

Chapter 3

Investments

1. General principles and legal framework

Private investments have been of paramount importance in Romania ever since the country started on its path of free market economy based on fair competition and sound business practice, which has made the investments accommodation and fostering to be one of the major goals in the legal framework drafting process.

The Romanian Constitution itself binds the State to guarantee, amongst others, free trade, protection of fair competition, provision of a favourable environment wherein every factor of production can be capitalised, as well as implementation of regional development policies in accordance with the objectives of the European Union.

In addition, GEO no. 92/1997 regarding incentives for direct investments (“GEO no. 92/1997”) provides a series of investment related guarantees, including (i) equal (that is fair, equitable and non-discriminatory) treatment for Romanian and foreign investors alike, (ii) the right to invest in any field and in any legal form, (iii) guarantees against nationalisation, expropriation or other equivalent measures, (iv) assistance in carrying out administrative formalities, etc.

Such rights and guarantees, along with many others that serve the same purpose, aim to ensure a suitable, adequate business climate wherein investors can conduct their activity based on the principles of an open, free market economy. In addition, the Romanian state has made efforts to accommodate, in line with the EU regulations regarding State aid, various forms of financial aid to investments.

Other national regulations applicable to the investments sector include:

- Government Emergency Ordinance no. 85/2008 on fostering investments (“GEO no. 85/2008”);
- Order no. 2509/2008 of the Ministry of Economy and Finances approving the Regulations concerning operations with T-bonds issued in dematerialized form (“Order no. 2509/2008”);
- Law no. 346/2004, regarding small and medium enterprises (“Law no. 346/2004”);
- Currency Regulation no. 4/2005 issued by the National Bank of Romania (“Currency Regulation no. 4/2005”);
- Law no. 571/2003 on the Fiscal Code (the “Fiscal Code”);
- Law no. 390/2002 regarding the foundation, organization and operation of the Romanian Agency for Foreign Investments (“Law no. 390/2002”);

- Government Ordinance no. 14/2002 regarding the establishment and operation of scientific and technological parks (“GO no. 14/2002”);
- Government Ordinance no. 65/2001 regarding the establishment and operation of industrial parks (“GO no. 65/2001”);
- Government Emergency Ordinance no. 24/1998 regarding less-favoured areas (“GEO no. 24/1998”);
- Government Ordinance no. 66/1997 regarding the regime of foreign investments in Romania, made by the acquisition of T-bonds (“GO no. 66/1997”);
- Law no. 84/1992 regarding the regime of free zones (“Law no. 84/1992”); and
- Various enactments regulating State aid schemes.

2. Investment facilities

2.1. Preliminary remarks

As of Romania’s accession to the European Union, any and all facilities that may qualify as State aid as per the Treaty establishing the European Community (the “EC Treaty”) are subject to the relevant rules enacted at EU level (*see* Chapter 9).

Hence, private investors may be granted such facilities only if approved by the European Commission further to individual aid notifications filed thereto by the aid supplier, or if they fall under the scope of the European Commission regulations exempting certain categories of State aid from the obligation to file such notifications. Such exemptions concern, amongst others, State aid schemes enacted at national level under certain conditions.

In line with the above, GEO no. 85/2008 provides the general framework regarding State support measures granted in consideration of Romania’s sustainable development through promotion of certain categories of investments, in compliance with principles such as equal treatment concerning the criteria and means for granting incentives, transparency, efficiency of the incentives use, confidentiality and eligibility as per financing sources.

As per GEO no. 85/2008, various facilities such as nonrefundable funds for purchasing fixed and non-fixed assets, financial aid in connection with newly created working places, interest facilities linked to credit commitments, etc. may be granted based on State aid schemes and with due observance of the EU rules concerning State aid.

The ordinance further details the eligibility conditions to be met by investments and investors and the steps to be followed in order to access the underlying facilities. The eligibility conditions require, *inter alia*, that the investor has no debts towards the state budgets or committed loans backed up by sovereign guarantee, and is not subject to insolvency, compulsory execution, dissolution or State aid recovery proceedings, etc.

