



## **Executive Summary**

Romania welcomes foreign investment, both direct and portfolio. The government provides national treatment for foreign investors. Romania's strategic location, membership in the European Union, well-educated workforce, competitive wages, and abundant natural resources make it a desirable location for firms seeking to access European, Central Asian and near East markets. U.S. investors have found opportunities in the information technology, energy, services, manufacturing, and consumer products sectors.

The investment climate in Romania is a mixed picture, and potential investors should undertake careful due diligence, when considering any investment. The Romanian government has taken needed steps in recent years to improve tax administration and collection, enhance transparency and support a legal framework conducive to foreign investment. It has implemented reforms necessary to bring the country out of economic crisis and begin to grow again. Another positive highlight has been the Romanian government's sale of a minority stakes in several State Owned Enterprises (SOEs) in key sectors, such as energy generation and exploitation. Through these Initial and Secondary Public Offerings, the Romanian government has exposed its SOEs to heightened standards of corporate governance and has attracted additional international investors, bolstering Romania's capital markets.

However, judicial, legislative, fiscal and regulatory unpredictability continue to complicate the business environment. The Romanian government still uses emergency measures to pass legislation, bypassing normal legislative procedures, including economic impact analyses and consultations with stakeholders. These measures have included the levying of taxes on infrastructure in capital intensive industries, including the energy sector. The arbitrary passage of ill-conceived revenue measures can serve as a disincentive to U.S. and multinational investment. Corruption at all levels remains endemic and the country's leaders have not yet displayed the political will necessary to effectively tackle this issue. Inconsistent enforcement of existing laws, including those related to the protection of intellectual property rights, also serves as a disincentive to investment.

Continuing to attract and retain additional foreign direct investment will require further progress on transparency, stability and predictability in economic decision-making and reduction of non-transparent bureaucratic procedures.

## **1. Openness To, and Restrictions Upon, Foreign Investment**

### ***Attitude Toward FDI***

Romania actively seeks direct foreign investment, and offers 19 million consumers, a well-educated workforce at competitive cost, a strategic location, and abundant natural resources, making it an attractive marketplace. To date, favored areas for U.S. investment include IT and

telecommunications, energy, services, manufacturing, especially in the automotive sector, and consumer products.

Romania has taken steps to strengthen tax administration, enhance transparency, and create legal means to resolve contract disputes expeditiously. Mergers and acquisitions are subject to review by the Competition Council. Romania's accession to the European Union (EU) on January 1, 2007 has helped solidify institutional reform. However, judicial, legislative, fiscal and regulatory unpredictability continue to negatively affect the investment climate.

Prospective U.S. investors should exercise careful due diligence, including consultation with competent legal counsel, when considering any investment. The Government of Romania (GOR) has, on occasion, allowed political interests or budgetary imperatives to supersede accepted Western business practices in ways harmful to investor interests. In 2013, the government instituted a windfall profit tax on additional profits from natural gas and electricity liberalization. A tax on special constructions, again passed without a prior impact assessment and no consultation with stakeholders, was instituted as of 2014.

Investments involving the public authorities (central government ministries, county governments, or city administrations) are generally more complicated than investments or joint ventures with private Romanian companies. Large deals involving the government – particularly public-private partnerships and privatizations of key SOEs – can become stymied by vested political and economic interests, or bogged down due to a lack of coordination between government ministries. Although the Public-Private Partnership (PPP) Law was revised in 2011 to remove anticompetitive provisions, the law still lacks clear terms on risk sharing, PPP project management, and investment recovery. As a result, investor interest in PPPs has been weak. How the new PPP law is eventually implemented will be of considerable interest to investors over the next few years.

### ***Laws/Regulations of FDI***

Romania became a member of the European Union on January 1, 2007. The country has worked assiduously to create a legal framework consistent with a market economy and investment promotion, and has largely concluded its efforts to enact EU-compatible legislation. At the same time, implementation of these laws and regulations frequently lags or is inconsistent.

