

Chapter 11

Labor and Social Security

1. General

The employment sector has faced substantial changes in Romania, but at quite a slow pace. It took 13 years for the regulations containing principles of employment dated 1972, to be finally repealed and a new legal framework enacted. The new Labor Code came into force on 1st March, 2003 and was amended several times since that date, the last amendment being made through Law no. 40/2011, applicable starting with 01.05.2011. The Labor Code gathers under the same umbrella the principles of employment relationship, employment contracts, labor and rest, labor protection and health. The Law no. 62/2011 on Social Dialogue applicable starting with 13 May, 2011 regulates the social dialogue, trade unions, employers' associations and labor conflicts.. Additionally to the Labor Code, social and labor security are provided for as distinct items in the Governing Program adopted by the Romanian Government for the period 2009-2012. The aforementioned program provides, *inter alia*, as government objectives, increase of employment rate, increase of flexibility of the labour market and elimination of inequities and abnormalities existing within the public pension system.

2. Main regulations

- The Labor Code, approved by Law no. 53/2003 ("Labor Code");
- Law no. 62/2011 on Social Dialogue („Law no. 62/2011”);
- Government Emergency Ordinance no. 56/2007 on employment and secondment of foreigners on the Romanian territory, as further amended (“GEO no. 56/2007”);
- Law no. 67/2006 on the protection of the employees' rights in case of transfer of undertakings, of units or part of those (“Law no. 67/2006”).

3. Individual Labor Contract

3.1. Form of the Individual Labor Contract

The individual labor contract is concluded based on the parties' mutual consent, recorded in writing in Romanian language. The obligation to conclude individual labor contracts is incumbent on the employer. The written form is mandatory for the valid conclusion of the contract.

The acceptance at work of up to 5 persons without concluding an individual employment contract represents a minor offence and is punished with administrative fine. The acceptance at work of more than 5 persons without concluding an individual employment contract represents a crime and is sanctioned with imprisonment from 1 to 2 years or with a criminal fine.

3.2. Entering the labor contract

3.2.1. Prior information before entering the labor contract

Before concluding or amending any individual labor contract, the employer must inform the applicant or the employee, as the case may be, on the general provisions it intends to insert/amend in the contract, such as: the parties' identity, the work place details, the employer's residence or headquarters, the criteria for the evaluation of the professional activities of the employee applicable at the level of the employer, risks of work, contract duration, position/occupation pursuant to the provisions of the Romanian Classification of Professions or pursuant to other enactments, the job description, terms and conditions of the prior notice to be served by the contracting parties, the basic salary, the applicable collective bargaining agreement, etc.

Any amendments of the above-mentioned elements during the performance of the individual employment contract shall involve the execution of an addendum to the contract within 20 days as of the date such change occurred, except for the cases when such change is expressly provided by law. Should the employer fail to observe the information obligation, the applicant or the employee, as the case may be, will be entitled to notify the competent legal court within 30 days and to request recovery of the damages incurred as a consequence of the employer's breach of its information obligation.

The employer has the obligation, prior to the commencing of the activity, to handover to the employee a counterpart of the individual labor contract.

3.2.2. Probation period

During the execution of the labor contract, only one probation period may be established, that shall not exceed (i) 120 calendar days for management positions, (ii) 90 calendar days for executive positions, (iii) 30 calendar days for employees with disabilities.

For graduates of higher education, the first 6 months following the beginning of their employment in profession shall be considered internship period except for the professions where the internship is regulated by special laws are excepted from this provision. At the end of the internship period the employer will mandatory issue the certificate certified by the territorial labor inspectorate.

Throughout or at the end of the probation period, the individual labor contract may be exclusively terminated based on a written notice, without prior notice, following the initiative of either party, without any reasoning being necessary.

Successive employments of more persons under probation periods for the same position may be performed for a maximum period of 12 months.

3.3. Observance of the minimum rights

According to art. 11 of the Labor Code, the provisions of the individual labor contract may not be contrary or grant rights in favor of the employee below the minimum level established by the relevant legislation or by the collective bargaining agreement.

3.4. Special types of individual labor contracts

The Labor Code provides for the following types of individual labor contracts:

a) Labor contract for a determined period of time:

- (i) as a rule, the labour contract is concluded for unlimited period; labor contract for a determined period of time may be concluded only under the terms expressly provided by law;
- (ii) may be concluded after the expiry of the initial term duration of 36 months;
- (iii) may be extended, based on the parties' written agreement, for the period of performing a project, program or work;
- (iv) the same parties may successively conclude maximum 3 individual labor contracts for a determined period of time;
- (v) the individual labor contracts for determined period, concluded within 3 months as of the termination of an individual labor contract for determined period, are considered successive contracts and cannot have a duration longer than 12 month each;
- (vi) employers are bound to inform the employees (by notice placed on the employer's premises) on any vacancies existing or about to exist in the company, corresponding to their professional skills and to assure the access to such vacancies under equal conditions with those of the employees hired with labour contracts for unlimited period; a copy of the aforementioned notice must be also transmitted to the trade union/ employees' representatives.

b) Temporary labor contract:

- (i) it is the work performed by a temporary employee who concluded a temporary labour contract with a temporary labor agent and who is placed at the disposal of a final labor user to temporary work under the latter's surveillance and coordination;
- (ii) it is concluded for a duration corresponding to the assignment provided in the contract, but not exceeding 24 months, and may be extended for successive periods, which, added to the initial duration of the mission, may not exceed 36 months;

- (iii) the temporary labour agent can conclude with the temporary employee an individual employment contract for unlimited period, in which case the temporary employee shall remain at the disposal of the temporary labour agent between two assignments;
- (iv) after finishing his/her assignment, the temporary employee may be employed by the user;
- (v) the salary received by the temporary employee for each assignment shall be paid by the temporary labor agent, is established by direct negotiation with the latter and cannot be lower than the minimum national gross salary.

c) Part-time individual labor contract:

- (i) it implies shorter working hours than the normal work hours;
- (ii) the employer is bound to inform in due time (by a notice posted on its premises) the vacation of any part-time or full-time jobs, in order to ease the transfers from full-time jobs to part-time jobs and vice versa; the aforementioned notice must be also transmitted to the trade union/ employees' representatives.

d) The individual labor contract for home work:

- (i) it implies the performance by the employee of his/her specific work tasks at his/her home, he/she having the right to establish his/her own working timeframe;
- (ii) the employer has the right to check the employee's activity, according to the terms stipulated in the contract.

e) Apprenticeship contract:

- (i) is concluded for a determined period of time;
- (ii) the apprentice attends vocational training and works under the employer's authority.

3.5. Special provisions

The parties may also negotiate certain specific clauses such as the professional training clause, non-competition clause, mobility clause, confidentiality, etc.

3.5.1 Non-competition clause

The non-competition clause implies the employee's obligation, after the cessation of the individual labor contract, not to carry out any activity in his/her own interest or in interest of a third party, which may compete with the activity performed for the benefit of his/her employer.

This clause shall produce effects for maximum 2 years as of the contract's cessation, provided that: (i) the individual labor contract expressly mentions the activities that are forbidden to the employee after the

cessation of the contract (ii) the employer grants an indemnification for the non-competition period, to be negotiated by the parties, amounting to at least 50 % of the employee's average gross salary over the last 6 months prior the cessation of the contract or, in case of length of the contract is less than 6 months, of the employee's average gross salary over the entire duration of the contract (iii) the contract provides the duration for which the employee may not carry out the activities that are forbidden, the third parties in favor of which the aforesaid activities are forbidden and the geographic area where the employee may be in competition with the employer.

From the employer's point of view, the non-competition indemnification shall be considered a deductible expense.

In certain cases of cessation by virtue of law of the individual labor contract or if the same ceases for reasons not related to the employee, the non-competition clause shall not produce any effects after termination of the individual labor contract.

The non-competition clause may not however result in totally preventing the employee from exercising his/her profession or vocation.

If the employee fails to observe the non-competition clause, he/she may be bound to pay back the indemnification that he/she has received, along with so caused damages to the employer.

3.5.2. Mobility clause

Under the mobility clause, the parties may agree that, due to the work particularities, the employee is not bound to perform his/her job tasks within a permanent location. Thus, the employee may benefit from additional allowances, in cash or in kind. The amount of the cash allowances or the modalities of granting the in kind allowances have to be provided in the individual labor contract.

3.5.3. Confidentiality clause

Under the confidentiality clause, the parties may agree that, for the entire duration of the individual labor contract and after its cessation, they will not disclose any data or information they had access while the contract was in force, according to the terms of the internal regulation, of the collective bargaining agreements or of the individual labor contracts. Failure to observe this clause by any of the parties will result in the defaulting party's obligation to pay corresponding damages.

3.6. Salaries

The salary includes basic salary, indemnifications, bonuses, as well as other additional payments, and it is paid prior to any other debts of the employer.

The minimum salaries levels are set out by the applicable collective bargaining contracts.

The individual salary shall be set out by individual negotiations between the employer and the employee.

The employer has the obligation to take all the necessary measures to ensure salary confidentiality.

The employer may not negotiate and establish basic salaries under individual labor contracts, below the national minimum gross salary.

Failure to observe the legal provisions regarding the payment of the national minimum gross salary represents a minor offence and is sanctioned with administrative fine. The deed of a person to repeatedly establish for employees working under an individual employment contract salaries under the level of the minimum gross national salary represents a crime and is sanctioned with imprisonment or criminal fine.

For the year 2011, the national minimum gross salary was established at RON 670/month, for full time jobs, i.e. an average of 170 hours/month, representing RON 3.94/hour.

The payment of salaries is secured by the employer's obligation to monthly contribute to the Security Fund for salary receivables payment, resulting from the individual labor contracts.

No withholdings as damages caused to the employer may be made from the employees' salary, unless the employee's debt is outstanding and payable and was considered as such by a final and irrevocable judgment. Such salary withholdings, cumulated, cannot exceed each month half of the employee's net salary.

However, the damage produced by an employee from his/her fault and related to his/her work may be recovered by parties agreement provided that the value of the damage recovered does not exceed the equivalent of 5 minimum gross salaries per economy.