The granting of any facility is conditional upon of the prior approval of the national supervising authority, which in any case must precede the commencement of the investment. As mentioned above, in case of an individual State aid falling outside of an approved State aid scheme, the European Commission authorization is also needed.

GEO no. 85/2008 also mentions the Romanian Agency for Investments as public body which is to carry out investment promotion activities, intermediate the contact between investors and public authorities and provide investors upon request technical assistance and guidance on the available State aid schemes. Said agency shall be established as soon as the relevant regulations providing for the organization, by-laws and attributions thereof come into force.

2.2. General schemes of regional aid

A number of three State aid schemes aiming at fostering regional development, one of which has been already approved by the European Commission, concern the granting of financial aid to:

- (i) large enterprises making investments in excess of EUR 100 million and incurring eligible costs of more than EUR 50 million in connection with such investments, provided that the latter result in the creation of at least 500 jobs; relevant facilities shall be awarded within the 2008-2012 period¹;
- (ii) large enterprises acting in certain fields for initial investments in connection with acquisition of tangible and intangible assets for investments not exceeding EUR 50 million in eligible costs; relevant facilities shall be awarded until December 2013;
- (iii) undertakings carrying out investments projects exceeding EUR 30 million and resulting in the creation of at least 300 jobs; relevant facilities shall be awarded within the 2007-2011 period².

Undertakings acting in the following sectors do not fall under the scope of the abovementioned schemes: activities related to primary production of the agricultural products listed in Annex 1 to the EC Treaty, fishing, coal industry, iron and steel industry, the transportation sector, naval ship construction, synthetic fibres, as well as certain export related activities and activities favouring the use of domestic products to the detriment of imported products.

2.3. Industrial parks

2.3.1. Concept

GO no. 65/2001 defines industrial parks as special areas where business activities, scientific research, industrial production and services are performed under a special incentives regime.

The establishment of an industrial park is based on a joint venture between central and local public authorities, undertakings, research & development institutes and/or other interested partners.

2.3.2. Management

Industrial parks are managed by specialised companies which may not be directly or indirectly controlled by any of the undertakings using the industrial park utilities and/or the infrastructure thereof. Management companies have, amongst others, as main tasks:

- (i) selection of the undertakings that will join the industrial park;
- (ii) performance of services and supply of utilities as required for the benefit of the activities carried out by the undertakings established within the park;
- (iii) ensuring such undertakings' right to use the industrial park infrastructure and utilities on a non-discriminatory basis;
- (iv) repairing, maintaining, improving and developing, as the case may be, such infrastructure and utilities;
- (v) management of the areas and buildings within the industrial parks;

¹ May be subject to extension based on the approval of the European Commission.

² May be subject to extension.

- (vi) liaising with the local and central public authorities;
- (vii) drawing up the functioning and development strategy for the industrial park.

Industrial parks are operated based on commercial agreements concluded between the management companies and the undertakings established within such parks.

2.3.3. Industrial park title

The industrial park title is issued by the Ministry of Interior and Administrative Reform (“MIRA”) either to the incorporated joint venture or to the relevant management company.

In order for MIRA to grant the industrial park title, the land pertaining thereto must cumulatively meet the following conditions:

- (i) have access to a national or European road;
- (ii) be connected to the public utilities infrastructure;
- (iii) have a surface of at least 10 hectares;
- (iv) be in the ownership or use of the joint venture applying for the industrial park title for a period of at least 30 years;
- (v) be free of any encumbrances;
- (vi) its legal status must not be disputed before the courts of law;
- (vii) meet the required technical conditions in terms of environmental protection.

Likewise, the buildings and utilities infrastructure which are in place upon the establishment of the industrial park are, to cumulatively fulfil the conditions referred to at above items (iv) to (vi).

The duration of the industrial park title shall be set as per the applicant’s request, but for not less than 15 years, and may be subject to extensions.

MIRA may cancel the industrial park title in case that other activities than those allowed by GO no. 65/2001 are being carried out in the park or if the prerequisites for the issuance of the title are no longer fulfilled.