Romania's legal framework for foreign investment is encompassed within a substantial body of law, largely enacted in the late 1990s, and subject to frequent revision. Major changes to the Civil Code were enacted in October 2011, replacing the Commercial Code, consolidating provisions applicable to companies and contracts into a single piece of legislation, and harmonizing Romanian legislation with international practices. Among other things, the new Code introduces the principle of good faith and stipulates that negotiating a contract without intent to conclude is bad faith. Under the hardship provisions, if the parties fail to agree on an amicable renegotiation of a contract, the court can mandate changes or even terminate the contract if it is deemed detrimental to one of the parties. The Civil Procedure Code, which provides detailed procedural guidance for implementing the new Civil Code, came into force in

February 2013. Romania has also passed a judicial reform law with the objective of improving the speed and efficiency of judicial processes, including provisions to reduce delays between hearings. The Mediation Law, revised in October 2012, provides alternative dispute resolution options. The new Criminal Code, that includes provisions applicable to the economic felonies, came into effect in February 2014.

Given the state of flux of legal developments, investors are strongly encouraged to engage local counsel to navigate the various laws, decrees, and regulations, as several pieces of investor-relevant legislation were challenged in both local courts and the Constitutional Court. There have been few hostile take-over attempts reported in Romania and as a result, Romanian law has not focused on limiting potential mergers or acquisitions. There are no Romanian laws prohibiting or restricting private firms' free association with foreign investors.

### ***Industrial Strategy***

The 2012-2016 governance program lists agriculture and energy among Romania's top priorities. Romania is in the process of revising its energy strategy. However, it does not offer incentive programs to attract investment to these sectors. The government offers income tax exemption for certain categories of high skilled information technology professionals

### ***Limits on Foreign Control***

Romanian legislation and regulation provide national treatment for foreign investors, guarantee free access to domestic markets, and allow foreign investors to participate in privatizations. There is no limit on foreign participation in commercial enterprises. Foreign investors are entitled to establish wholly foreign-owned enterprises in Romania (although joint ventures are more typical), and to convert and repatriate 100% of after-tax profits. Foreign firms are allowed to participate in the management and administration of the investment, as well as to assign their contractual obligations and rights to other Romanian or foreign investors.

### ***Privatization Program***

The State Asset Administration Authority (AAAS) is responsible for privatizing state-owned industrial assets and managing them during the privatization process. The Department of Energy within the Ministry of Economy oversees energy assets. Romania's privatization law permits the responsible authority to hire an agent to handle the entire privatization process, though ultimate decision-making authority remains with the Government.

Joint ventures between state-owned energy companies and private investors for electric power production have been stalled due to the absence of a liberalized energy market and unattractive conditions offered by the GOR.

The terms of Romania's precautionary stand-by agreement with the IMF include the sale of minority stakes in several state-owned energy companies through initial public offerings (IPOs) and secondary public offerings (SPOs) on the Bucharest Stock Exchange (BVB). To date,

successful transactions have included a 15% SPO for natural gas transmission operator Transgaz in April 2013 (following a 10% IPO in November 2007), an IPO for 10% stake in nuclear power producer Nuclearelectrica in September 2013 and an IPO for a 15% stake in natural gas producer Romgaz in October 2013. The IPO for the majority privatization of state-controlled electricity distributor Electrica is scheduled for June 2014. The government has also scheduled 15% IPO for integrated coal mining and coal-fired power production company Oltenia Energy Complex in fall 2014, pending completion of coal reserves evaluation. The IPO of hydropower producer Hidroelectrica, which had been planned for mid-2014, is delayed until after insolvency proceedings are concluded.

The GOR announced in 2012 its intention to privatize chemical manufacturer Oltchim and the copper mine Cuprumin; both transactions failed. Oltchim entered insolvency proceedings in January 2013; the proceedings are ongoing.

The government is resuming the privatization procedure for state-controlled rail freight carrier CFR Marfa, after failing to privatize it in 2013. The privatization is tentatively scheduled for completion in June 2015.

