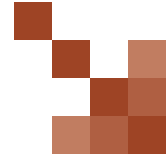


# Romania

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## THE CONSTRUCTION SECTOR

### 1. What have been the main trends in the construction sector in your jurisdiction over the last 12 months? What have been the most significant deals?

Construction works increased by 32.3% during the first half of 2008, compared with the first half of 2007 (*Romanian Institute of Statistics*). Non-residential projects saw the highest increase at 35.7%. Construction works contributed 9.1% to the gross domestic product (GDP) in 2007. This was reflected in the increase of material prices, workforce costs and a shortage in qualified personnel.

This increase is largely due to Romania's requirements for new buildings and infrastructure. Up until 2013, the government has budgeted EUR20 billion (about US\$25.3 billion) to build 1,000 kilometres of highway, and 6,000 kilometres to 8,000 kilometres of national and regional roads. Infrastructure works were awarded in the second half of 2007 and first half of 2008 to reputable companies such as:

- Colas (selected through its Romanian subsidiary, SCCF Iasi, as contractor for the building of a EUR40 million (about US\$50.7 million) ring road in Suceava).
- Louis Berger (EUR4.17 million (about US\$5.29 million) consultancy contract for the construction of Ploiesti-Brasov highway).

In the second half of 2007, Ugirofin BV, a Dutch holding company controlled by Advent International took over control of Ceramica Iasi, one of the top local construction manufacturers, acquiring a 65.88% share for EUR22.3 million (about US\$28.3 million). Ugirofin BV also became EuroBrick International BV and currently holds 69.41% of Ceramica Iasi.

There are a number of newcomers to the construction market including:

- Rautaruukki, Finland. In August 2008, it finalised its EUR35 million (about US\$44.3 million) production unit near the Bucharest-Pitesti highway.
- CRH, Ireland. CRH took over Elpreco Craiova from the US investment fund Broadhurst.
- Tekzen, Turkey. Tekzen invested EUR10 million (about US\$12.7 million) to build its first construction materials store in Brasov.

- Isomat, Greece. Isomat announced the start of works on its first production unit evaluated at EUR8 million (about US\$10.1 million) in April 2008.
- Plannja AB, Sweden. Plannja AB announced its intention to invest EUR4 million (about US\$5.1 million) in 2008 to start up a steel roofing sheets production unit.
- Hunnebeck, Germany. This acquired a local dealer, Baviera, in Cluj-Napoca.
- Hornbach opened its first DIY store following a EUR25 million (about US\$31.7 million) investment in Bucharest and announced a EUR200 million (about US\$253 million) budget to open ten DIY stores by 2015.

The aggregate turnover of the ten largest construction materials distributors in 2007 was over EUR1.8 billion (about US\$2.3 billion).

However, the global financial crisis may slow development, affecting both employers and final customers, since obtaining finance has become more difficult.

## TRANSACTION STRUCTURES AND FINANCE

### 2. Please briefly outline the typical transactional structures and corporate vehicles used in a construction project in your jurisdiction, such as special purpose vehicles and joint ventures.

Construction projects are typically structured as share deals using a special purpose vehicle (SPV). When the project is completed, the SPV's shares are transferred to the buyer. Asset deals are often avoided because of higher tax implications. Joint ventures are commonly established through shareholder agreements, based on which SPVs are established between the joint venture partners.

### 3. How are construction projects generally financed, for example through debt and equity, mezzanine finance and bond issues?

Construction projects are generally financed through bank finance, and less commonly by other debt finance and equity finance. Mezzanine finance and bond issues are usually used by public authorities to attract funding for public works such as improving and modernising infrastructure.

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#### 4. What security and other contractual protections (such as step-in rights, warranties and the assignment of contractual rights) are usually required by funders?

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Funders usually require security over collaterals such as:

- Land (mortgage interest).
- Shares and other tangible assets (pledges).
- Bank accounts and proceeds from third parties under leases.
- Insurance policies and so on (proceeds assignment).

Where material risks arise, funders require personal guarantees in the form of corporate letters and surety from the SPV's shareholders or the company's affiliates.

Contractual warranties and appropriate remedies (including step-in rights, acceleration of payments and termination of contract) covering issues about which the funder is concerned are also usually provided.