2.3.4. Incentives

According to GO no. 65/2001, investments in industrial parks may benefit from the following incentives:

- a) tax reductions approved by the local public administration for the land and buildings transferred for the use of the industrial park, as well as other incentives that may be granted by the local authorities under the law;
- b) exemption from payment of levies charged for changing the destination of land or for its removal from the agricultural circuit by the joint venture.

The incentives mentioned above may be granted only if and to the extent allowed under EU State aid rules, as well as with due observance of the specific procedures required by said rules.

To this end, the Minister of Interior and Administrative Reform passed Order no. 296/2007 approving the regional State aid scheme for investments carried out in industrial parks (the “Industrial Parks Scheme”). The Industrial Parks Scheme has been approved by the

European Commission and is therefore not subject to the obligation of prior notification thereto.

Under the Industrial Parks Scheme the following incentives may be granted to initial investments made in industrial parks:

- (i) exemptions from payment of taxes on buildings and taxes on lands;
- (ii) exemption from payment of the levies charged for changing the destination of lands pertaining to the industrial parks;
- (iii) exemption from payment of levies charged for withdrawal of the relevant land plots from the agricultural circuit.

The Industrial Parks Scheme only applies to initial investments not exceeding EUR 50 million in eligible costs, out of which, at least 25 percent must be borne by the investor from own resources. The initial investment must be maintained for a period of at least five years (three years for SMEs).

Large investments projects are excluded from the application of the Industrial Parks Scheme.

Aid granted under the Industrial Parks Scheme may be cumulated with other State aid measures without exceeding the maximum permitted intensity for State aid. However, according to GO no. 65/2001, if the investment is eligible for the same incentives based on more than one enactment, the beneficiary shall have to choose only one of such enactments to apply thereto.

For instance, aid granted under the Industrial Parks Scheme may not be cumulated with other incentives taking the form of tax reductions pertaining to lands and buildings but may be cumulated with incentives granted under the State aid scheme for regional development through the establishment and development of business structures, part of the regional Operational Programme 2007-2013 approved through Order no. 287/2008 issued by the minister of Development, Public Works and Housing (the "Business Parks Scheme"). Likewise, the Business Parks Scheme is not subject to the obligation of prior notification to the European Commission.

The Business Parks Scheme provides that undertakings may be granted non-reimbursable financing for up to 70 percent of the eligible costs for projects carried out within business parks.

In order for an investment to be deemed as eligible to benefit from State aid under the Business Parks Scheme, it must meet, amongst others, the following eligibility criteria:

- (i) the total value of the project must range between EUR 0.5 million and EUR 25 million;
- (ii) the activities to be financed must not have received public funding within the last 5 years;
- (iii) the initial investment must be maintained for at least five years (three years for SMEs).

2.4. Scientific and technological parks

2.4.1. Concept

GO no. 14/2002, defines scientific and technological parks as areas wherein one performs activities of education and research, technology transfers on research results as well as capitalization of these through economic activities.

Scientific and technological parks are set up based on a joint venture between universities and/or research & development institutes, on one hand, and *regies autonome*, national companies, commercial companies, local public administration authorities, business owners associations or professional associations, individuals, Romanian or foreign investors, on the other hand.

2.4.2. Assets

The movable and immovable assets pertaining to scientific and technological parks are contributed by the parties to the joint venture, which are to ensure that the right of use over such assets shall be granted to the scientific and technological park for the entire duration thereof, in accordance with the relevant joint venture agreement.

2.4.3. Management

Scientific and technological parks are managed by specialised companies appointed by the joint venture, whose sole activity shall be that of managing the relevant park. The management companies have, amongst others, the following attributions:

- (i) developing, updating and maintaining the infrastructure and utilities network pertaining to the scientific and technological park;
- (ii) selection of the undertakings that will join the scientific and technological park;
- (iii) liaising with the local and central public authorities.

2.4.4. Authorisation

The Ministry of Education and Research authorises scientific and technological parks upon request of the management company, provided that certain conditions are fulfilled, including, amongst others, the following:

- (i) the parties to the joint venture have a high level of scientific expertise and knowledge;
- (ii) one of the parties to the joint venture is a university and/or a research and development institute;
- (iii) the land and other assets necessary for the operation of the scientific and technological park have been made available thereto.