Romania is in the process of implementing the Electricity Directive and the Gas Directive of the EU's Third Energy Package introducing a structural separation between transmission system operator activities, and generation, production and supply activities. Ownership unbundling rules apply to investors with participations in energy transmission, generation, production and/or supply activities. According to the Third Energy Package directives, the same person cannot control generation, production and/or supply activities, and at the same time control or exercise any right over a transmission system operator (TSO). Furthermore, the same person cannot control a TSO and at the same time control or exercise any right over generation, production and/or supply activities.

Prospective investors are strongly advised to conduct thorough due diligence before any acquisition, particularly of state-owned assets. Some firms have found it advantageous to purchase industrial assets through AAAS's budget arrears recovery process rather than through direct privatization. Through this method, AAAS uses the proceeds from the sale of state assets to cover any outstanding arrears of the company. By acquiring the assets and not the company itself, buyers may avoid assuming historical debt or encumbering labor agreements.

As a member of the EU, Romania is required to notify the European Commission's General Directorate for Competition regarding significant privatizations and related state aid. Prospective investors should seek assistance from legal counsel to ensure compliance by relevant government entities. GOR failure to consult with, and then formally notify, the European Commission properly has resulted in delays and complications in some previous privatizations. Some investors have also experienced problems due to the occasional failure of GOR entities to fully honor contractual obligations following conclusion of privatization agreements. Investors receiving state aid, whose investments have been affected by the global economic crisis, have found renegotiation of their state aid agreements to be cumbersome, in part due to local authorities' failure to acknowledge that market conditions have changed.

Romanian law allows for the inclusion of confidentiality clauses in privatization and public-private partnership contracts to protect business proprietary and other information. However, in certain high-profile privatizations, parliamentary action has compelled the public disclosure of such provisions.

### *Screening of FDI*

Romania does not have processes to screen or approve foreign investments; foreign greenfield and brownfield investments are subject to the same legal requirements as investments by Romanian companies.

### *Competition Law*

In 2010, Romania extensively revised its competition legislation, bringing it closer to the EU *acquis communautaire* and best corporate practices. Companies with a market share below 40% are no longer considered to have a dominant market position, thus avoiding a full investigation by the Romanian Competition Council (RCC) of new agreements, saving considerable time and money for all parties involved. Resale price maintenance and market and client sharing are still prohibited, regardless of the size of either party's market share. In a positive move, the authorization fee for mergers or takeovers has been capped at 25,000 euros. Under previous legislation, the fee was 0.04% of total turnover in Romania for all entities involved in the action, not exceeding 100,000 euros. The Fiscal Procedure Code requires companies to front a deposit equal to 20% of the fine while awaiting a court decision on the merits of the complaint.

To increase the absorption of EU funds, revisions to the public procurement law in December 2012 raised the open tender threshold for public projects to 5 million euros. Government projects falling under the 5 million euro threshold have the option of being tendered through a "call for bids" to at least three companies. Additionally, the amendments stipulate that public procurement awards can only be challenged with the National Complaint Council (NCC). The NCC's decision is binding, even if the contracting authority or a bidder challenges the decision in court. If the complaint against an award decision is determined to be unfounded, the contracting authority can withhold a percentage of the challenger's bid participation fee as a penalty.

### *Investment Trends*

According to the Heritage Foundation's Economic Freedom Report, deeper institutional reforms, particularly related to eradicating corruption and ensuring judicial independence, remain critical to ensuring Romania's ongoing transition to a more resilient market-oriented economy and to improved economic growth. The World Bank's Doing Business report indicates that Romania continues to rank below the world average in paying taxes, dealing with construction permits, and setting up utility services.

**TABLE 1:** The following chart summarizes several well-regarded indices and rankings.

Measure	Year	Rank or value	Website Address

TI Corruption Perceptions index	2013	(69 of 177)	<a href="http://cpi.transparency.org/cpi2013/results/">http://cpi.transparency.org/cpi2013/results/</a>
Heritage Foundation's Economic Freedom index	2013	(62 of 177)	<a href="http://www.heritage.org/index/ranking">http://www.heritage.org/index/ranking</a>
World Bank's Doing Business Report "Ease of Doing Business"	2013	(73 of 189)	<a href="http://doingbusiness.org/rankings">http://doingbusiness.org/rankings</a>
Global Innovation Index	2013	(34 of 142)	<a href="http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener">http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener</a>
World Bank GNI per capita	2012	USD 8,820	<a href="http://data.worldbank.org/indicator/NY.GNP.PCAP.CD">http://data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>

## 2. Conversion and Transfer Policies

### *Foreign Exchange*

Romania does not restrict the conversion or transfer of funds associated with direct investment. All profits made by foreign investors in Romania may be converted into another currency and transferred abroad at the market exchange rate after payment of taxes.

