



Romania

Ana-Maria Plăcintescu and Ileana Șovăilă
Mușat & Asociații

www.practicallaw.com/9-503-3388

SCOPE OF LAWS

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws applicable to foreign nationals

Foreign nationals are protected by the mandatory rules in the Labour Code if either:

- They have agreed with their employers that Romanian law will regulate their employment contracts.
- Other governing law is chosen by the parties, or in the absence of choice, they are employed under an employment contract, perform work in Romania for a Romanian employer and one of the following conditions provided by Article 8 of the Council Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I Regulation) is satisfied:
 - they habitually carry out their work in performance of their employment contracts in Romania, even if they are temporarily employed in another country;
 - if the employees do not habitually carry out their work in any one country, the place of business through which they are engaged is situated in Romania; or
 - overall their employment contracts are more closely connected with Romania.

Laws applicable to nationals working abroad

The mandatory provisions of the Labour Code do not apply to nationals working abroad, unless either:

- The parties choose Romanian law to regulate the employment contract.
- One of the conditions under Article 8 of the Rome I Regulation applies is met (*see above, Laws applicable to foreign nationals*).

EMPLOYMENT RESTRICTIONS AND INCENTIVES

2. Are there any age or nationality restrictions on managers or company directors? If so, please give details.

Age restrictions

There are no age restrictions on managers or company directors.

Nationality restrictions

There are no nationality restrictions on managers or company directors.

3. Are any grants or incentives available for employing people? If so, please give details.

Employers receive a subsidy or are exempt from paying contributions to the unemployment fund if they employ certain categories of person, including:

- **Graduates.** Employers who recruit graduates are exempt for 12 months from paying contributions to the unemployment fund for these graduates. During the 12 months, they also receive a monthly subsidy of between one and 1.5 times the social reference index, currently RON500 (as at 1 August 2010, US\$1 was about RON3.3), depending on the employee's level of education. Employers who hire disabled graduates benefit from these rights for 18 months. To receive these benefits, the employer must undertake to employ the graduates for at least three years.
- **Unemployed persons.** Employers who recruit certain categories of unemployed persons are exempt for 12 months from paying contributions to the unemployment fund. During the 12 months, they receive a monthly subsidy equal to the social reference index. To receive these benefits, the employer must undertake to employ the unemployed persons for at least two years.
- **The disabled.** Employers who recruit disabled employees when they have no legal obligation to do so receive a monthly subsidy equal to the social reference index for 12 months. To receive this benefit, the employer must undertake to employ the disabled persons for at least two years.

WORK PERMITS

4. What permits do foreign nationals require to work in your country? Please explain:

- How these permits are obtained.
- How much they cost.
- How long the process takes.

Required permits

Several permits can be necessary to live and work in Romania:

- **Registration certificate.** EU nationals can enter and reside in Romania for up to three months. To stay longer, EU



nationals require registration certificates. These are valid for the duration of the employment contract.

- **Work permit.** European Economic Area (EEA) nationals do not require work permits to work in Romania. A non-EEA national must have a work permit unless he, among other things:
 - has a legally established permanent residence in Romania;
 - is the head of the subsidiary or representative office in Romania of a company with a registered office abroad; or
 - is seconded to Romania when working in an EEA member state with a work permit. Work permits last for one year, after which they are automatically extended for successive periods until the employment contract terminates.
- **Long-stay visa.** To work in Romania, non-EEA nationals from certain countries must have a long-stay visa in addition to a work permit. These countries are listed in Annex 1 of Council Regulation (EC) 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (for example, Albania, Belarus, Colombia and India).
- **Temporary-stay permit.** Non-EEA nationals who work in Romania based on a work permit can request an extension of their residence period. In this situation, they must have a temporary-stay permit for work purposes, which can be renewed successively at intervals of up to one year.