3.7. Working hours

The normal working schedule is of 8 hours/day or 40 hours/week in average. For young people under the age of 18, the normal work time is 6 hours/day and 30 hours/week. Depending on the work features, employees may opt for an irregular distribution of the working hours, yet with the strict observance of the normal working time of 40 hours/week. The maximum legal working time may not exceed 48 hours/week, including overtime work. As an exception, the working time may exceed 48 hours/week, provided that the average of working hours for a 4-month period does not exceed 48 hours/week.

The employees effectively and permanently performing their activity in work places with special conditions-harmful, hard or dangerous are entitled to a decrease of the work time under 8 hours/day, under the law.

The employer may establish individualized, flexible working hours, with the employee's consent or upon the request of an employee.

3.8. Paid leaves

3.8.1. Annual rest leave

The minimum annual rest leave duration is 20 working days. Employees working in hard, dangerous or harmful conditions, blind or disabled individuals or young people under the age of 18 will benefit from an additional annual rest leave of at least 3 working days.

The right to annual rest leave may not be subject of any waiver, assignment or limitation.

The effective period of the annual rest leave is stipulated in the individual labor contract, with the observance of the law and the applicable collective bargaining contracts. Such period is awarded proportionally to the activity carried out by employee during a calendar year. However, the part-time employees benefit by the same annual rest leave as the employees who work full-time.

The non-working legal holidays, as well as the paid days off, stipulated in the applicable collective bargaining agreement are not included in the annual rest leave.

As a general rule the annual rest leave shall be taken every year. Employers are bound to grant annual rest leave, until the end of the following year, to all employees who did not entirely benefit from the leaves they were entitled to in a calendar year. Compensation in cash of the untaken annual rest leave is allowed only in case of individual labor contract termination.

During the period of the annual rest leave the employee shall benefit of an indemnity, which may not be lower than his/ her base salary, indemnities and permanent bonuses due for that period. The indemnity for annual rest leave represents the daily average of the employee's salary rights for the last three months prior to the month when the leave is completed, multiplied by the number of annual rest leave days; such indemnity will be paid at least 5 working days before the employee's departure.

3.8.2. Other paid leaves

The Labor Code grants the employees the right to paid days off for special family events . Such events and the number of days off are set up by law, by the applicable collective bargaining contract or by the internal regulations.

3.9. Suspension of the individual labor contract

The suspension of the individual labor contract may occur *de jure*, pursuant to parties' mutual consent or at one of the parties' initiative.

The individual labor contract is *de jure* suspended, inter alia, during maternity leave and temporary working incapacity leave.

The contract may be suspended further to the employee's initiative for leave for raising children under the age of 2, for paternal leave, for participating to strikes and other situations expressly stipulated by law.

The employer may have the initiative to suspend the individual labor contract, for example, during the employee's prior disciplinary investigation, as well as during the temporary interruption or reduction of its activity due to economical or technological reasons.

In case of temporary reduction of activity for more than 30 working days, the employer may with the prior consultation of the representative trade union/employees' representatives reduce the work program from 5 to 4 days per week, with the corresponding salary decrease, until the remedy of the situation which caused the reduction of the program.

During the temporary interruption and/ or reduction of the employer's activity, the employees engaged in the reduced/ interrupted activity, who no longer work, are entitled to compensations amounting to at least 75% of the basic salary corresponding to the occupied work place, excepting the case provided above (temporary reduction exceeding 30 working days).

3.10. Termination of individual labor contract

The individual labor contract may cease either *de jure*, pursuant to parties' mutual consent, on the date agreed by the same, or further to the one of the parties' initiative, under the terms and conditions expressly provided by law.

3.10.1. Termination *de jure* of the contract

The termination of the individual labor contract may occur *de jure* in certain cases, expressly provided by the Labor Code, among which:

- (i) upon decease date of the employee or of the employer individual person, as well as in case of dissolution of the employer legal entity as of the date the employer ceased its existence, pursuant to the law;
- (ii) on the date when the cumulative conditions of standard age and minimum retirement subscription period are met; at the communication date of the retirement decision in case of retirement for disability, partial anticipated retirement, anticipated retirement, retirement for standard age with the reduction of the standard age for retirement;
- (iii) when the court grants the application for reinstatement in the position previously held by an employee illegally dismissed, commencing on the date the judgment becomes final;
- (iv) on the expiry date of the individual labor contract for a determined period of time.

3.10.2. Dismissal

a) Legal concept of dismissal

The dismissal represents the cessation of the individual labor contract based on the employer's initiative and may be occur for reasons related to the employee, or for reasons not related to the employee.

The employees may not be dismissed, among others, in the following situations:

- (i) during the employee's temporary working incapacity;
- (ii) during pregnancy, if the employer was aware of the woman's condition before her dismissal;
- (iii) during maternity leave;
- (iv) during annual paid leave, etc.

These cases are not applicable when the employee is dismissed further to the employer's judicial reorganization, bankruptcy or dissolution, in accordance with the law.