Certain mechanisms can be implemented in joint venture agreements between the shareholders, ensuring:

- Control over the company and investment.
- The funder's rights are observed.
- Effective remedies can be applied (for example, right of first refusal, drag-along and tag-along rights, events triggering the purchase right, put options, subscription rights and veto right).

### MAIN PARTIES

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#### 5. Please briefly outline the main parties involved in a construction project in your jurisdiction, and the most common procurement arrangements between them.

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The employer is the main party in a construction project and can comprise:

- An individual, or a group of individuals and legal entities under a joint venture agreement.
- A separate legal entity in the form of an SPV.

If external financing is required, the lender, whether a bank or investment fund, is a party to the construction project. In complex schemes, an appointed development manager co-ordinates technical, financial and commercial aspects. A project manager is chosen to:

- Co-ordinate the technical team appointed for the project.
- Ensure the selection of various professionals (that is, architects, engineers, experts and so on).
- Ensure preparation of the pre-construction and tendering stages of the project.

In addition, contractors are selected (usually by tender), as well as an independent site manager (*diriginte de santier*), who must inspect the construction works, to ensure the works are carried out according to the relevant building approvals and permits, and the project's technical plans. Co-operation with the local authorities is required during the intermediary and final stages of construction. Procurement arrangements between the parties are through independently negotiated contracts, except with the authorities who are involved according to and as required by law.

### STANDARD FORMS OF CONTRACTS

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#### 6. What standard forms of contracts are used for large construction projects in your jurisdiction? Which construction organisations typically produce them?

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There are no standard construction industry contracts. However, in practice, international standard terms and conditions are used (with necessary changes made for Romanian law and practice) such as:

- *Fédération Internationale des Ingénieurs-Conseils* (FIDIC).
- To a limited extent, Royal Institute of Chartered Surveyors (RICS).

#### 7. Do construction contracts for international projects differ? If yes, please give brief details.

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International developers accustomed to FIDIC and RICS standards have shown willingness to comply with local mandatory legal requirements and practices.

#### 8. Do contracts for engineering projects differ? If yes, please give brief details.

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Generally, the same standards apply to most engineering projects. The parties' rights and obligations, as set out by specific procedures and co-operation mechanisms, are similar.

### CONTRACTUAL ISSUES

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#### 9. What risks are typically allocated to the contractor? How are these risks (such as material price escalation and ground conditions) offset or managed?

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Employers generally transfer all financial price risks to the contractor, by fixing the price at a specific amount or a value which can be determined by reference to agreed unit prices. Under the Civil Code, the contractor is generally responsible for all risks related to the planned building works, particularly those related to the quantity and complexity of the necessary works and materials.

Risk for damage to building is borne by contractors until the building is delivered to the employer.

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**10. How can liability be excluded? For example, can the contractor exclude liability for indirect or consequential loss, and loss of business or profits?**

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The contractor is liable for:

- Execution of the works on time and under agreed conditions.
- Hidden defects.
- The quality of the building structure and materials.

However, parties can negotiate to limit or extend liability, unless otherwise provided by law. The following types of contractor liability cannot be limited:

- The building's structure resistance for the whole life of the building.
- The building's structural hidden defects, which may cause the building's destruction.
- Fraud.

Agreements that entirely exclude contractor liability are void.

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**11. Do the parties usually agree a cap on liability? If yes, how is this usually fixed?**

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Generally, parties can contractually pre-determine the value of the loss and agree to cap contractor liability. Limitation of a contractor's liability can also be negotiated after default. Typically, if liability is not contractually agreed, damages can be claimed for direct loss (*damnum emergens*) and any direct loss of business (*lucrum cessans*).

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**12. Are force majeure exclusions available and enforceable in your jurisdiction?**

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Force majeure exclusions are available and enforceable (*Civil Code*). However, it is advisable to contractually define force majeure events and procedures. A contractor must both:

- Prove the force majeure event has occurred, usually by presenting a certificate issued by an independent body.
- Notify the employer of its start and end.

Contractual limitation of the period for which a force majeure event can suspend works is possible and usually results in termination of contract.

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**13. How are construction professionals usually appointed and how are their liabilities dealt with in the contract?**

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Construction professionals are customarily appointed by tender, or by entering into specific services contracts.

Professional liability is frequently limited to a given value and limited time. Professional indemnity insurance is contractually required by the employer and is mandatory in certain cases.