Romania's national currency, the Leu, is freely convertible in current account transactions, in accordance with the International Monetary Fund's (IMF) Article VII.

### *Remittance Policies*

Proceeds from the sales of shares, bonds, or other securities, as well as from the conclusion of an investment, can also be repatriated. There is no limitation on the inflow or outflow of funds for remittances of profits, debt service, capital gains, returns on intellectual property, or imported inputs.

Romania implemented regulations liberalizing foreign exchange markets in 1997. The inter-bank electronic settlement system became fully operational in 2006, eliminating past procedural delays in processing capital outflows. Commission fees for real-time electronic banking settlements have gradually been reduced.

Capital inflows are also free from restraint. Romania concluded capital account liberalization in September 2006, with the decision to permit non-residents and residents abroad to purchase derivatives, treasury bills, and other monetary instruments.

Romania is identified as a Financial Action Task Force (FATF) jurisdiction of concern in the 2013 International Narcotics and Control Strategy Report (INCSR).

### **3. Expropriation and Compensation**

The law on direct investment includes a guarantee against nationalization and expropriation or other equivalent actions. The law allows investors to select the court or arbitration body of their choice to settle disputes. Several cases involving investment property nationalized during the Communist era remain unresolved. In doing due diligence, prospective investors should ensure that a thorough title search is done to ensure there are no pending restitution claims against the land or assets.

### **4. Dispute Settlement**

#### *Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts*

Romania recognizes property and contractual rights but enforcement through the judicial process can be lengthy, costly, and difficult. Foreign companies engaged in trade or investment in Romania often express concern about the Romanian courts' lack of expertise in commercial issues. Judges generally have limited experience in the functioning of a market economy, international business methods, intellectual property rights, or the application of Romanian commercial and competition laws. Inconsistency and a lack of predictability in the jurisprudence of the courts or in the interpretation of the laws remains a major concern for foreign and domestic investors and for wider society. Even when court judgments are favorable, enforcement of judgments is inconsistent and can lead to lengthy appeals.

Failure to implement court orders or cases where the public administration unjustifiably challenges court decisions constitutes challenges to the binding nature of court decisions.

Mediation as a tool to resolve disputes is gradually becoming more common in Romania. Parliament passed legislation in 2006 recognizing mediation and establishing a certifying body, the Mediation Council, to set standards and practices. The professional association, The Union of Mediation Centers in Romania, is the umbrella organization for mediators throughout the country. There are recognized mediation centers in every county seat where court-sanctioned and private mediation is available.

There is no legal mechanism for court-ordered mediation in Romania but judges can encourage litigants to use mediation to resolve their cases. If litigants opt for mediation, they must present their proposed resolution to the judge upon completion of the mediation process, who must then approve the agreement.

#### *Bankruptcy*

Romania's bankruptcy law contains provisions for liquidation and reorganization that are generally consistent with Western legal standards. These laws usually emphasize enterprise restructuring and job preservation. To mitigate the time and financial cost of bankruptcies, Romanian legislation provides for administrative liquidation as an alternative to bankruptcy. However, investors and creditors have complained that liquidators sometimes lack the incentive

to expedite liquidation proceedings and that, in some cases, their decisions have served vested outside interests. Both state-owned and private companies tend to opt for judicial reorganization to avoid bankruptcy.

In December 2009, the debt settlement mechanism Company Voluntary Agreements (CVAs) was introduced as a means for creditors and debtors to establish partial debt service schedules without resorting to bankruptcy proceedings. The global economic crisis did, however, prompt Romania to shorten insolvency proceedings in the past year.