The dismissed individuals will receive, as a rule, a prior dismissal notice of minimum 20 working days.

b) Dismissal for reasons related to the employee

The employer may resolve the employee's dismissal for reasons related to the employee in the following cases:

- (i) if the employee perpetrates a severe infringement or repeated infringements of labor discipline;
- (ii) in case the employee is in preventive arrest for more than 30 days;
- (iii) in case the employee is found out to have a physical and/or psychic inability;
- (iv) if the employee is professionally unfit for the job.

c) Dismissal for reasons not related to the employee

This type of dismissal is determined by the cancellation of the position held by the employee for one or more reasons not pertaining to the employee.

3.10.3. Collective dismissal

a) Notion

The collective dismissal consists in dismissing, for reasons not related to employees, within a 30-day period, of at least 10 employees (for companies with 21-99 employees), 10% of the employees (for companies with 100-299 employees), 30 employees (for companies with at least 300 employees).

b) Procedure

Collective dismissal involves consultations with the trade unions/ employees' representatives on the methods and means to avoid the collective dismissals or to reduce the number of dismissed employees and to mitigate the consequences thereof and prior notifications to the trade unions/employees' representatives, the territorial labor inspectorate and the territorial agency for professional occupation and training, on the

intention of collective dismissal and the social protection measures taken. The aforementioned notifications has to provide, *inter alia*, the number and categories of employees to be dismissed, the criteria considered for establishing the dismissal priority order, measures for mitigating the dismissal consequences and compensatory payments to be granted to dismissed employees, the date starting from or the period within which the dismissal shall be performed. The dismissal decision is individual and the serving of notices is mandatory.

c) Limitations in case of reactivation of the cancelled jobs

The employee dismissed by collective dismissal has the right to be reemployed with priority on the workplace reestablished in the same activity, without exam, competition or probationary period, within 45 calendar days as of the dismissal date. The employee has a term of 5 calendar days as of the communication of the recommencement of the activity in order to express their written consent regarding the offered workplace. In case the dismissed employees, entitled to be reinstated in their jobs, refuse to be reinstated or do not express in written their consent within the above mentioned term, the employer may employ other persons for the vacant jobs.

The provisions of the Labour Code on the collective dismissal do not apply to employees from public institutions and authorities, as well as to individual employment contracts concluded for determined period of time, except for the cases in which these dismissals take place prior to the expiry date of such agreements.

d) Social protection measures for the persons whose individual labor contracts are terminated further to the collective dismissals

The dismissed employees benefit of active measures of unemployment fighting and may also benefit from compensations under the law and the applicable collective bargaining contract.

e) Illegal dismissals

In case of illegal or ungrounded dismissal, the Court may invalidate such dismissal, bind the employer to pay damages equal to the employee's updated, increased salary, together with any other rights the employee would have benefited from should dismissal not have occurred and, upon the employee's request, to reintegrate him/her on the position previously held. Moreover, the employee may request the equivalent of the moral prejudice suffered for the fault of the employer.

The employer's failure to observe the reinstatement judgements constitutes an infringement and it is punished with the imprisonment or fine.

If the employee does not request to be reinstated in the situation prior to the issuance of the dismissal dismissal, the individual labor contract shall be terminated by virtue of law on the date the court decision is final and binding.

3.10.4. Resignation

The resignation represents the unilateral deliberate act of the employee who, by means of a written notification, informs the employer on the termination of his/her individual labor contract, after the completion of a prior notice term. The employee is not bound to justify such resignation.

The prior notice term will be established by the parties in the contract, and cannot exceed 20 working days for execution positions, and 45 working days for management positions.

The individual employment contract is terminated on the expiration of the prior notice term or on the date when the employer partially or totally renounces to the prior notice term.

In case the employer breaches its obligations provided in the individual labor contract, the employee is free to resign without serving prior notice to the employer.

3.11. Social protection measures for employees, in case of transfer of business

The transfer of business is regulated by the Labor Code and by Law no. 67/2006. The latter entered into force on January 1, 2007 and transposes the Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Under Law no. 67/2006, the transfer is defined as the passing of undertaking, of unit or part of those from the transferor's ownership into the ownership of the transferee as a result of an assignment or merger, having as purpose the continuation of the main or secondary activity, irrespective of obtaining of any profit.

Both the Labor Code and Law no. 67/2006 provide that the rights and obligations of the transferor arising from the individual labor contracts and from the applicable collective labor contract existing on the undertaking transfer date, shall be fully transferred to the transferee. The transferee has to observe the collective labor contract, in force on the date of the transfer, until its termination. Such collective bargaining contract can be re-negotiated, but not earlier than one year as of the transfer date.

If the transferred business doesn't keep its autonomy after the transfer and the transferee's collective labor contract is more favorable to the transferred employees, it shall apply to the transferred employees.

Law no. 67/2006 requires prior consultations with the trade unions/employees representatives of the transferor and transferee and their notification in writing (or the notification of the transferor and transferee employees, if the trade unions or employees representatives are not established) with at least 30 days prior to the transfer date, on certain elements such as: (i) the transfer date or the proposed transfer date, (ii) the reasons for the transfer, (iii) the legal, economic and social consequences of the transfer for the employees, (iv) any measures to be taken with respect to the employees, (v) work conditions and work framing conditions, etc.