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**14. What are the usual methods of payment for construction work? Are there ways to secure payment or mitigate risks of non-payment?**

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There are no mandatory procedures for construction work payment. Usually, payment is by instalments on completion of specific construction stages. Usually, completion of relevant stages is confirmed by the parties, or by experts if there is a dispute. Confirmation of competent authorities is also a condition to show the completion of certain stages.

The contractor has a legal lien over the materials incorporated in the building to guarantee payment of the relevant construction work. In addition, the employer is usually contractually required to make a large advance payment or interest free loan (that is, ranging from 10% to 20% of the contract value), which is recovered gradually by a pro-rata set-off against invoices issued by the contractor during the contract. As customary practice, payments made by employers are usually guaranteed by parent company guarantees or bank letters of guarantee.

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**15. What contractual provisions are typically negotiated to cover material delays to the project?**

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To prevent project delays, the contractor is normally subject to penalties if agreed milestones are unfulfilled, or for unjustified suspension or cession of works. Additionally, employers seek to impose immediate termination clauses to ensure the contractor can be replaced in due time and works continued according to the project timelines and specifications.

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**16. How are material variations to the works usually dealt with in the contract (for example, the effect on timing and cost)?**

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Unless otherwise agreed, contractors cannot refuse performance of any material variations requested by the employer, if an appropriate adjustment of price and extension of deadlines are agreed beforehand.

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**17. How do the parties typically manage their relationships with subcontractors?**

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The contractor is fully liable for any subcontractors appointed by it, unless otherwise agreed with the employer. However, employers seek to retain a right to approve the subcontractors before being appointed by the contractor. Subcontractors can demand payment directly from the employer, if the employer does not pay the contractor for works provided by subcontractors (*Civil Code*).

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**18. Please briefly outline the other main contractual provisions that are usually heavily negotiated by the parties.**


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The following provisions are heavily negotiated by the parties:

- Defining the scope of works, as contractors usually seek to limit or exhaustively list their tasks.
- The employer's right to interfere with the contractor's day-to-day operations.
- The employer's right to unilaterally set up milestones and remedy terms.
- Confirming satisfactory completion of works.
- Appointing subcontractors. Contractors prefer not to have restrictions in appointing subcontractors, as ultimately, the contractor is held solely liable towards the employer.
- Performance security for duly completed works. Usually, this is provided as an unconditional and on first demand bank guarantee or a deposit (accrued by withholding amounts from the contractor's payments).

Except in turnkey projects (that is, handing over the project in a ready-to-use condition), the following are also subject to substantial negotiation:

- Options to engage third party services for different parts of the same project to share the construction site.
- Employer's step-in rights in various agreements and arrangements between the contractor and subcontractors.

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**LICENSING REQUIREMENTS**


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**19. Please set out what licences and other consents are required by contractors to carry out construction work in your jurisdiction.**


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Law No. 50/1991 for authorising construction works, as republished, amended and supplemented, regulates construction work and details the procedure to obtain approval for construction/demolition work, including the requirements for a building permit (*autorizatie de construire*) and demolition permit (*autorizatie de desfiintare*). Construction/demolition works cannot begin unless these permits are issued (*Law No.50/1991*). The legal framework for construction requires compliance with certain administrative procedures beforehand, for the execution, transformation and demolition of constructions.

Initially, contractors must obtain an urbanism certificate, indicating the legal (whether the land is in private ownership or owned by the public community), economic (including the type of land and types of buildings that can be built) and technical regime (indicating maximum height, maximum rate of land occupancy (POT), and maximum land use pattern (CUT), and so on) and construction in force as of the date of the application. Urbanism certificates also set out:

- Zoning requirements (including the maximum rate of land occupancy, the maximum land use patterns, the maximum height level for constructions and so on).
- Approvals/permits that must be obtained before the issue of a building/demolition permit (for example, approval issued by the utilities suppliers, consent of the emergency state inspectorate, regional zoning plan or detailed zoning plan and so on).

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**INSURANCE**


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**20. Please set out what types of construction-related insurance have to be maintained by law. Are other non-compulsory types of insurance maintained under contract?**


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Construction-related insurance is not mandatory. However, certain non-compulsory insurances are agreed in individual cases, under a construction agreement with the contractor, such as:

- Civil liability insurance against loss of works by various risks including catastrophes, earthquakes, landslide and storms.
- Civil liability insurance against damages to third parties caused by any construction site plant and equipment.
- Civil liability insurance against damages caused to third parties by the contractor's fault or by accidents arising out of or related to the performance of works.
- Professional liability insurance.