Obtaining permits

The process for obtaining permits is as follows:

- **Registration certificate.** Within 90 days of entry into Romania, EU nationals must request certificates from the Romanian Immigration Office together with:
 - a copy of their passport or ID. Romanian legislation does not set out the types of ID that are acceptable, therefore any official identity document issued by the competent national authorities based on which aspects of the person's identity can be verified is typically considered acceptable; and
 - a notarised copy of their employment contract or a certificate issued by their employer.
- **Work permit.** The employer must file an application together with certain documents (for example, the employer's corporate documents, a letter attesting the employer's solvency, the employee's job description and documents attesting the employee's professional qualifications) to the Romanian Immigration Office.
- **Long-stay visa.** Foreign nationals must apply to the Romanian Diplomatic Mission or consulate in their jurisdiction within 30 days of the issue of their work permit. The Visas National Centre then considers the application.
- **Temporary-stay permit.** Foreign nationals must apply for the permit at the Romanian Immigration Office.

Cost

The costs for permits are:

- **Registration certificate.** The cost is RON1.
- **Work permit.** The cost is RON832 or RON208, depending on the type of work permit.
- **Long-stay visa.** The cost is EUR120 (as at 1 August 2010, US\$1 was about EURO.8).
- **Temporary-stay permit.** The cost is RON729.

Length of process

The time it takes to obtain a permit varies as follows:

- **Registration certificate.** Certificates are issued on the same day that they are requested.
- **Work permit.** Work permits are generally issued after 30 days, although this can be extended by another 15 days if additional examination of the case is required.
- **Long-stay visa.** Long-stay visas are generally issued after 30 days.
- **Temporary-stay permit.** Temporary-stay permits are generally issued after 30 days, although this can be extended by another 15 days if additional examination of the case is required.

TERMS OF EMPLOYMENT

5. What terms govern the employment relationship? In particular:

- **Is a written employment contract or statement of employment terms required?**
- **Are any terms implied by law into the employment contract (in addition to the terms referred to in Question 1)?**
- **Are collective agreements with trade unions or employee representatives common (generally or in specific industries)?**

Written employment contract

Employment contracts must be entered into in writing and in the Romanian language (*Article 16, Labour Code*). The lack of a written form does not affect the validity of the contract, but it does trigger a fine for the employer. An unwritten employment contract is presumed to be indefinite, and the parties can use any evidence to prove contractual terms and work performed without having to conclude a separate statement of terms. A written employment contract must contain certain details, including:

- Parties' identities.
- Place of work.
- Any mobility clause.
- The contract's duration.
- Leave entitlement.
- Remuneration.



Implied terms

Terms such as work and safety regulation, work and rest programmes and compensatory payments can be implied into a contract through:

- Statute.
- Collective bargaining agreements (CBAs) (*see below, Collective agreements*).
- Work regulations.
- Custom and practice.

Collective agreements

CBAs are common in Romania. They can be concluded between groups of companies, or at company, industry or national level. CBAs concluded at national level apply to all employers and employees.

MINIMUM WAGE

- 6. Is there a minimum wage? If so, please give details, in particular whether it applies to all employees, regardless of their age and experience.**

From 1 January 2009, the minimum monthly wage for full time workers is RON600 (based on an average of 170 working hours per month). The minimum wage increases according to employees' education levels, based on ranking criteria. Age is not relevant to the minimum wage.

WORKING TIME

- 7. Are there restrictions on working hours? If so, please give details.**

Regular working hours are:

- Eight hours a day.
- 40 hours a week.

For employees under 18 years of age, regular working hours are reduced to:

- Six hours a day.
- 30 hours a week.

Maximum working hours are 48 hours a week, including overtime. Employees can exceed the 48-hour weekly maximum if their average working hours calculated over a period of three months do not exceed 48 hours a week. Employers and employees can negotiate longer reference periods of between three and 12 months at branch level in certain industry sectors, such as:

- Construction.
- Tourism.
- Hotels and restaurants.
- Transport.
- Electricity.
- Chemical and petrochemical.

- 8. Is there a minimum holiday entitlement? If so, please give details. How many public holidays are there in a year and are they included in the minimum holiday entitlement?**

The minimum holiday entitlement is 21 working days a year. An additional holiday of at least three days is given to the following employees:

- Employees who work in difficult, dangerous or harmful conditions.
- Blind employees.
- Disabled employees.
- Employees under the age of 18.

There are seven public holidays a year, in addition to the minimum holiday entitlement.