Law no. 67/2006 provides also an essential interdiction, namely that the transfer of undertaking cannot represent reason for collective or individual dismissal of the employees by the transferor or by the transferee. It is important to outline that the transferor may not dismiss its employees in order to facilitate the transfer of undertaking.

If the transfer of undertaking implies a substantial modification of the work conditions to the employees' detriment, the employer is responsible for the termination of the individual labor contract.

4. Employees' liability

4.1. Internal regulations

Each employer has to adopt an internal regulation. The internal regulation covers issues such as: hygiene, labor protection and security, rights and obligations for both the employer and the employees, labor discipline, the criteria and procedures for the professional evaluation of employees etc.

The internal regulation should be acknowledged to the employees by the employer and is binding on the employees on the date of their acknowledgement thereof. The internal regulation should be displayed within the employer's premises, and any interested employee may approach the employer on any provisions thereof, provided that he/she proves that the regulation infringes his/her rights.

4.2. Disciplinary liability

The employer has the disciplinary prerogative, being legally entitled to apply sanctions to any employee, whenever he/she finds out that such employee breaches his/her duties.

Disciplinary infringements are labor related deeds consisting in faulty actions or omissions of the employee, in breach with the legal provisions, the internal regulation, the individual labor contract or the applicable collective labor contract, his/her superiors' orders.

The employer will establish the applicable disciplinary sanction, well balanced with the disciplinary infringement committed by the employee.

The employer may apply the following disciplinary sanctions:

- (i) written warning;
- (ii) demotion from his/her current position and the reduction of his/her salary in accordance with the new position, for maximum 60 days;
- (iii) decrease of the basic salary by 5-10% for a period of 1 to 3 months;
- (iv) decrease of the base salary and/or, as the case may be, of the management allowance by 5-10% for a period of 1 to 3 months;

- (v) disciplinary termination of the individual labor contract.

The disciplinary sanction shall be erased by virtue of law within 12 months as of its appliance provided that a new sanction was not applied to the employee within this period. The erasure of the disciplinary sanctions shall be ascertained by decision of the employer issued in written form.

Subject to absolute voidance, no disciplinary sanction excepting for written warning may be imposed unless a prior disciplinary investigation is performed. The employee will be summoned in writing by the person empowered by the employer to perform the investigation. The employees' failure to answer such summon without an objective reason may lead to the sanction being enforced without prior disciplinary investigation.

During the prior disciplinary investigation, the employee may formulate and sustain any defense in his/her favor and to offer all proofs and motivations he/she considers necessary and may be assisted, upon his/ her request, by a representative of the union he/she is part of.

The employer will impose the application of the disciplinary sanction by decision issued in writing, within 30 calendar days as of the date the employer was informed on the disciplinary infringement, but no later than 6 months after the date of perpetrating such deed.

5. Foreigners working in Romania

The citizens of the European Union member states (EU citizens) can enter and have a residence right in Romania if their stay is no longer than three months, without the requirement of other additional conditions. For longer stays, the EU citizens who work in Romania need registration certificates that are issued by the Romanian Immigration Office and that are valid for the period of the individual labor contract.

Non-EEA citizens and non-EU citizens may work in Romania, provided that they obtain a work permit from the Romanian Immigration Office.

The work permit may be issued, upon request, to non-EEA citizens and non-EU citizens who meet the requirements provided by law regarding the foreigners' regime, the integration to employment and the secondment on the Romanian territory.

The work permit is issued by the Romanian Immigration Office, being granted for a period up to one year and being automatically extended for successive periods of up to one year until the termination of the individual labor contract.

Among non-EEA citizens and non-EU citizens who can be employed in Romania without a work permit, are those who:

- (i) have legally established their permanent residence on the Romanian territory;
- (ii) have acquired a form of protection in Romania;

- (iii) whose free access to the Romanian labor market is regulated by agreements, treaties or bilateral understandings concluded by Romania with other states;
- (ii) perform teaching, scientific and other specific temporary activities in Romanian education institutions, based on reciprocal agreements, or as holder of a staying right for performing activities of scientific research, the highly skilled personnel, based on the order of the minister of education, research and youth and the foreigners that perform artistic activities in Romanian cultural institution based on the order of the minister of culture and cults;
- (iii) are going to perform on Romanian territory temporary activities requested by ministries or any other public institutions;
- (iv) are appointed head of subsidiaries, representative offices or branches of a foreigner company on Romanian territory;
- (v) are family members of Romanian citizens;
- (vi) are seconded in Romania and work based on a work permit within EEA or EU member state.

The number of work permits issued are limited annually by Government decision, depending on the concrete status of the Romanian labor market and the policy in the field of labor force migration. For 2011, the Government established a number of 5,500 work permits to be issued to foreign citizens that intend to work on Romanian territory.

6. Collective bargaining contract

6.1. Negotiation obligation

The collective bargaining contracts may be negotiated at unit, groups of units or activity sectors level.

The criteria of affiliation to the activity sectors is the main object of activity of the company registered with the Trade Registry.

The employer is bound to initiate collective negotiations at unit level, except when the number of its employees is less than 21. The initiative of the collective negotiation must be made at least 45 calendar days as of the expiry of the collective bargaining contracts or as of the expiry of the applicability of the provisions of the addenda to the collective bargaining contracts.