According to World Bank *Doing Business* report, resolving insolvency in Romania takes 3.3 years on average and costs 11% of the debtor's estate, with the most likely outcome being that the company will be sold as piecemeal sale. The average recovery rate is 30.0 cents on the dollar. Globally, Romania stands at 99 in the ranking of 189 economies on the ease of resolving insolvency. An October 2013 emergency ordinance amending the insolvency law was declared unconstitutional. A revised law is expected to be implemented in mid-2014.

### ***Investment Disputes***

Two cases against Romania are pending with the International Center for Settlement of Investment Disputes (ICSID).

### ***International Arbitration***

Romania increasingly recognizes the importance of arbitration in the settlement of commercial disputes. Many agreements involving international companies and Romanian counterparts provide for the resolution of disputes through third-party arbitration.

Romanian law and practice recognize applications to other internationally-known arbitration institutions, such as the ICC Paris Court of Arbitration and the Vienna United Nations Commission on International Trade Law (UNCITRAL). Romania also has an International Commerce Arbitration Court administered by the Chamber of Commerce and Industry of Romania.

### ***ICSID Convention and New York Convention***

Romania is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Romania is also a party to the European Convention on International Commercial Arbitration concluded in Geneva in 1961 and is a member of ICSID.

### ***Duration of Dispute Resolution***

According to World Bank *Doing Business* report, it takes in average 512 days to enforce a contract, from the moment the plaintiff files the lawsuit until actual payment, of which trial and judgment total 365 days on average and enforcement another 95 days. Associated costs total around 29% of the claim.

Arbitration awards are enforceable through Romanian courts under circumstances similar to those in other Western countries, although legal proceedings can be protracted.

## **5. Performance Requirements and Investment Incentives**

### ***WTO/TRIMS***

Romania has been a WTO member since January 1, 1995. Romania does not maintain any measures alleged to violate its WTO TRIMS obligations.

### ***Investment Incentives***

Currently, customs and tax incentives are available to investors in six free trade zones. State aid is available for investments in free trade zones under EU regional development assistance rules. Large companies may receive aid up to 50% of their eligible costs (limited to 40% in Bucharest and surrounding Ilfov County), while small- and medium-sized enterprises (SMEs) may receive assistance of up to 65% of their eligible costs. Prospective investors are advised to thoroughly investigate and verify the current status of state incentives.

In 2007, Romania adopted EU regulations on regional investment aid, and instituted state aid schemes for large investments and SMEs. Both Romanian and EU state aid regulations aim to limit state aid in any form, such as direct state subsidies, debt rescheduling schemes, debt for equity swaps, or discounted land prices. The EC must be notified of, and approve, GOR state aid that exceeds the pre-approved monetary threshold for the corresponding category of aid. To benefit from the remaining state aid schemes, the applicant must secure financing that is separate from any public support for at least 25% of the eligible costs, either through his own resources or through external financing, and must document this financing in strict accordance with Ministry of Finance guidelines. Amendments made in 2010 to the state aid scheme for regional projects score applications based not only on the economics of the project, but also on the GDP per capita and unemployment rate for the country of intended investment.

In practice, GOR budget constraints and a less-than-fully transparent application process have limited access to these forms of state aid. Different ministries and government entities manage the various state aid schemes, and the rules and procedures are complex. Companies interested in state aid are encouraged to seek competent counsel and when developing a business plan, to set aside a generous amount of time for moving through all the bureaucratic stages required for state aid scheme approvals.

In July 2011, the European Commission approved the GOR's revised Green Certificate System, part of the Renewable Energy Law, which provides incentives for certain types of renewable energy. The Green Certificates are traded in parallel with the energy produced, providing an additional source of revenue for renewable energy producers. The revised system includes provisions to prevent overcompensation. Renewable energy projects that are eligible for other types of aid, such as EU structural funds, receive a smaller number of green certificates. Any renewable energy investment with an installed capacity over 125 megawatts must be notified to the European Commission. In July 2013, the government amended through emergency

ordinance the Renewable Energy Law, revising downwards the number of green certificates and deferring part of their release. The legislation is currently under review in the parliament. The changes have to receive approval from the EC.