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**LABOUR LAWS**


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**21. Please briefly set out the labour law requirements to hire construction employees. In particular, what authorisations (such as work permits) do foreign nationals require to work in your jurisdiction?**


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All employees must be hired under individual employment contracts, which set out the job description and working conditions.

Foreign persons can work in Romania, if they obtain the following permits:

- Registration certificate. This is required for EU citizens who work and reside in Romania for more than three months a year.
- Labour permit. This is required for non-EEA (European Economic Area) citizens to work in Romania. Permits are valid for one year and are automatically extended for successive periods until termination of the employment agreement. Persons in certain status-related categories are exempt from applying for a labour permit. For example, those:
  - with permanent residence in Romania (*resedinta permanenta*);
  - heading subsidiaries or representative offices in Romania of foreign companies;

- Long-stay visa. In addition to a labour permit, non-EEA citizens must obtain long-stay visas if they come from certain countries (listed in Annex 1 of Regulation (EC) No. 539/2001).
- Temporary-stay permit. Non-EEA citizens who work in Romania based on a labour permit can request extension of their residence period, and a temporary-stay permit for labour purposes is required. This permit can be renewed successively at intervals of up to one year.

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**22. Please briefly set out any labour laws relevant to construction projects, such as minimum wage laws or restrictions on working hours.**

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Labour relationships in construction are mainly regulated by the Labour Code and by the collective bargaining agreement for the construction industry. Individual employment contracts cannot contain clauses less favourable than the applicable collective bargaining agreement.

The 2008 to 2009 construction industry collective bargaining agreement sets the minimum gross wage at RON570 (about US\$169), the equivalent of 170 hours of work per month, and a maximum of ten working hours per day, without exceeding 48 working hours per week.

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**23. Are there any labour law considerations at the end of a construction project, such as termination payments?**

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In relation to termination payments at the end of a construction project, a distinction is made between the finalisation of a project and termination of an individual employment contract as a consequence of the project's finalisation (*see below*).

In the finalisation of a construction project, no termination payments for the relevant workers are mandatory, provided their individual employment contracts are not terminated as a consequence.

If individual employment contracts are terminated as a result of the construction project finalisation, then under the 2008 to 2009 construction collective bargaining agreement, such termination is qualified as a termination for causes not attributable to the worker's fault, and the employer must pay the worker, in addition to the due wage, an indemnification of up to 50% of the gross wage. This indemnification is mandatory for individual employment contracts with an undetermined period, and for individual employment contracts terminated before their agreed term.

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**HEALTH AND SAFETY LAWS**

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**24. Please outline the health and safety legislation that applies to construction projects in your jurisdiction.**

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Health and safety in constructions is mainly regulated by Government Decision No. 300/2006 on minimum security and health requirements for temporary or mobile construction sites,

as amended. In addition, the general legal framework for labour health and safety, as set out below, also applies:

- Law No. 319/2006 on labour safety and health, as amended, and related methodological norms.
- Government Decision No. 355/2007 on surveillance of workers' health, as amended.
- Government Decision No. 971/2006 on the minimal signalisation for safety and/or health conditions at the workplace.
- Government Decision No. 1091/2006 on the minimum safety and health conditions at the workplace.

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**ENVIRONMENTAL ISSUES**

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**25. Please briefly set out local legislation regulating the impact of construction projects on the environment, in particular in the areas of:**

- Air.
- Water.
- Waste.
- Environmental impact assessments.
- Sustainable development.

Environmental protection is regulated by Emergency Governmental Ordinance No. 195/2005 regarding the environment protection, as amended and supplemented, which also contains provisions regarding authorisation of construction works. The impact of construction projects on the environment is also detailed in specific regulations, including:

- Law No. 107/1996 (Water Law), which contains provisions regarding the constructions developed around water sources and the impact on these sources.
- Law No. 426/2001 for the approval of Emergency Governmental Ordinance No. 78/2000 regarding waste management, including waste from construction.
- Governmental Decision No. 856/2002 regarding the evidence of the waste management and the list of dangerous waste.
- Governmental Decision No. 1216/2007 regarding the amendment of the National Strategy for sustainable development.
- General Urbanism Regulation.