ILLNESS AND INJURY PAY

- 9. What rights do employees have to time off in the case of illness or injury? Is that time off paid? Can an employer recover from the state sick pay granted to its employees?**

Leave for illness or injury is granted to:

- Employees who have worked at least one month during the 12 months preceding the illness or injury.
- All employees who have:
 - urgent surgery;
 - tuberculosis;
 - certain contagious diseases; or
 - AIDS.

Employees receive an indemnity during this leave. The employer pays this for the first five days of leave and the Sole National Social Security Fund pays it for the rest of the leave. The monthly indemnity is 75% of employees' average salaries during the six months before the illness. This increases to 100% for severe illnesses. Employees can take leave and indemnity for a maximum of 183 days a year. This may be increased to 18 months' leave for certain diseases, such as tuberculosis and AIDS.

PARENTS AND CARERS

- 10. What are the statutory rights of employees who are parents or carers (including those of disabled children and adult dependants)? How is employees' pay affected during periods of leave?**

Maternity rights

Employees who have worked for at least one month during the 12 months before pregnancy are entitled to 126 days' maternity leave, divided as follows:

- 63 days before birth.
- 63 days after birth.



Disabled pregnant employees can request longer maternity leave that starts on the sixth month of pregnancy. Employees receive an indemnity during this leave from the Sole National Social Security Fund. This is 85% of their average salary during the six months before the leave. Female employees who lose their insurance for reasons beyond their control (for example, they are dismissed without fault) also benefit from maternity rights if they give birth within nine months of the date of losing their insurance. Pregnant employees and mothers who recently gave birth also have other statutory rights, including:

- Paid time off for prenatal consultations.
- Maternity risk leave. This is leave of up to 120 days granted when working conditions endanger the health of pregnant employees or mothers who recently gave birth.
- Nursing breaks.

Paternity rights

Fathers can request up to five working days' paternity leave within the first eight weeks of the child's birth. Paternity leave is extended to 15 working days if the employee follows childcare courses.

Adoption rights

Adoptive parents do not benefit from maternity and paternity leave, but have parental rights (*see below, Parental rights*).

Parental rights

Employees who have a child and have worked for at least 12 uninterrupted months are entitled to parental leave of:

- Two years for the first three children. This is increased to three years for disabled children.
- Three months for the fourth child onwards.

During the leave granted for the first three children, employees receive:

- An indemnity of RON600, or optionally, 85% of their average income from the last 12 months, but not more than RON4,000.
- A monthly child allowance of RON200.

If employees do not take the leave they are entitled to for the first three children, they receive:

- An indemnity of RON100.
- A reduction in their working hours of two hours a day. This does not affect their continuity of employment or salary.

The state pays the indemnities and allowance.

Carers' rights

Employees who have a sick child and have worked for at least four weeks during the 12 months before the sickness are entitled to 45 days' leave a year if the child is either:

- Up to seven years old.
- Up to 18 years old and disabled.

The leave can be extended beyond 45 days for certain diseases. Employees receive 85% of their average salary during the six months before the leave, which is paid by the Sole National So-

cial Security Fund. Employees with other dependants, such as a sick relative, do not have any carers' rights.

CONTINUOUS PERIODS OF EMPLOYMENT

- 11. Does a period of continuous employment create any benefits for employees? If individual employees are transferred to a new entity, are they deemed to retain their period of continuous employment?**

Benefits

Continuous employment does not create any benefits. Employees receive a seniority bonus of between 5% and 25% of their base salary for their length of service, but this depends on their total length of employment regardless of whether it was continuous.

Transfer

Employees who are transferred to a new entity retain their period of continuous employment.

TEMPORARY AND AGENCY WORKERS

- 12. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees?**

Temporary workers

Temporary workers cannot be treated less favourably than permanent workers in relation to hiring and work conditions, except in cases where the different treatment applied is objectively justified (*Labour Code*). Employers must inform temporary workers about available and impending vacancies which match the workers' vocational training, and grant them access to apply for these positions under the same terms as permanent workers.