The activities carried out within scientific and technological parks shall be assessed by the National Authority for Scientific Research every two years, or as often as necessary. The authorisation may be withdrawn in case a scientific and technological park no longer meets the requisite conditions to operate and if the relevant infringements are not remedied during the suspension period previously decided by the National Authority for Scientific Research.

2.4.5. Incentives

According to GO no. 14/2002 Investments in scientific and technological parks enjoy the following incentives:

- a) tax reductions approved by the local public administration for the land and buildings transferred for the use of the scientific and technological park, as well as other incentives that may be granted by the local authorities under the law;
- b) exemption from payment of levies charged for changing the destination of land or for its removal from the agricultural circuit;
- c) deferred payment of VAT pertaining to raw materials, equipment and connections to the utilities network, throughout the investment period, until the park becomes operational;
- d) programs for development of infrastructure, investments and equipment provided by local and central authorities, or through external financial assistance;
- e) donations, concessions and structural funds for development.

The incentives mentioned above may be granted only if and to the extent allowed under EU State aid rules, as well as with due observance of the specific procedures required by said rules.

In addition to the abovementioned incentives, undertakings established within scientific and technological parts may benefit from non-reimbursable financing of up to 70 percent of the eligible expenses pertaining to the investment to be performed within the park based on the Business Parks Scheme referred to at section 2.3.4. above. Aid granted under the Business Parks Scheme may be cumulated with other State aid measures without exceeding the maximum permitted intensity for State aid.

2.5. Small and medium enterprises

2.5.1. Concept

Law no. 346/2004, which has been enacted with a view to regulate certain measures aimed at creating a favourable environment for the establishment and development of small and medium enterprises (“SME”), defines SMEs as any undertaking³ which meets the following cumulative conditions:

- (i) has less than 250 employees on an annual average;
- (ii) has an annual net turnover not exceeding the RON equivalent of EUR 50,000,000 or assets whose total value does not exceed the RON equivalent of EUR 43,000,000, based on the last approved financial statement.

Where at least 25% of an undertaking’s share capital or voting rights are directly or indirectly controlled, either individually or jointly, by one or several public bodies or organizations, the undertaking in question may not qualify as SME.

³ The concept of “undertaking” is defined by Law no. 346/2004 as any form of organization of a business that is authorized as per the applicable laws to carry out commercial activities with the purpose of obtaining a profit under competition conditions, namely companies, cooperative partnerships, free lancers and family associations.

2.5.2. Special measures supporting SMEs

The Government is to approve on an annual basis the programmes encouraging and fostering the setting up and development of SMEs, including by promoting foreign investments. Such programmes are drawn up by the National Agency for Small and Medium Enterprises and Cooperatives⁴, which is in charge with coordinating the SMEs related public policies.

In addition, public authorities and chambers of commerce and industry are to draw up policies and take actions pertaining to protection of SMEs in their relation with the State, especially by simplifying administrative procedures and preventing unjustified increases of costs incurred by SMEs for law compliance purposes.

Amongst other measures aimed at supporting SMEs, Law no. 346/2004 also provides the following:

- (i) subject to not distorting free competition on the market, public authorities are to take concrete measures facilitating the SMEs' access to public utilities networks and services as necessary for the latter to carry out their activities;
- (ii) SMEs benefit from 50% reductions on the turnover criterion, the participation bond and good performance guarantee within public procurement procedures;
- (iii) SMEs have the following rights in relation to available assets held by State owned companies and regies autonomies:
 - (a) priority access to taking such assets on lease or concession;
 - (b) the right to purchase upon request the available assets they had previously taken on lease or concession, at a negotiated price set as per a valuation report drawn up by expert agreed by the parties;
 - (c) preferential rights in purchasing available assets located in the immediate vicinity of their properties;
 - (d) priority rights in purchasing available assets at a public auction organized only for SMEs.