All construction projects must comply with the general urbanism regulations, while observing applicable environmental legislation. Therefore, on starting a building project, the environmental impact of the project is investigated and assessed by the competent authorities.



In the following areas, there are particular legal requirements.

### Air

Contractors must take all necessary measures to avoid polluting technologies and sound pollution to limit air pollution and preserve quality of life.

### Water

Construction projects must avoid polluting surface or internal waters. Construction activities affecting water sources and constructions developed in neighbouring water sources must obtain the water management authorities' approval.

### Waste

The contractor or specialist company must manage, store and dispose of the waste from construction to protect the environment and public health. The Ministry for Environment and Sustainable Development initiated a bill concerning waste management from construction/demolition works, specifically regulating the contractor and the owner's obligations.

### Environment impact assessment

This is necessary for building projects with significant environmental impact because of their nature, dimension or location. This assessment includes three stages:

- Preparation of the impact study by the employer.
- Setting up by the employer of a public debate on the foreseen impact.
- Analysis of the project by the environment authorities.

At the end of this process, the relevant authority can issue an environment agreement, necessary for obtaining the required building permit.

### Sustainable development

The government currently updates the National Sustainable Development Strategy, to comply with European law.

### 26. Are there any regulations requiring contractors to make buildings comply with carbon emissions or climate change targets?

Currently, no regulations require contractors to make buildings comply with carbon emission or climate change targets. To comply with Directive 2002/91/EC on the energy performance of buildings, Romania began an action plan intended to cut greenhouse gas emissions and energy use. The action plan is not yet in force, but seeks to require all building owners to implement measures such as thermal insulation of buildings' outer walls, and use more environmentally friendly methods for heating and cooling homes.

## CORRUPT PRACTICES

### 27. Please briefly set out any rules in your jurisdiction that prohibit corrupt business practices and bribery affecting construction projects, and any civil and criminal penalties that apply.

Corrupt business practices and bribery are illegal and the penalties include (*Criminal Code and Law No. 78/2000*):

- For individuals: one to five years' imprisonment, the prohibition of exercising certain civil rights and other related sanctions.
- For legal entities: a fine between RON10 million (about US\$2.96 million) and RON5 billion (about US\$1.48 billion), the prohibition of carrying out certain activities and other related sanctions.

## INSOLVENCY

### 28. If a contractor becomes insolvent, what rights will the client and funder typically require (for example, to terminate the construction contract and hire a new contractor)?

A contractor's insolvency is a common reason for termination of contract by the employer. The employer owns the construction works already performed and pays the corresponding portion of the contract price. Payment by an insolvent contractor of any outstanding debts under the contract is only possible through liquidation. Therefore, unless a security interest is created in its favour, the employer must register any outstanding debt on the liquidator's creditor list and wait for its debt to be paid off from the contractor's liquidation proceedings.

## PPP/PROJECTS

### 29. Is the use of public private partnerships (PPPs) common in construction projects in your jurisdiction? If yes, please outline which sectors commonly use PPPs.

A series of enactments regulate the assignment of public acquisition contracts, public works concession contracts and services concession contracts, which may be described as a form of partnership or co-operation between public authorities and private investors. This co-operation is expressly detailed by Law No. 215/2001 in relation to local public administration.

Therefore, PPPs are regulated by various legal provisions and can comprise various agreements between public authorities and investors. PPPs are usually established for infrastructure development, but have also been used in commercial centre and engineering plants developments.

## MAIN CONSTRUCTION ORGANISATIONS

### Construction State Inspectorate (*Inspectoratul de Stat in Constructii*)

**Main activities.** Its main scope is to verify and ensure observance of the applicable urbanism regulations and the legal requirements for the quality of constructions works and materials.

W [www.isc-web.ro/](http://www.isc-web.ro/)

### Ministry of Development, Public Works and Housing (*Ministerul Dezvoltării, Lucrărilor Publice și Locuințelor*)

**Main activities.** It is mainly responsible for providing national standards in the construction domain (for example, for construction materials), and pursuing the needs for infrastructure and housing for the general population.

W [www.mdpl.ro/](http://www.mdpl.ro/)

### National Association of Romanian Valuers (*Asociația Națională a Evaluatorilor din România*)

**Main activities.** It is a professional organisation of public interest, with the specific responsibility for development of valuations methods, including methods used in the construction domain.