Agency workers

Except for the special contrary provisions of the Labour Code, the provisions of the law and of the collective bargaining agreements applicable to permanent workers of the user also apply to agency workers for the duration of their assignment with the user (*see above, Temporary workers*). Therefore, agency workers can access all the services and facilities provided by the user, under the same terms as its other employees (*Labour Code*). In addition, the salary received by the agency workers for each assignment must not be lower than the salary received by the user's employee who performs the same work or work similar to the one of the agency workers. Between assignments, agency workers are at the disposal of the temporary work agent and benefit from salary paid by it, which cannot be lower than the national minimum gross salary.

DATA PROTECTION

- 13. What statutory data protection rights do employees have?**

An employer can only collect employees' personal data for definite, clear and legitimate purposes. It can only store the data for the duration necessary to achieve these set purposes. Employ-



ees have the following rights over their personal data (*Law No. 677/2001 for the protection of persons in relation to the processing of personal data (Data Protection Law)*):

- To be informed of the:
 - identity of the data controller and recipient;
 - purpose of the data processing;
 - employee rights under the Data Protection Law; and
 - conditions for exercising these rights.
- To have access to data.
- To have data rectified, updated, blocked, removed or made anonymous if the processing does not comply with the Data Protection Law.
- To object to the processing of the data at any time, if this objection is based on justified and legitimate reasons linked to their particular situation.
- Not to be subject to a decision based solely on the processing of the data.
- To file a complaint to the supervisory authority and to refer to a court of law in defence of any of the rights guaranteed by the Data Protection Law.

DISCRIMINATION AND HARASSMENT

14. What protection do employees have from discrimination or harassment, and on what grounds?

Discrimination

Employees are protected at recruitment, dismissal and during the course of their employment against discrimination on the grounds of:

- Gender.
- Sexual orientation.
- Genetic characteristics.
- Age.
- Nationality.
- Race.
- Colour.
- Ethnic origin.
- Religion.
- Political opinion.
- Social status.
- Disability.
- Family conditions or responsibilities.
- Trade union membership or activity.

Discrimination is punishable with a fine of:

- RON400 to RON4,000 for discrimination in relation to a single employee.

- RON600 to RON8,000 for discrimination in relation to a group of employees.

Harassment

Harassment is prohibited and punishable in the same way as discrimination (*see above, Discrimination*). Sexual harassment is also prohibited and is punishable with a fine of RON1,500 to RON15,000. In addition, sexual harassment is a crime under the Penal Code, and is punishable with imprisonment of between three months and two years or a fine of RON500 to RON30,000.

15. Do whistleblowers have any protection? If so, please give details.

There is no specific protection for whistleblowers. However, the employer's internal regulations or code of conduct may specify that an employee who reports a breach in good faith will not suffer any adverse consequences.

DISMISSALS AND REDUNDANCIES

16. What rights do employees have when their employment contract is terminated? Please provide information on:

- Notice periods.
- Severance payments.
- Any procedural requirements for dismissal.

Notice periods

The employer must give a notice period of termination of at least 20 working days. During this period, employees are entitled to be absent from work for four hours a day to search for alternative employment, without this affecting their salary rights. The employer can require that these paid hours be taken together.

Severance payments

Employees are entitled to at least one month's salary if their employment contract is terminated for reasons not attributable to them. CBAs may provide for higher severance payments.

Procedural requirements

The employer must communicate dismissals to employees in writing and include certain details in the notice. Other than this universal requirement, procedural formalities vary depending on the type of dismissal. The most complex procedures are for:

- Redundancies (*see Question 18*).
- Dismissals on disciplinary grounds.
- Dismissals for professional unfitness (that is, insufficient or no knowledge of the specific professional rules of the job).

Procedural requirements can include, for example, requirements to:

- Consult with the trade union.
- Investigate.
- Offer the dismissed employee another job.



17. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Any unfair dismissal is invalid. The court can compel the employer to:

- Pay the employee any remuneration that the employee would have received since dismissal.
- Give the employee any rights that he was entitled to under the employment contract, such as bonuses.
- Reinstatement of the employee to the same position at his request.

If a case is taken to court, the employer cannot rely on reasons for the dismissal that were not stated in the original notice. The employer cannot dismiss employees during:

- Temporary incapacity from work.
- Pregnancy, if the employer was informed about the pregnancy.
- Maternity leave.
- Parental leave.
- Carers' leave.
- Holiday.
- Exercise of an elected position in a trade union, unless the dismissal is for a serious disciplinary infringement or for repeated disciplinary infringements.