Available assets are defined as production units, subunits, department, accommodation areas or similar assets which meet either of the following conditions: (i) have not been used by their respective owners for a period of at least three months; (ii) have been under conservation for more than a year; (iii) have been operationally shut down. Notwithstanding, the law provides for several assets that are exempted from the application of the abovementioned rights⁵. State owned companies and regies autonomes are to draw up lists of available assets and update such lists on a monthly basis. As per the law, such lists are to be finally conveyed to the county chambers of commerce and industry and to the chamber of commerce and industry of the Bucharest Municipality, as well as to business owners associations and professional associations.

⁴ Established under the subordination of the Ministry for Small and Medium-Sized Companies, Trade, Tourism and Liberal Professions.

⁵ Assets mentioned at item (iii) are deemed as available only for the purpose the priority rights referred to at letter (d) above, whilst assets held by State education institutions and national R&D institutes may only be subject to the rights referred to at letter (a). Assets pertaining to airports, railway stations, harbors and those held by the National Company for Motorways and National Roads may not be deemed as available.

2.5.3. Microenterprises

SMEs which (i) have up to 9 employees and (ii) an annual net turnover or assets not exceeding EUR 2 million in total qualify as microenterprises within the meaning of Law no. 346/2004 and the enactments pertaining to the policies and measures referred to in said law, including relevant State aid schemes.

On the other hand, for taxation purposes a company shall be deemed as a microenterprise in case it cumulatively meets the following conditions set forth by the Fiscal Code:

- (i) its revenues generated from activities other than consultancy and management exceed 50% of the total revenues;
- (ii) has 1 to 9 employees;
- (iii) generates revenues not exceeding the Romanian currency equivalent of EUR 100,000;
- (iv) is not owned by either of the State, local authorities and public institutions.

Companies that qualify as microenterprises as per the Fiscal Code are entitled to opt out between the customary tax on profit rules¹ and a turnover tax that shall be charged in 2009 at a rate of 3%.

2.5.4. Incentives

Pursuant to the existing State aid schemes, SMEs may benefit from various forms of *de minimis*⁶ aid, including amongst others:

- (i) non-reimbursable grants for the upgrading and development of SMEs acting in certain fields, to be awarded from 2007 to 2011, unless further extended;
- (ii) non-reimbursable grants aimed at facilitating SMEs' broadband connections to the internet and related services, to be awarded until December 2013;
- (iii) non-reimbursable grants for professional training, consultancy, auditing, information and publicity costs incurred throughout the implementation of investments projects in the e-economy field, to be awarded until December 2013;
- (iv) non-reimbursable grants for implementation of international standards and for the increase of competitiveness through access to new markets at international level, to be awarded until December 2013;
- (v) non-reimbursable grants to SMEs (other than microenterprises) acting in certain fields of the extractive industry, processing industry, water supply, sanitation, waste management, decontamination and constructions, to be awarded until December 2013;
- (vi) non-reimbursable grants to SMEs (other than microenterprises) for specialised consultancy and training for the drawing up and implementation of investment projects, to be awarded until December 2013, etc.

⁶ According to EC Regulation no. 1998/2006, the total *de minimis* aid granted to an undertaking may not exceed EUR 200,000 over any period of three fiscal years or EUR 100,000 over any period of three fiscal years in case of aid granted to an undertaking active in the road transport sector.

2.6. Deprived areas

2.6.1. Concept

According to GEO no. 24/1998, deprived areas are special geographic areas meeting the following conditions:

- (i) unemployment rate was at least three times higher than the unemployment rate at national level, during the last three months prior to the date of the documentation drawn up for the purpose of establishing the relevant deprived area;
- (ii) are remote areas, with poorly developed means of communication and infrastructure.

A geographic area may be declared as deprived area by Government Decision for a period between three to ten years. A number of 31 such areas have been insofar declared as deprived areas.

2.6.2. Incentives

As per GEO no. 24/1998, privately owned companies investing in deprived areas in certain fields⁷ benefit from the following incentives:

- (i) certain customs duty exemptions⁸;
- (ii) exemption from payment of levies charged for changing the destination of the land plots intended to investment purposes or for the withdrawing of such lands from the agricultural circuit;
- (iii) exemption from the payment of corporate taxes pertaining to new investments, during the period of existence of the State of deprive area, for legal persons having obtained the certificate of permanent investor in the deprived area prior to July 1, 2003;
- (iv) grants from special funds for the financing of special programmes.

