, and detention must be executed. The stay of Nationals in Romania for fewer than three months is not conditioned by any other supplementary requirement.

The right of Nationals to temporary stay in Romania for a period exceeding three months is dependent upon several conditions: (i) they are workers, or (ii) they are able to support themselves and the members of their families and they possess health insurance acknowledged by the Romanian social security system or (iii) they are registered as students in an accredited educational institution in Romania, they have health insurance and they have the means to support themselves and their family members in Romania, usually at least at the level of the minimum guaranteed revenue in Romania or (iv) they are the family members of a National who complies with one of the abovementioned conditions. Nationals who are in one of the abovementioned situations apply for a registration certificate within three months as of their entry into Romania to the corresponding territorial branch of the Immigration Office, providing in their application supporting documents as to their compliance with the abovementioned conditions.

The above-mentioned are general rules provided for by Romanian legislation, that have not been amended during the COVID-19 pandemic. However, during the pandemic there have been and still there are restrictions as to the entry of Nationals to Romania, which may change on a weekly basis.

4.8.2 Third-country nationals

As per the provisions of Emergency Ordinance 194/2002, an "alien" is defined as any individual

with neither Romanian citizenship nor the citizenship of any Member State of the European Union, of the European Economic Area or of the Swiss Confederation.

As a general provision, an alien can enter Romania only on the basis of (i) a passport or any other valid travel document for crossing the Romanian state border, (ii) visa, residence permit or residence card, as well as (iii) documents attesting to the purpose and conditions of the trip, and any documents indicating that they hold the appropriate financial means to support themselves during the transit.

The list of the countries whose citizens, holders of simple travel documents, must be in possession of a visa upon entry on the Romanian territory, as well as the list of the countries whose citizens, holders of simple passports, are exempt from the requirement of a Romanian visa, are established according to European Council Regulation number 539/2001, as well as according to the provisions of relevant international agreements to which Romania is party.

Long-stay visas will be issued to foreigners, on demand, for a period of up to 90 (ninety) days, depending on the nature of the activity the applicant for such visa will carry out on the Romanian territory.

Aliens requiring a Romanian visa will have to attach to their application form a valid travel document, acknowledged by the state of Romania, as well as all the documents required under the law, in order to confirm the stated purpose of the trip, the duration of the stay, the fact that they have the financial means to support themselves during the stay, and also to return to their home country or continue the trip to a third state that will grant them entry, upon the end of their stay in Romania. However, depending on the function of the purpose for which the long-stay visa is required, the applicants will have to attach to their application other necessary documents.

After entering Romania on the basis of a long-stay visa, foreigners have to carry out the necessary formalities with the relevant Romanian Immigration Office in view of obtaining a temporary residence permit.

As opposed to short-stay visas, the reasons for which long-stay visas can be issued include continuous activity. For example, a long-stay visa for commercial activities is granted to foreigners who are or will become shareholders or hold administration positions, within Romanian legal entities, but only following the prior approval of the Romanian Centre for the Promotion of Trade and Foreign Investment.

The extension of the right to stay is possible, and in the case of temporary residence permits issued to aliens who have invested a minimum amount of Euro 500,000 or have created over 50 full-time work positions, their initial right of stay of ninety days is extended by three years.

Aliens can obtain permanent residence permits only if they have continuously and legally resided on the Romanian territory in the last five years. The residence is considered as continuous when the period of absence from the Romanian territory is fewer than six consecutive months and it does not exceed a total of ten months.

However, as a special provision, aliens who can prove that they have invested a minimum amount of Euro 1,000,000 or that they have created 100 full-time work positions in Romania, can obtain a permanent residence permit without being required to reside continuously and legally on the Romanian territory for five years.

Under Romanian legislation, holders of permanent residence permits benefit from the same treatment as Romanian citizens regarding

(i) access to the Romanian employment market, (ii) access to all forms and levels of education and professional training, including scholarships, (iii) benefits from social security, assistance and social protection, from public heath assistance, tax deductions, (iv) access to public goods and services, including the obtaining of housing, (v) benefits from freedom of association, affiliation and membership in a trade union or professional organization, and (vi) the right to establish and change their domicile on the Romanian territory under the same conditions as Romanian citizens.

The permanent right to stay ends in certain situations, as for example: (i) cancellation or annulment, (ii) obtaining of a permanent residence right on the territory of another state, (iii) in the case of a twelve consecutive months term of absence, excepting the situation in which, during this term, a temporary residence permit for a state member of the European Union was issued, (iv) in the case of a minimum of six consecutive years of absence from the Romanian territory.

Aliens who hold permanent residence permits issued by the relevant Romanian Immigration Office may enter and reside in any of the member states of the European Union for up to 90 days, within a period of six months, without a visa being required.

Aliens can take up permanent working positions in Romania upon compliance with the following cumulative conditions: (i) the respective vacancies cannot be filled with Romanian, EU, EEA nationals or with permanent residents, (ii) they comply with the special professional training, experience and authorization conditions required by the employer in accordance with the legislation in force and do not have a criminal record incompatible with the activity which is envisaged to be carried out in Romania, (iii) they provide evidence of being medically fit to carry out the respective activity and they have no criminal record that may be incompatible with the activity to be carried out in Romania, and (iv) they conclude a full-time employment agreement.

The above-mentioned conditions do not apply to aliens who exercise the mandate of a director in a company, if there is only one alien appointed to this position.

The above-mentioned are the general rules regarding aliens in Romania. However, temporarily restrictions may apply in this field because of the pandemic.

With respect to the Ukrainian nationals who come from the armed conflict zone in Ukraine, they are granted a one-year temporary protection status in Romania (until 4 March 2023), which includes, among others, the benefits provided by a long-stay visa. Unless the protection ceases as a result of a decision of the Council of the European Union, it can be extended with periods of 6 months, for a maximum of one year. If the reasons for temporary protection persist, another extension of one year could be envisaged.

Ukrainian citizens have the opportunity to access employment in Romania without the need of obtaining a long-stay visa for work purposes.

Moreover, if they do not possess the documents proving the professional qualification or work experience necessary for employment, Ukrainian nationals coming from the armed conflict zone in Ukraine may be employed for a period of 12 months with the possibility of extension with periods of 6 months, for a maximum of one year, based on their self-statement on meeting the conditions of professional qualification and work experience necessary for the relevant job and the lack of a criminal record which would make him/her incompatible for performing the relevant job within the Romanian territory; in this respect,

registration at the relevant employment agencies of the county, respectively of the employment agency of the Bucharest municipality is necessary.

However, the immigration legislation applicable to Ukrainian nationals coming from the armed conflict zone in Ukraine is subject to constant change.