These exceptions do not apply to dismissals that are due to the employer's reorganisation or insolvency.

18. What rules apply on redundancies?

An employer that carries out collective dismissals must comply with certain requirements. A collective dismissal is a dismissal for reasons that cannot be blamed on the employees, within a 30-day period, of at least:

- Ten employees, if the employer has between 21 and 99 employees.
- 10% of the workforce, if the employer has between 100 and 299 employees.
- 30 employees, if the employer has 300 or more employees.

30 days before carrying out a collective dismissal, the employer must:

- Consult with the relevant trade unions and employee representatives on the planned dismissals.
- Notify the planned dismissals to the:
 - trade unions and employee representatives;
 - regional labour inspectorate; and
 - regional agency for professional occupation and training.

This notification must contain certain details. The labour inspectorate can delay the implementation of the dismissals by ten days. The dismissal decision is individual and the serving of notices is mandatory.

An employer that carries out collective dismissals cannot fill the dismissed employees' positions with new employees for nine months after the dismissals, unless the dismissed employees refuse to be reinstated.

TAXATION OF EMPLOYMENT

19. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Foreign nationals are subject to Romanian income taxes if they are either:

- Domiciled or resident in Romania.
- Non-resident in Romania but fall into one of the following categories:
 - they are present in Romania for over 183 days during any period of 12 consecutive months, that ends in the relevant taxation year;
 - the employer that pays their salary is resident in Romania; or
 - their salary is a deductible expense for a permanent establishment in Romania.

However, if the employee's salary is taxed in another country, a double taxation treaty may regulate the tax treatment to avoid double taxation.

Nationals working abroad

Romanians with a domicile in Romania pay Romanian income tax on income earned abroad. They can deduct the tax paid in the other jurisdiction from the income tax they owe in Romania. However, a double taxation treaty may regulate exemptions from the payment of income tax in the two jurisdictions. Romanians who do not have a domicile or residence in Romania do not pay any Romanian tax if they leave the country.

20. What is the rate of taxation on employment income? Are any other taxes or social security contributions levied on employers and/or employees? If so, please give details, including the rates.

Income tax

Employment income is taxed at 16%. The employer withholds this tax from the employee's salary. Employees who are responsible for another person's living expenses (such as a spouse or child) benefit from a personal deduction, the amount of which depends on the number of people they are responsible for.

Social security contributions

Both the employer and the employees owe social security charges in connection with the employment contract. The employer withholds the charges that employees owe and pays them all to the



relevant social security budget. The employer pays the following social security charges:

- Social security contribution. This is charged at one of the following rates, on the gross monthly total salary fund:
 - 20.8% for ordinary working conditions;
 - 25.8% for hard-working conditions (for example, employees who work underground in the mining industry); and
 - 30.8% for special working conditions (for example, employees who work with biological products that exceed legally accepted limits).
- Unemployment security fund: 0.5% of the gross monthly total salary fund.
- Health social security contribution: 5.2% of the gross monthly total salary fund.
- Contribution to the National Insurance Fund for Work Accidents and Professional Diseases: between 0.15% and 0.85% of the gross monthly total salary fund.
- Contribution to the salaries guarantee fund: 0.25% of the gross monthly total salary fund.
- Contribution for medical live fund: 0.85% of the gross monthly total salary fund.

Employees pay the following social security charges:

- Social security contribution: 10.5% of gross monthly salary.
- Unemployment security fund: 0.5% of gross monthly salary.
- Health social security contribution: 5.5% of gross monthly income.

LIABILITY

21. Are there any circumstances in which:

- **An employer can be liable for the acts of its employees?**
- **A parent company can be liable for the acts of a subsidiary company's employees?**

Employer liability

An employer can be held civilly liable for its employees' acts if certain cumulative conditions are met (for example, if damage is caused to third parties in the exercise of employment duties, or an illegal action by the employee causes the damage, and so on). In this situation, the employer is jointly liable for the damage (*Articles 1000(3) and 1003, Civil Code*). If the employer pays for the employees' share of the damage, it can recover this compensation from the employees.