The incentives mentioned above may be granted only if and to the extent allowed under EU State aid rules, as well as with due observance of the specific procedures required by the same.

As per the Accession Treaty of the Republic of Bulgaria and Romania to the European Union (the "Accession Treaty"), Romania may continue granting corporate tax exemptions provided by GEO 24/1998 (i) for Brad, Valea Jiului and Bălan deprived areas, up to and including 31 December 2008, (ii) for further 22 deprived areas⁹, up to and including 31 December 2009, and (iii) for Cugir, Zimnicea, Copșa Mică deprived areas, up to and including 31 December 2010, all under certain conditions including amongst others:

- a) the State aid is granted for regional investments;

⁷ Agriculture, forestry, forestry exploitation, extracting and manufacturing industry, energy, gas, water, constructions, wholesale and retail trade, sale of products that are not manufactured in the deprived area, transportation and storage, real estate transactions, rental and services developed mainly for business enterprises, health care and social assistance, etc.

⁸ Customs duties related issues are detailed at Chapter 12.

⁹ Comanesti, Bucovina, Altan Tepe, Filipesti, Ceptura, Albeni, Schela, Motru Rovinari, Rusca Montana, Bocsa, Moldova Noua-Anina, Baraolt, Apuseni, Stei-Nucet, Borod Suncuius-Dobresti-Vadu Crisului, Popesti-Derna-Alesd, Ip, Hida-Surduc- Jibou-Balan, Sarmasag-Chiejd-Bobota, Baia Mare, Borsa Viseu, Rodna

- b) the net intensity of such regional aid shall not exceed the rate of 50 % Net Grant Equivalent; this ceiling may be raised for small and medium-sized enterprises by 15 percentage points provided that the total net aid intensity does not exceed 75 %;
- c) if the undertaking is active in the motor vehicle sector, the total aid shall not exceed a maximum of 30 % of the eligible investment costs;
- d) the eligible costs that may be taken into account shall be those incurred between October 2, 1998 and September 15, 2004.

2.7. Free zones

2.7.1. Concept

According to Law no. 84/1992, free trade areas are geographical areas, designated as such by Government decision wherein undertakings may carry out a number of activities expressly provided by the law, based on licensing issued by free trade areas administration and which are subject to customs regulations.¹⁰

The assets under administration of free trade areas which are public or private property of the State or local authorities as well as services/activities of national or local interest may be granted on concession or lease to private undertakings.

Financial operations concerning the activities carried out in the free trade areas are to be performed in foreign convertible currency accepted by the National Bank of Romania with certain exceptions when payments may also be made in RON.

In case of liquidation or reduction of the activity carried out in the free trade area, natural persons and legal persons are free to transfer abroad the proceeds resulted there from after paying all dues towards the Romanian State and their business partners.

2.7.2. Incentives

The following types of incentives are applicable to operations carried out in free trade areas: (i) special custom duties provisions, (ii) tax exemptions for delivery of goods subject to being introduced in free trade areas, (iii) other forms of State aid.

The incentives mentioned above may be granted only if and to the extent allowed under EU State aid rules, as well as with due observance of the specific procedures required by the same.

According to the Accession Treaty, Romania may continue granting royalty exemptions on the basis of the Law on Free Trade Areas until December 31, 2011 under certain conditions, including amongst others:

- (i) the State aid is granted for regional investments,
- (ii) the net intensity of such regional aid shall not exceed the rate of 50 % Net Grant Equivalent; this ceiling may be raised for SMEs by 15 percentage points, provided that the total net aid intensity does not exceed 75 %,
- (iii) if the undertaking is active in the motor vehicle sector, the total aid shall not exceed a maximum of 30 % of the eligible investment costs,
- (iv) the eligible costs that may be taken into account shall be those incurred between July 30, 1992 and November 1, 2004.

¹⁰ See Chapter 12 (Customs) for details regarding customs rules applicable to free trade areas.