As a member of the EU, Romania must receive European Commission (EC) approval for any state aid it grants that is not covered by the EU's block exemption regulations. The Romanian Competition Council acts as a clearinghouse for the exchange of information between the Romanian authorities and the EC. The failure of state aid grantors to notify the EC properly of aid associated with privatizations has resulted in the Commission launching formal investigations into several privatizations. Investors should ensure that the government entities with which they work fully understand and fulfill their duty to notify competition authorities. Investors may wish to consult with EU and Romanian competition authorities in advance, to ensure a proper understanding of notification requirements.

Companies operating in Romania can also apply for aid under EU-funded programs that are co-financed by Romania. When planning the project, prospective applicants must bear in mind that the project cannot start before the financing agreement is finalized; the application, selection and negotiation process can be lengthy. Applicants also must secure financing for non-eligible expenses and for their co-financing of the eligible expenses. Finally, reimbursement of eligible expenses – which must be financed up front by the investor – is often very slow. Procurements financed by EU-funded programs above a certain monetary threshold must comply with public procurement legislation. In an effort to increase the rate of EU funds absorption, Romania has amended regulations to allow applicants to use the assets financed under EU-funded programs as collateral. However, understaffing and a lack of expertise on the part of GOR management entities, cumbersome procedures, and applicants' difficulty obtaining private financing still remain significant obstacles to improved EU funds absorption by Romania.

### ***Performance Requirements***

There are no performance requirements imposed as a condition for establishing, maintaining or expanding an investment.

### ***Data Storage***

The government does not require investors to establish or maintain data storage in Romania

## **6. Right to Private Ownership and Establishment**

Romanian legislation allows foreign and domestic private entities to establish and own business enterprises and engage in all forms of remunerative activity.

Foreign investors may engage in business activities in Romania by any of the following methods:

- Setting up new commercial companies, subsidiaries or branches, either wholly-owned or in partnership with Romanian natural or legal persons;

- Participating in the increase of capital of an existing company or the acquisition of shares, bonds, or other securities of such companies;
- Acquiring concessions, leases or agreements to manage economic activities, public services, or the production of subsidiaries belonging to commercial companies or state-owned public corporations;
- Acquiring ownership rights over non-residential real estate improvements, including land, via establishment of a Romanian company;
- Acquiring industrial or other intellectual property rights;
- Concluding exploration and production-sharing agreements related to the development of natural resources.

Foreign investor participation can take the form of: foreign capital, equipment, means of transport, spare parts and other goods, services, intellectual property rights, technical know-how and management expertise, or proceeds and profits from other businesses carried out in Romania. Foreign investment must comply with environmental protection, national security, defense, public order, and public health interests and regulations.

## **7. Protection of Property Rights**

### ***Real Property***

The Romanian Constitution, adopted in December 1991 and revised in 2003, guarantees the right to ownership of private property. Mineral and airspace rights, and similar rights, are excluded from private ownership. Under the revised Constitution, foreign citizens can gain land ownership through inheritance. With EU accession, citizens of EU member states can own land in Romania, subject to reciprocity in their home country.

Companies owning foreign capital may acquire land or property needed to fulfill or develop company goals. If the company is dissolved or liquidated, the land must be sold within one year of closure, and may only be sold to a buyer(s) with the legal right to purchase such assets. Investors can purchase shares in agricultural companies that lease land in the public domain from the State Land Agency.

The 2006 legislation that regulates the establishment of specialized mortgage banks, also makes possible a secondary mortgage market, by regulating mortgage bond issuance mechanisms. Mortgage loans are offered by commercial banks, specialized mortgage banks, and non-bank mortgage credit institutions. Romania's mortgage market is now almost entirely private, although the state-owned National Savings Bank, CEC Bank, also offers mortgage loans. Since 2000, Romania has had in place the Electronic Archives of Security Interests in Movable Property (AEGRM), that represents the national recording system for the priority of mortgages structured by entities and assets, ensuring the filing of transactions regarding mortgages, assimilated operations, or other collateral provided by the law, as well as their advertising.