In case the employer doesn't initiate the collective negotiations, these are initiated upon the request of the representative trade union or of the employees' representatives, within 10 days as of the date when the request was made.

The collective negotiations can exceed 60 calendar days only subject to the parties' agreement. The collective bargaining contracts may provide the periodical renegotiation of any provisions agreed between the parties.

6.2. Execution of collective bargaining contract

The collective bargaining contracts are concluded for a determined period of time which cannot be shorter than 12 months and longer than 24 months. The parties may decide upon the extension of the collective bargaining contract only once, for a duration no longer than 12 months.

6.3. Contract content and registration

The collective bargaining contract may not contain inferior rights to those established through the collective bargaining contract concluded at superior level.

Upon the collective bargaining contract execution, the legal provisions relating to employee's rights have a minimal character.

- (i) the collective bargaining contracts concluded at the company level and the addenda thereto must be concluded in written form and registered with the territorial labour inspectorate;
- (ii) the collective bargaining contracts concluded at groups of units or activity sectors level, shall be registered with the Ministry of Labor, Family and Social Protection and shall also be published in the Part V of the Official Gazette.

In case of the contracts negotiated at activity sectors level, the collective bargaining contract shall be registered for the respective level only if the number of employees from the units members of the signatory employers' organisations exceeds half of the total number of the employees from the activity sector. Otherwise, the contract shall be registered as contract concluded at groups of units level.

6.4. Contract performance, amendment, suspension and termination

The provisions of the collective bargaining contracts produce effects as follows:

- (i) for all the unit's employee, in case of the collective bargaining contracts concluded at this level;
- (ii) for all the employees of the units that are included in the group of units for which the collective bargaining contract was concluded;
- (iii) for all the employees of the units from the activity sector for which the collective bargaining contract was concluded and that are part of the employers' associations that executed the contract.

The appliance of the collective bargaining agreement registered at the level of an activity sector may be extended to the level of all units from the sector, based on an order of the Ministry of Labour, Family and Social Protection, with the approval of the National Tripartit Council, based on the request of the signatories of the collective bargaining contract at sectorial level.

If, during the performance of a collective labor contract, the employer changes its main object of activity, the provisions of the collective bargaining contract concluded at the level of the activity sector in which the new object of activity is included will be applicable.

The provisions of the collective bargaining contract may be amended during the contract's performance whenever the parties agree on such amendments. Any amendments of the collective bargaining contract shall be applicable starting from their registration date, or upon a subsequent date, depending on the parties' agreement.

The collective bargaining collective will cease:

- (i) upon expiry of its term or upon achievement of the assignment the contract was signed for, if the parties fail to agree upon its extension;
- (ii) upon dissolution or liquidation of the employer;
- (iii) pursuant to the parties' agreement.

7. Labor associations

7.1. Trade Unions

A trade union may be set-up by minimum of 15 persons belonging to the same company. An individual may belong, at same time, only to one trade union of the same employer.

Employed individuals, public officers and public officers with special statute, cooperation unit members and employed farmers have the right to set up a trade union and/or to adhere thereto.

In order to defend the interests of its members, a trade union may use specific union means, such as: negotiations, litigation solving procedures through mediation, conciliation, arbitration, petition, picket, march, meeting and demonstration or strike.

A trade union defends the rights of their members, resulting from the labor laws, public officer statutes, collective bargaining agreements and individual labor agreements, in front of court or in front of state authorities or institutions. The representative trade unions are entitled to represent their members in the collective bargaining agreement negotiations.

The trade unions may associate depending on the industry criteria in trade union federations/ trade union confederations/ territorial trade unions.

7.2. Employers' Associations

The employers' associations are autonomous, apolitical, and set up based on the freedom of association principle as legal entities of private law for the purpose of defending and promoting the common rights and

interests of their members. The employers' associations may associate, depending on the industry criteria, in federations confederations or territorial employer's associations.

An employer's association can be affiliated only to one superior employer's association.

7.3. The Economic and Social Council

On the grounds of Law no. 62/2011 on the social dialogue, the Economic and Social Council was established, as a three-folded, autonomous public institution of national interest, meant to ensure tripartite social dialogue at national level between the representatives of the organised civil society, trade unions and the employers' associations.

The Economic and Social Council is mandatorily consulted by the initiator of law projects in its area of competence: economic, financial, fiscal, work relations, social protection, salaries and health policies, education, research and culture. The Council may refer matters to itself or may be notified by any employers' association or trade union representative at national level, as well as by the representatives of the civil society on facts, evolutions or social-economical events of national interest on which the Council may issue opinions and recommendations.

This Council's main powers are to give advice on law projects initiated by Government or Parliament, to announce the Government or the Parliament on any economic or social circumstances requiring new enactments etc.

7.4. Labor conflicts

7.4.1. Concept

Work conflicts are conflicts between employees and employers related to the economical, professional or social interests or the rights resulting from the work relations. . Such conflicts can be:

- (i) *collective work conflict* is the labor conflict between employees and employers having as object the initiation, performance or termination of negotiations regarding the collective bargaining agreements;
- (ii) *individual work conflict* is the labor conflict having as object the exercise of certain rights or fulfilment of certain obligations arising from any laws or other enactments, or from the collective or individual contracts.