Parent company liability

A parent company cannot be held liable for the acts of its subsidiary company's employees, as the two companies are separate legal entities, unless the subsidiary's employees are seconded to the parent company.

22. What are an employer's obligations regarding the health and safety of its employees?

The employer must ensure its employees' health and safety at work at its own cost. It must:

- Prevent risks to health and safety occurring at work.
- Inform and instruct the employees.
- Ensure the necessary organisation and means to protect health and safety.

Any legal entity with at least 50 employees must establish a health and safety labour committee, to ensure the employees' involvement in the planning and implementation of health and safety decisions.

REPRESENTATION AND CONSULTATION

23. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management representation

Employees are not entitled to management representation, irrespective if there is a share sale or assets sale.

Consultation

The employer and trade unions must inform each other of all decisions that relate to the main aspects of employment. Therefore, employers must consult the relevant trade unions and employees' representatives in connection with all decisions that may significantly affect the employees' rights and interests, such as:

- Collective dismissals.
- Establishing work norms.
- Transfers of undertakings (that is, an asset sale).
- Planning health and safety measures.
- Professional training.

In addition, the employer's board of directors or similar body must invite the trade unions' representatives to attend its meetings. Employee representatives can observe proceedings and express their opinion, but have no voting rights. A company or group of companies can set up a European works council (EWC) if it has at least both:

- 1,000 employees within one EU member state.
- 150 employees in at least two EU member states.

Romanian law applies to the EWC if the company's (or the group of companies') central management board has one of the following:

- A seat in Romania or another EU or EEA member state.



- A representative office in Romania.
- A subsidiary, branch or secondary office with the highest number of employees out of its offices in EU member states in Romania.

If there is an EWC, employers must consult and inform it of measures that affect employees' interests. An EWC is a body that employers inform and consult on employee matters.

Major transactions

In relation to a transfer of the whole or part of an undertaking or unit (that is, a legal entity) (asset sale), the old and new employers must:

- Notify the details of the transfer to the trade union or employee representatives at least 30 days before the transfer.
- Inform and consult with the trade union or employee representatives in connection with the legal, economic and social implications of the transfer for the employees before the transfer takes place. There are no legal consultation requirements on a share sale, but CBAs may provide this right in favour of the employees.

24. What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

In certain cases (for example, collective dismissals and transfers of undertakings), if the employer fails to comply with its consultation duties, the affected employees or their trade unions can request the court to annul any measures taken without consultation.

Employee action

The only action employees can take is to request annulment of a decision taken without consulting their trade union (*see above, Remedies*).

TRANSACTIONS

25. Is there any statutory protection of employees on a business transfer? In particular:

- Are they automatically transferred with the business?
- Are they protected against dismissal (before or after the disposal)?
- Is it possible to harmonise their terms of employment with other (existing) employees of the buyer?

Automatic transfer

If the whole or part of an undertaking or unit is transferred to a new employer, the employees' rights are protected. The new employer automatically takes on all the old employer's rights and obligations arising from the employment contract and CBAs that existed on the date of transfer.

Protection against dismissal

Neither the old nor new employers can dismiss employees because of a transfer of an undertaking. The old employer cannot dismiss employees to facilitate the transfer. Any employees dismissed in breach of these rules can contest the dismissal in court, and request reinstatement at the same position with the new employer, if the transfer has already taken place.

Harmonisation

On a transfer of an undertaking, the new employer takes on the transferred employees' employment contracts and must comply with their CBA until this terminates or expires. Applicable CBAs can be renegotiated, but no earlier than one year after the transfer. However, if the new employer has a CBA with more favourable provisions, these new provisions will apply to the transferred employees instead.

The employer can attempt to harmonise the transferred employees' terms by negotiating with each new employee. However, this harmonisation must not cause the transferred employees to have fewer rights than those established under their previous CBA, if that CBA still applies.

PENSIONS

26. Do employers and/or employees make pension contributions to the state in your jurisdiction? If so, please give details of:

- The contributions payable.
- The tax treatment of those contributions.
- The monthly amount of the state pension.