### ***Protection of Property Rights***

Romania is a signatory to international conventions concerning intellectual property rights (IPR), including Trade-Related Aspects of Intellectual Property Rights (TRIPS), and has enacted legislation protecting patents, trademarks, and copyrights. Romania has signed the Internet Convention to protect online authorship. While the IPR legal framework is generally good, enforcement remains weak and ineffectual, especially in the area of Internet piracy. The once-flagrant trade of retail pirated goods has largely been eliminated, but unlicensed use of software and personal use of pirated audio-video products remains high. The recording and film industries have expressed concern over increasing levels of Internet-based piracy. Romania has passed broad IPR protection enforcement provisions, as required by the WTO, yet judicial enforcement remains lax. Romania is on the Special 301 Watch List primarily due to weak enforcement efforts against on-line copyright piracy.

### ***Patents***

Romania is a party to the Paris Convention for the Protection of Industrial Property, and subscribes to all of its amendments. Romanian patent legislation generally meets international standards, with foreign investors accorded equal treatment with Romanian citizens under the law. Patents are valid for 20 years. Romania has been a party to the European Patent Protection Convention since 2002.

### ***Trademarks***

In 1998, Romania passed a trademark and geographic indications law, which was amended in 2010 to make it fully consistent with equivalent EU legislation. Romania is a signatory to the Madrid Agreement relating to the international registration of trademarks and the Geneva Treaty on Trademarks. Trademark registrations are valid for ten years from the date of application and renewable for similar periods. In 2007, Romania ratified the Singapore Treaty on the Law of Trademarks.

### ***Copyrights***

Romania is a member of the Bern Convention on Copyrights. The Romanian Parliament has ratified the latest versions of the Bern and Rome Conventions. The Romanian Copyright Office (ORDA) was established in 1996, and promotes and monitors copyright legislation. The General Prosecutor's Office (GPO) provides national coordination of IPR enforcement, but copyright law enforcement remains a low priority for Romanian prosecutors and judges. Many magistrates still tend to view copyright piracy as a "victimless crime" and this attitude has resulted in weak enforcement of copyright law. Due to increasing online piracy, copyright infringement of music and film is widespread throughout Romania.

### ***Semiconductor Chip Layout Design***

Romanian law protects semiconductor chip layout design. In order to benefit, designs must be registered with the Romanian Inventions and Trademark Office. Romania is a signatory to the Washington Treaty.

“For additional information about treaty obligations and points of contact at local IP offices, please see WIPO’s country profiles at <http://www.wipo.int/directory/en/>.”

### **Resources for Rights Holders:**

#### **Contact at Mission/AIT:**

- **NAME of IP Attaché or Economic Officer: Ravi F. Buck**
- **TITLE: Economic Officer**
- **TELEPHONE NUMBER: +40212003418**
- **EMAIL ADDRESS: BuckRF@state.gov**

**Country/Economy resources:** Please provide contact information for country-specific resources such as the local American Chamber of Commerce (AmCham), and a link to Post’s or AmCham’s public list of local lawyers. [http://www.osim.ro/cons/2013/agentii\\_consilieri.pdf](http://www.osim.ro/cons/2013/agentii_consilieri.pdf)

## **8. Transparency of the Regulatory System**

Cumbersome and non-transparent bureaucratic procedures are a major problem in Romania. Foreign investors point to the excessive time it takes to secure necessary zoning permits, environmental approvals, property titles, licenses, and utility hook-ups. National and local officials often cannot provide potential investors with clear and comprehensive information on what permits or approvals are needed, or how they are to be obtained. Set fees for certain services, such as utilities, may not exist or may be subject to “negotiation” with local authorities or utility providers. Romania enacted a "Silent Approval" Law in 2003 to reduce bureaucratic delays, but it has yet to be universally enforced or recognized. Additionally, regulations can change frequently, often without advance notice or proper analysis of the impact the changes will have on the economy and business environment. Modifications can also be vaguely worded and/or poorly explained. These unforeseen changes add to the costs of doing business and can alter an investor’s business prospects overnight.

Romanian law requires consultations with the private sector and a 30-day comment period on legislation or regulation affecting the business environment (the "Sunshine Law"); however, this requirement is not consistently enforced.