W [www.anevar.ro](http://www.anevar.ro)

### Ministry for Environment and Sustainable Development (*Ministerul Mediului și Dezvoltării Durabile*)

**Main activities.** It promotes a unitary, coherent environmental policy, setting itself some major targets to comply with the *acquis communautaire* for the environment, increasing energy efficiency, promoting the renewable sources of energy and the ecological rehabilitation of the historically polluted areas or coastal erosion.

W [www.mmediu.ro/](http://www.mmediu.ro/)

### Romanian Association of Construction Developers (*Asociația Română a Antreprenorilor de Construcții*)

**Main activities.** This is an independent professional organisation established for the purpose of promoting the interests of the construction industry.

W [www.araco.org](http://www.araco.org)

## 30. Please briefly outline the legislation applying to PPPs in your jurisdiction.

Features of a public-private co-operation are in various agreements, regulated mainly by:

- Government Emergency Ordinance (GEO) No. 34/2006.
- Law No. 215/2001 regarding local public administration.
- Law No. 50/1991 for authorising construction works.
- GEO No. 54/2006 on the legal regime of public property concession agreements.
- The Commercial Code.

## 31. Please briefly outline the typical procurement/tender process in a PPP transaction.

It is a common practice for public authorities to hold public tenders for various PPPs. The main legal framework is set out by:

- GEO No. 34/2006.
- Law No. 50/1991.
- Law No. 215/2001 on public administration law.
- GEO No. 54/2006.

Generally the main stages are as follows:

- The public tender and related conditions must be released by public announcement.
- A tender book and related regulations must be issued in due time to be obtained by the participants.
- Tenders must be held according to the tender book and related regulations.
- The result of the tender must be recorded in writing in tender awarding minutes.

However, these general rules may vary in individual cases, depending on each project's specific purpose, the applicable law and the tender book's terms.

## CONSTRUCTION DISPUTE RESOLUTION

### 32. Please briefly outline the most common dispute resolution methods used to resolve construction disputes in your jurisdiction.

Construction disputes are settled by the ordinary competent courts, depending on whether litigation is considered as civil, commercial or administrative. Commercial disputes are usually settled by arbitration, if expressly agreed by the parties.

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**33. What are the most common alternative dispute resolution (ADR) methods used? Consider if relevant adjudication, dispute review boards and expert determination.**

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The most common form of ADR is arbitration, which can be established by the parties' agreement. A form of preliminary conciliation is mandatory under the Civil Procedure Code before a dispute is submitted for court judgment. Adjudication, dispute review boards and expert determination are not regulated, but are extensively used in practice, particularly in contracts made using FIDIC and RICS terms.

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**34. Which courts usually deal with construction disputes in your jurisdiction? Are there any specific construction courts or tribunals?**

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There is no exclusive jurisdiction on construction disputes. However the nature of the dispute can trigger the certain exclusive jurisdiction of the civil, commercial or administrative courts (see Question 33).

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**35. Which organisations are usually used to arbitrate construction disputes in your jurisdiction (please include their website address)?**

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The most commonly used arbitration court is the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (<http://arbitration.ccir.ro/engleza/index.htm>). Alternatively, for construction disputes under FIDIC rules, the ICC International Court of Arbitration generally arbitrates construction disputes ([www.iccwbo.org/court/arbitration](http://www.iccwbo.org/court/arbitration)).

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## CONSTRUCTION TAX

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**36. Please briefly outline the main tax issues that arise on construction projects in your jurisdiction. For example:**

- Value added tax (VAT)?
  - Stamp duty/transfer tax (or equivalent)?
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Development of a construction project requires payment of various taxes, by either the client (owner or financier of the project) or the contractor.

For any construction project, the client must obtain a number of endorsements and approvals from different public authorities and for this, the following taxes must be considered:

- Tax for obtaining an urbanism certificate, calculated by considering the land surface and a maximum value determined by law.
- Tax for obtaining the building permit, calculated as a percentage of the estimated value of the buildings.
- Architectural tax, at 0.5% of the estimated construction value.

- Tax for the issuance of the approvals and endorsements necessary for connecting the building to the urban utilities. Their value is established by each issuing authority.
- Tax for obtaining other approvals specified within the urbanism certificate (for example, environmental approval).
- Additional tax for extending the term of the urbanism certificate or of the building permit, equal to 30% of the issuance tax paid for these documents.