Contributions

Pension contributions form part of social security contributions. For social security contribution rates, see *Question 20, Social security contributions, Social security contributions*.

Tax

Social security contributions are a deductible expense for the employer.

Monthly amount

The monthly amount of the state pension is calculated individually for each employee, by multiplying the following amounts:

- **The employee's average annual score.** The employee gains a number of points each month, which are calculated by dividing his gross monthly individual salary, including bonuses and other incentives, by the national average gross monthly salary. These are added up to create an annual score, which is then averaged over the contributory period, that is, the years during which the employee made social security contributions.
- **A pension point.** The state social security budget establishes this annually. As of 1 January 2010, the pension point is RON732.8. The monthly amount of the state pension is increased by any contributions to the health fund (*see Question 20, Social security contributions*).



27. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? Do such schemes provide pensions the value of which:

- Can usually be determined at the start of the arrangement (for example, the value is linked to the employee's salary)?
- Cannot usually be determined at the start of the arrangement (for example, the value is dependent on employer and employee contributions and investment return on those contributions)?

Law No. 204/2006 on facultative pensions gives employees access to a facultative pension. This is a private pension fund in addition to the state pension system. The contributions to the facultative pension fund can be up to 15% of the employee's gross salary. The employer and employee can split the contributions, or one of them can pay them entirely, for example, if the employer offers pension contributions as an employment benefit. In all cases, the employer must withhold the employee's salary and pay the contributions. The law was only implemented in 2007, therefore facultative pension schemes are not common.

The facultative pension schemes' value cannot be determined at the start of the arrangement because it depends on the value of the employer/employee's contributions to the scheme and on the investments made by the insurer. The employee is the owner of the personal assets from his account and has the right to be informed of the insurer's investment policy, associated risks and the financial markets in which the contributions are invested.

Currently, there are no legal provisions on the organisation and functioning of the payment system of facultative pensions schemes.

28. Is there a regulatory body that oversees the operation of supplementary pension schemes? If so, please briefly summarise the regulatory framework.

The regulatory body that oversees the operation of supplementary pension schemes is the Commission of Supervising the Private Pensions System (Commission). The Commission is an administrative autonomous authority under the control of the Parliament and is led by a council of five members.

The Commission regulates, co-ordinates, oversees and controls the activity of the private pensions system. The Commission controls the entities involved in the private pensions system at least once a year and publishes, within six months as of the end of each calendar year, a report on the evolution and functioning of the private pensions funds and the performance of the entities involved in the system.

29. Are any tax reliefs available on contributions to supplementary pension schemes (by the employer and employees)? If so, please give details.

The employer's contributions to the scheme are deductible from its taxable base for profit tax, up to a cap of RON1,673 per fiscal year for each employee. An employee can also apply a deduction of RON836.5 to his gross salary.

30. Is there any legal protection of employees' pension rights on a business transfer? In particular:

- Do supplementary pension rights qualify as acquired rights that transfer automatically under national legislation?
- If not, is there any other protection for pension rights on transfer?

A transferor employer's rights and obligations under individual employment agreements and any applicable CBA on the business transfer date are fully transferred to the new employer. In addition, all obligations in relation to the payment of the social security contributions to the state pension systems are transferred from the transferor to the transferee employer and the employee's rights under the state pension system are not affected by the business transfer.

The business transfer legislation does not contain express provisions on the supplementary pension rights of transferred employees. However, if the transferor was obliged to pay contributions into private pension funds for employees' benefit, this may represent a right that is transferred from the transferor to the transferee in a business transfer.

31. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

- Employees who are working abroad?
- Employees of a foreign subsidiary company?

Employees working abroad or employees of a foreign subsidiary company can only participate in a pension scheme established by a parent company in Romania if the parent company is their employer. They are only entitled to the tax advantages referred to in *Question 28* if they are subject to Romanian income tax.

BONUSES

32. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded? If so, please give details.

There are certain mandatory bonuses:

- Seniority bonus.
- Bonus for work during free days (that is, rest days) and legal holidays that was not compensated with free paid days.
- Bonus for night work.
- Bonus for additional hours that were not compensated with free paid days.
- Bonus for work in difficult, dangerous, harmful or painful conditions.