2.8. Other incentives

Several other State aid schemes aimed at encouraging various sectors of activity or, as the case may be, supporting certain goals, provide for investment support measures such as:

- (i) the scheme financing initial investment in projects concerning research, development and innovation, meant to encourage the research and development field via non-reimbursable grants for the purpose of implementing new investment projects;
- (ii) the scheme for regional sustainable development and emission reduction, aimed at supporting environmental protection by non-reimbursable financing for investments aimed at producing electrical and thermal energy to cover part of the costs;
- (iii) the scheme for development of renewable energy sources aimed at supporting environmental protection by allowing undertakings that choose to invest in constructing and upgrading facilities used for production of electrical and thermal energy by exploitation of renewable resources to obtain non-reimbursable financing;
- (iv) the *de minimis* aid scheme supporting economic activities with a view to diversify rural economy and to ensure the increase in the quality of life in the rural area, by non-reimbursable grants awarded to undertakings investing in productive activities and/or services in less developed areas in Romania, other than agricultural activities;
- (v) the *de minimis* aid scheme which finances actions aimed at increasing exports such as the participation to fairs, international exhibitions, the organization of economic missions, etc;
- (vi) the *de minimis* aid scheme for supporting the innovative start-ups and spin-offs, aimed at encouraging innovation and technology.

3. Foreign investments

3.1. General

In line with the Romanian Constitution, GO no. 92/1997 provides that equality of treatment between Romanian and foreign investors is guaranteed as regards investments made in Romania. Hence, foreign investors benefit from the same rights as Romanian nationals in respect of their investments on Romanian territory. In addition, foreign investors enjoy various specific rights, most notable of which are referred to below, as well as special taxation rules (*see* Chapter 6). At the date hereof, the main public body specialising in the field of foreign investment is the Romanian Agency for Foreign Investments (ARIS) which has been established in 2002 with the aim of providing assistance to foreign investors, including as concerns opportunities offered by the investment environment in Romania, as well as of supervising the coherent implementation of the State policy on promoting and attracting foreign investments.

According to GO no. 85/1998, ARIS is to be replaced by the Romanian Agency for Investments as soon as the relevant enactments regulating the organization, by-laws and attributions of the latter come into force.

3.2. Specific currency and financial rules

Foreign investors benefit from the currency and financial rights set forth by the Currency Regulation no. 4/2005 in respect of non-residents¹¹, as follows:

- (i) the right to acquire, hold and use financial assets expressed in foreign currency and national currency (RON);
- (ii) the right to convert on the foreign exchange market the amounts held in national currency and foreign quoted currency;
- (iii) the right to open and maintain with credit institutions foreign currency accounts and national currency accounts;
- (iv) the right to repatriate and transfer their financial assets.

According to GO no. 92/1997, repatriation may take place without any restrictions subject to payment of the relevant taxes and settlement of other obligations provided by Romanian law and may concern amongst others: dividends, profit generated by companies, revenues obtained as a result of an unincorporated joint-venture, capital gains, proceeds from voluntary liquidation or bankruptcy procedures as well as amounts obtained as compensation for expropriation or other measures with equivalent effect. All such transfers may be made in the initial investment currency.

The National Bank of Romania, under certain circumstances, may take safeguard measures with respect to capital currency operations, such as:

- (i) the obligation to notify the National Bank of Romania with 10 days in advance of the intention to carry out short-time capital currency operations;
- (ii) setting ceilings and other limits for short-time capital currency operations which generate residents and non-residents capital entries/exits;
- (iii) retaining for a determined period of time part of the amounts in foreign/national currencies which result from short-term capital currency operations and generate residents and non-residents capital entries/exits;
- (iv) setting maturity date restrictions with respect to certain short-time currency capital operations;
- (v) setting restrictions on the commencement of new short-time capital currency operations.

Such measures should, as a matter of principle, not exceed a six-month period. Upon specific request of the European Commission, the National Bank of Romania is to modify, replace or repeal the relevant safeguard measures.