7.4.2. Situations when collective work conflicts may occur

Collective work conflicts may occur when:

- (i) the employer or the employers' association refuses to proceed with the negotiation of the collective bargaining agreement, when there is no collective bargaining agreement concluded or when the former collective bargaining agreement has expired;

- (ii) the employer or the employers' association refuses to accept the employees' claims;
- (iii) the parties do not reach to an agreement on the conclusion of a collective bargaining agreement until the date mutually agreed for finalization of negotiations.

During the validity period of a collective bargaining agreement, employees may not start the collective work conflict.

7.4.3. Settlement of collective work conflicts

Settlement of a collective work conflict requires several steps, some of them mandatory (notification and conciliation), while other optional, applicable based on the parties' agreement (mediation and arbitration).

In all such cases where grounds for the initiation of conflict of interests may be spotted, the representative trade union or the employees' representatives will notify, in writing, the employer or the employers' association about this situation, indicating the employees' claims together with their arguments, as well as the proposals for the conflict settlement.

The employer or the employers' association is bound to answer in writing to the trade unions or, in lack thereof, to the employees' representatives, within 2 working days from the notification receipt, by mentioning the answers to the claims. If the employer or the employers' association fails to answer all the notified claims or, although answered such claims, the trade unions or the employees' representatives do not agree with their positions, the conflict of interests can be initiated.

The collective work conflict is initiated after the representative trade union or the employees' representatives (in case of collective work conflicts at company level) notify the employer on the initiation of such conflict and notify in written the territorial labor inspectorate in view of conciliation.

The territorial labor inspectorate will appoint its delegate who will participate in the collective work conflict conciliation and will summon the parties to the conciliation procedure, within a period that cannot exceed 7 days as of the appointment of the delegate.

If, further to such conciliation, the parties reach an agreement, the collective work conflict will be considered as solved.

If the collective work conflict cannot be settled as a result of the conciliation, the parties may mutually decide to initiate the mediation procedure.

For the entire duration of a collective work conflict, the parties involved in the conflict may mutually decide for the claims to be subjected arbitration of Office for Mediation and Arbitration of collective work conflicts attached to the Ministry of Labor, Family and Social Protection.

The decisions passed by the Office for Mediation and Arbitration will be binding on the parties, and complete the collective bargaining agreements and become enforceable as of the decision date.

Mediation or arbitration of a collective work conflict is mandatory if the parties have mutually agreed so, prior to the strike initiation or during the strike.

7.4.4. Strikes

The strike is any form of a collective and voluntary work cessation within a company and can be declared only (i) if previously there have been used all the possibilities to solve the collective work conflict through the mandatory procedures provided by law (ii) following the development of the warning strike and (iii) if the strike initiation has been notified to the employers by the strike organizers at least two working days in advance. The warning strike cannot exceed two hours, if involves work cessation and in all cases has to precede with 2 working days the respective strike. When, after declaring the strike, more than half of the number of employees having decided to declare strike waive in written to such decision, the strike will cease. The employees not taking part in the strike shall continue their activity.

For the entire duration of participation to the strike, the individual employment agreement of the employee is suspended *de jure* and during such suspension period only the health insurance rights are maintained.

During the strike, its organizers will continue negotiations with the company's management in order to solve the claims making the subject of the collective work conflict. If the strike organizers and the company's management reach an agreement, the work conflict is considered settled and the strike ceases.

If the company considers the strike was declared or is held illegal, it may address the court an application requesting the termination of such strike.

If the court decides that the strike should cease due to breach of law, upon the interested persons' request, the organizers of the illegal strike and the participating employees may be bound to pay damages.

Preventing or compelling, through threats or violence, an employee or a group of employees, to participate in the strike or to work during the strike represents criminal offence and is sanctioned by imprisonment or fine.

8. Settlement of labor conflicts and litigation

8.1. Panel of judges

Law no. 304/2004 on courts organization, provides that, based on the Minister of Justice's decision, specialized sections or panels of judges shall be established within the court, meant to settle labor conflicts and litigation.

Such cases will be heard based on an urgent procedure, by a panel of one judge, assisted by two judiciary assistants. The judiciary assistants participate in the debate, having a consultative vote, and their separate opinions will be motivated and recorded in the judgment.

8.2. Procedural rules derogating from the common law

Any labor conflicts will be settled based on procedural norms derogating from common law procedures, meaning that they:

- (i) will be subject to trial as emergency cases;
- (ii) hearing terms cannot exceed 15 days;
- (iii) the legal summoning term can be of 24 hours before the hearing term;
- (iv) the burden of proof will be incumbent on the employer;
- (v) the territorial competence belongs to the court having jurisdiction in the area of the claimant's residence / domicile / headquarters;
- (vi) the first instance's judgment is subject to second appeal only.

Law no. 62/2011 contains certain special provisions for the individual labor conflicts, such as:

- (i) hearing terms cannot exceed 10 days;
- (ii) the legal summoning term is of at least 5 days before the hearing term;
- (iii) the territorial competence belongs to the court having jurisdiction in the area of the claimant's domicile or workplace.