It is also widespread practice to offer employees supplementary bonuses in addition to their basic wage and the mandatory bonuses. They can take the form of bonuses for exceptional work, meal tickets, and so on. Employment contracts and CBAs can establish systems for awarding bonuses.



IP

33. If employees create IP rights in the course of their employment, do the employees or the employer own the rights?

Patent rights

In the absence of a specific contractual provision that is more favourable to the employee:

- The employer owns patent rights for inventions made by employees under an inventive task that the employment contract expressly requires. Employees receive a supplementary remuneration for this right, which is established in the employment contract.
- Employees own patent rights for inventions created:
 - during the performance of employment duties;
 - within the employer's business field, by knowing or using the employer's techniques; or
 - with the employer's material help.

Copyright

In the absence of a specific contractual provision, employees own the copyright for their inventions made in the performance of their work duties, including the exclusive right to use them. However, employees can only authorise third parties' use of the invention both:

- With the employer's consent.
- By rewarding the employer for its contribution to the costs of the invention.

If the contract does not specify a term, the assignment is valid for three years from when the invention was delivered to the employer.

Software

In the absence of a specific contractual provision, the employer owns the copyright to software created by employees in the performance of their work duties or under the employer's instructions.

RESTRAINT OF TRADE

34. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer pay its former employees remuneration while they are subject to post-employment restrictive covenants?

Employees have an obligation of loyalty to their employer during their employment, which stops them from engaging in any activities that may affect the employer's interests.

The employment contract may provide for a non-compete clause to prevent employees competing with the employer after their employment ends. In return, the employer must pay employees a monthly indemnity during the period of restraint. This must be at least half of their average gross monthly salary during the last six months before termination of the employment contract.

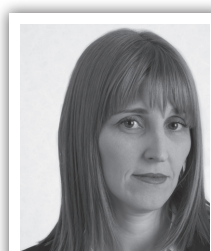
PROPOSALS FOR REFORM

35. Are there any proposals to reform employment law or pensions law in your jurisdiction?

The Deputies Chamber is currently examining an amendment to the Labour Code (*Law no. 53/2003*), increasing the number of the public holidays and including 24 January as a public holiday, although it is not yet clear when this is likely to come into force.

The Deputies Chamber is also examining an amendment of Government Emergency Ordinance no. 158/2005 on sick leave and healthcare indemnities aiming to increase maternity leave to a maximum of 168 calendar days (63 calendar days before giving birth and 105 calendar days after giving birth), during which female employees will benefit from an indemnity for maternity leave. It is not yet clear when this is likely to come into force.

CONTRIBUTOR DETAILS



ANA-MARIA PLĂCINTESCU

Muşat & Asociații

T +40 21 202 59 10

F +40 21 223 39 57

E anamaria@musat.ro

W www.musat.ro



ILEANA ȘOVĂILĂ

Muşat & Asociații

T +40 21 202 59 00

F +40 21 223 39 57

E ileanas@musat.ro

W www.musat.ro

Qualified. Romania, 2000

Areas of practice. Labour and employee benefits; insolvency and restructuring; corporate and commercial.

Recent transactions. Advised major Romanian and international clients such as Unilever South Central Europe, Alcatel-Lucent, Volvo, Romstal Leasing, Vignette Europe Ltd, SABMiller Plc, Va Tech Wabag, Caterpillar Financial Services, Abbot Laboratories, L'Oreal and Tarom.

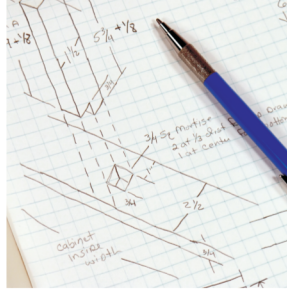
Qualified. Romania, 2003

Areas of practice. Labour and employee benefits; corporate and commercial law.

Recent transactions. Numerous major employment projects, advising high-profile clients such as Vignette Europe Ltd, Va Tech Wabag, Abbot Laboratories USA, L'Oreal, Next Sourcing Romania, NovoNordisk Region Europe, Atlas Estates Investments, Evalserve, PPG Industries, Prosperity Man Power and SABMiller Plc.

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