¹¹ According to Currency Regulation no. 4/2005, the following shall be deemed as non-residents: (a) natural persons – Romanian citizens, foreign and stateless persons, residing abroad; (b) legal persons and any other entities, with their head office abroad, as well as natural persons, Romanian citizens, foreign and stateless persons domiciled abroad, authorized and/or registered to perform economic activities abroad, independently, under the conditions of the legal provisions in force; (c) subsidiaries, agencies, agents, offices of Romanian legal persons, as well as of other Romanian entities, registered and/or authorized to operate abroad; and (d) embassies, consulates and other permanent representatives and missions of other states in Romania, as well as international organizations and representatives of such organizations operating in Romania.

3.3. Foreign investments by acquisition of T-bonds

T-bonds are deeds representing Romania's public debt, issued in the form of bills, treasury certificates and other instruments with maturity of one year or less, bonds and other instruments with maturity exceeding one year, which stand for State borrowings in national and/or foreign currency, on short, medium or long term.

Non-resident investors may purchase T-bonds on the primary market via primary dealers and participate to T-bonds transactions through persons acting as intermediaries on the secondary market.

The primary market is organized at inter-banking level, while the secondary market is organized with the Bucharest Stock Exchange.

Participants on T-bonds primary market as primary dealers are credit institutions specifically authorized by the National Bank of Romania, financial investment companies authorized by the Romanian National Securities Commission and the equivalent of the aforementioned institutions, authorized in EU Member States and/or in the other States within the European Economic Area.

Participants on the secondary market as intermediaries are the entities that have been accepted by the secondary market's administrator further to the fulfilment of the conditions provided by the applicable regulations.

Currency transactions concerning foreign investments in T-bonds are subject to the currency regulations enacted by the National Bank of Romania.

Investors may freely repatriate the invested proceeds and the incomes generated by portfolio investments consisting of the acquisition of T-bonds in convertible currency.

3.4. Foreign investments litigations

3.4.1. Bilateral investment treaties

To date, Romania has concluded roughly 85 bilateral investment treaties ("BITs") with states such as the U.S.A, Canada, Australia, Israel, the European Union member states, neighbouring countries, some of the states of the former Soviet Union and other former socialist countries, as well as certain Asian and African countries.

Pursuant to the BITs, Romania has undertaken various obligations such as:

- (i) to promote in its territory investments made by natural or legal persons which are nationals of the counterparty State or are controlled thereby, and admit such investments in accordance with Romanian legislation;
- (ii) to ensure fair and equitable treatment as concerns such investments and not to impair them through unreasonable or discriminatory measures;
- (iii) to award such investments no less favourable treatment than required by international law;
- (iv) to award such investments treatment that is not less favourable than that accorded to investments made by its own investors or by investors of third States, whichever is more favourable to the investor;
- (v) not to expropriate such investments unless in public interest, on a non-discriminatory basis and with prompt, adequate and effective compensation.

Should BITs include provisions more favourable to investors, such provisions will, as a rule, override Romanian legislation.

Where the State does not meet its obligations under the relevant BIT, investors have direct resort to arbitration against the State in order to recover damages incurred as a result of the State's misconduct.

Such arbitrations may be held either under the jurisdiction of the International Centre for the Settlement of Investment Disputes based in Washington (ICSID)¹², or by ad-hoc arbitral tribunals constituted in accordance with UNCITRAL¹³ Rules of Arbitration, at the concerned investor's choice.

As a matter of principle, BITs do not preclude investors from referring their investment related claims against the State and bodies thereof to the customary courts of law, based on infringements to Romanian enactments or, as the case may be, to contractual obligations undertaken by the State.

3.4.2. Infringement of investment principles regulated under Romanian law

Pursuant to GEO no. 92/1997, foreign investors' claims arising from rights and obligations set forth by said enactment may be addressed, at the investor's choice, to any of the following: (i) Romanian courts of law, based on Law no. 554/2004 on administrative disputes, (ii) ICSID, and (iii) ad-hoc arbitral tribunals constituted in accordance with UNCITRAL Rules of Arbitration.

¹² ICSID has been established by the Washington Treaty on the Settlement of Investment Disputes Between States and Nationals of Other States, of 18 March 1965, ratified by Romania through Decree no. 62/1975.

¹³ United Nations Commission on International Trade Law.