9. Social security

Romanian social security regime is grounded on the incorporation of common social security funds which, as a matter of principle, are state budget funds, save for certain funds established and organized based on certain special laws for certain professional categories, such as lawyers or farmers.

The contribution rates to the state social security funds are determined on a yearly basis by the law on social security budget approval and the law on health security or, for the contributions to the labor accident & professional illnesses insurance fund, by Government decision.

9.1. Contributions to the public pension system and other social security funds

The social security contribution rates are differentiated depending on the work conditions, i.e.: normal, hard or special, and are approved annually by the state social security budget law.

According to Law no. 287/2010 on the state social security budget for 2011, the social security contribution rates for the year 2011 are as follows:

- (i) 31.3% for normal work conditions (of which 10.5 per cent is owed by the employee and 20.8 per cent by the employer);
- (ii) 36.3% for hard work conditions (of which 10.5 per cent is owed by the employee and 25.8 per cent by the employer);
- (iii) 41.3% for special work conditions (of which 10.5 per cent is owed by the employee and 30.8 per cent by the employer).

These rates apply to (i) the gross monthly income of the employee, being limited to the amount of five times the gross medium income provided by the state social security budget law and to (ii) overall gross monthly salary fund of the employer which cannot exceed the result of multiplying the number of insured employees and the value of five times the gross medium income. The employer's contribution includes also the contribution of 3% to the private pension funds. The gross medium income provided by the state social security budget law for the year 2011 is of RON 2,022. The employer will calculate, withdraw and pay the employee's contributions to the social security fund on a monthly basis.

As for the other categories of insured persons, who are not employees or who don't work for a certain employer or for an assimilated person, the contribution is entirely owed by the insured and will be in proportion with the gross insured income.

9.2. Contribution to the unemployment security budget

The contribution to the unemployment fund, owed by employers is of 0.5% and applies to the monthly gross salary fund.

Any employed individual owes a contribution amounting to 0.5% of his/her monthly gross salary. The employer shall calculate, withdraw and pay to the unemployment security budget such contributions.

Any insured person carrying out a certain activity individually (such as associates, shareholders, free lancers, members of family associations, etc.) can be subject to insurance by means of concluding an unemployment security contract with the Agency for Employment and Professional Training. In such cases, the contribution will amount to 1 % of his/her declared monthly income, entirely owed by the insured.

9.3. Contribution to the health social security fund

The health social security funds are established based on the insured persons' contributions, on the contributions of the individual and legal entities having employed salaried personnel, on state budget subsidies as well as other sources.

As a general rule, employers are bound to pay the 5.2% health social security contribution, proportionate to the overall monthly salary fund.

The monthly cash contribution of an insured person is established to 5.5 %, applied upon the gross salary incomes – for the employees – or upon the taxable incomes – for other categories of insured persons.

9.4. Contribution to the National Insurance Fund for Work Accidents and Professional Diseases

Starting with January 2003, the regulations regarding the set up of an insurance fund for work accidents and professional illnesses came into force, as part of the social security system and are meant to provide social protection against the risks involved by loss or diminishing one's working capacity, death as a result of a work accident or professional diseases. This fund is established by means of the contributions owed by employers or, as the case may be, persons insured through contracts.

The contribution for work accidents and professional diseases insurance owed by employers ranges between 0.15% and 0.85% applied to the gross salary fund/ the minimum gross national salary corresponding to the working days out of the medical leave period, depending on the risk class associated with the employer's main activity unfolded in the unit.

The contribution for work accidents and professional diseases insurance owed and borne by non-employed individuals concluding, according to the law, insurance contracts for work accidents and professional diseases and who are insured with the public pension system, such as associates, shareholders, administrators, individuals carrying out independent activities, etc., was established as a fix rate of 1% of the insured monthly income.

9.5. Contribution to the Salaries Guarantee Fund

The Salaries Guarantee Fund was established in order to guarantee the payment of the salary receivables resulting from the individual labor contracts and from the collective labor contracts concluded by the employees with employers against whom final court judgments were ruled for the opening of the insolvency procedure and with respect to whom the measure of the removal in full or in part of the administration right was ruled.

The employers are bound to pay the 0.25% contribution to the Salaries Guarantee Fund, proportionate to the gross salary fund.

9.6. Contribution to the National Fund for Social Health Insurances

Under Government Emergency Ordinance no. 158/2005 on leaves and indemnities for health social insurances, the employers are bound to pay a contribution to the National Fund for Social Health Insurances amounting to 0.85% of the monthly salary fund, in order to allow the employees the access to indemnities related to medical leaves (e.g. indemnity for work incapacity, for maternity, etc). During the period the employees benefit of medical leave and health social indemnities, the monthly basis for calculation of the contribution to the state social health insurance system shall be the amount representing 35% of the gross medium income provided by the state social security budget law corresponding to the number of the working days out of the medical leave period.

9.7. Sanctions imposed on employers for failing to pay the amounts withheld as contributions to the social security funds

Any employer's failure to pay the amounts withheld from employees as contributions to the public social security system, to the unemployment security budget or to the health security budget is qualified by the law as an offence and is punished with imprisonment or fines.