The taxes are calculated using the estimated construction value. Therefore, 15 days after finalising the works, the building owner must declare the actual value of the construction and pay any eventual tax balance. The taxes mentioned above are due to the local authorities.

Other mandatory costs the client has to consider are:

- Tax at 0.1% of the estimated value of the project, paid to the Construction State Inspectorate (*Inspectoratul de Stat in Constructii*) for the urbanism state control.
- Tax at 0.7% of the contract value, paid to the Construction State Inspectorate for quality control.

On completion of the construction project, the owner must register the building with the fiscal authorities to pay the ownership tax.

For Romanian or foreign contractors, with a PE in Romania, the proceeds from services provided under the contract are included in the taxable basis for profit tax purposes, that is, 16% of the profit obtained by the company/PE.

If the foreign contractor does not have a PE according to the Fiscal Code provisions, the proceeds obtained from the construction services provided in Romania are subject to 16% tax. However, the proceeds may fall under a double taxation avoidance treaty and be exempt from taxation in Romania or subject to a lower tax.

Building services are subject to the 19% value added tax (VAT) on the invoiced value of the services.

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**37. Are any methods commonly used to mitigate tax liability on construction projects? Are there any tax incentives to carry out construction regeneration projects?**

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There are no specific methods for mitigating tax liability on construction projects. General provisions regulating exemptions from profit tax or deductibility of expenses can apply. Incentives may be available, such as exemptions from the payment of local taxes for the issue of certificates, approvals or permits for:

- War veterans.
- Politically persecuted individuals, deported or politically convicted during the communist regime.
- Specific entities (for example, institutions or entities subordinated to the Ministry of Education, Research and Youth, testamentary foundations and social organisations).



Local councils may exempt from or reduce the tax for the issue of urbanism certificates and building permits, when there are natural disasters.

In construction regeneration projects, the issue of the building permit for the thermal regeneration or improvement of residential buildings or for the consolidation of residential buildings, official historic monuments or cultural buildings is tax exempted. In addition, incentives (that is, 34% to 100% subsidies for expenses incurred for expert reports, energy audit, design and performance of regeneration works, and tax-free building permits) are available for thermo-regeneration works for condominiums built between 1950 and 1990 and listed in annual rehabilitation programmes approved by the Ministry of Transport, Constructions and Tourism.

### CROSS-BORDER ISSUES

#### 38. Please outline any special considerations for foreign contractors operating in your jurisdiction. For example:

- **Special licensing or other requirements for foreign contractors.**
- **Legal or practical considerations that may restrict foreign contractors.**

Romania became a member of the EU in 2007. Freedom of services is guaranteed and ensured for all EU citizens and legal entities. Therefore, there are no legal requirements for EU contractors differing from those imposed on Romanian contractors (that is, having the authorisation required to carry out construction works). In addition, there are no restrictions in contracting construction projects.

In practice, non-EU construction companies must set up a subsidiary in Romania authorised to carry out construction works.

The EU system of diploma recognition applies to architects, engineers and other professionals from EU countries, while those from non-EU countries must prove their qualifications.

### REFORM

#### 39. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

A Construction Code is required to regulate, among other things:

- The professional certification of construction companies.
- Mandatory insurance being provided by contractors and a minimum required insured value.
- The control of construction materials to be traded and used for the first time in Romania.

The proposal of a code is supported by the majority of trade unions and professional associations of constructors, architects and engineers.

The State Inspectorate for Constructions drafted a code for Territorial Management, Urbanism and Constructions, which was submitted for public debate in October 2006. However, the draft was not approved by the Ministry of Development, Public Works and Housing, which requested amendments to comply with current legislation relating to the drafting of laws and normative enactments. Opposition to the current form of the draft code was expressed by constructors' associations and unions arguing that a Construction Code should be separated from the draft Urbanism and Territorial Management Code, as their content is fundamentally different.

Another debated construction topic is adopting standard terms and conditions for public works tendering. In an open letter dated February 2008, contractors' associations warned public authorities that contractors would stop submitting tenders for public works held by public authorities if FIDIC terms relating to price dynamic adjustment were not included in the tender book. However, this did not prompt an amendment of the relevant legislation. It is likely this issue will be directly addressed during tender book preparation and in negotiations.

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