## **9. Efficient Capital Markets and Portfolio Investment**

Romania welcomes portfolio investment and is working to develop efficient capital markets. The Financial Regulatory Agency (ASF) is responsible for regulating the securities market. The ASF implements the registration and licensing of brokers and financial intermediaries, the filing and approval of prospectuses, and the approval of market mechanisms.

The Bucharest Stock Exchange (BVB) resumed operations in 1995, after a hiatus of 50 years. The BVB operates a three-tier system that, at present, lists a total of 104 companies, with 28 companies in the highest tier. The official index, BET, is based on a basket of the 10 most active stocks listed, while the BET-C index follows the trend of all stocks listed on the BVB. The BVB also has an “over-the-counter” market (RASDAQ) that currently lists 964 different stocks. The

BVB allows trade in corporate, municipal, and international bonds, and in 2007, the BVB opened derivatives trading. The BVB's integrated group includes trading, clearing, settlement, and registry systems. The BVB's Alternative Trading System (ATS) allows trading in local currency of 29 foreign stocks listed on international capital markets, of which eleven are U.S. blue chip stocks.

Despite a diversified securities listing, the situation on the international capital and financial markets has adversely affected the Romanian capital market, and liquidity remains low. Neither the government nor the Central Bank impose restrictions on payments and transfers. The red tape associated with capital market access, still high trading fees, and inconsistent enforcement of the corporate governance rules have kept Romania within frontier market tier. Country funds, hedge funds and venture capital funds continue to participate in the capital markets. Minority shareholders have the right to participate in any capital increase. Romanian capital market regulation is now EU-consistent, with accounting regulations incorporating EC Directives IV and VII.

### ***Money and Banking System, Hostile Takeovers***

There are 40 banks and credit cooperative national unions currently operating in Romania. The largest, Romanian Commercial Bank (BCR), was privatized in 2006 by sale to Erste Bank of Austria and has a 17.5% market share. The second-largest is the French-owned Romanian Bank for Development (BRD-Société Générale) with 13.0% market share, followed by privately-owned Transilvania Bank (8.9%), Italian-controlled UniCreditTiriac Bank (7.6%), state-owned CEC Bank (7.4%), Austrian-owned Raiffeisen (7.3%), and Dutch-owned ING (4.7%).

The banking system is sound and well provisioned. However, according to the National Bank of Romania, overdue and doubtful loans now account for 20.1% of total bank loans and interest; the solvency rate of the banking system is 15.0%.

The GOR has encouraged foreign investment in the banking sector, and there are no restrictions on mergers and acquisitions. The only remaining state-owned banks are the National Savings Bank (CEC Bank) and EximBank, comprising 8.5% of the market combined.

While the National Bank of Romania must authorize all new non-EU banking entities, banks and non-banking financial institutions already approved in other EU countries need only notify the National Bank of plans to provide local services.

## **10. Competition from State-Owned Enterprises**

### ***OECD Guidelines on Corporate Governance of SOEs***

Private enterprises compete with public enterprises under the same terms and conditions with respect to market access and credit. Energy production, transportation, and mining are majority state-owned sectors, while the government retains a monopoly on electricity and natural gas transmission.

SOEs are required by law to publish an annual report. Majority state-owned companies that are publicly listed, as well as state-owned banks, are required to be independently audited. If properly implemented, legislation on corporate governance of SOEs should ensure the professional selection of board members and managers, and bring more transparency and accountability to the management and oversight of SOEs

### ***Sovereign Wealth Funds***

Romania currently does not have a sovereign wealth fund.

## **11. Corporate Social Responsibility**

### ***OECD Guidelines for Multinational Enterprises***

Corporate social responsibility (CSR) as a concept is slowly becoming more common in Romanian business, driven primarily by multinational companies infusing their corporate culture into the local market. Virtually all foreign enterprises in Romania have some kind of CSR program, and most follow generally accepted CSR principles, such as the OECD Guidelines for Multinational Enterprises. Romanian legislation allows companies to allocate part of their corporate income tax (a maximum of 10% of total corporate income tax due) to CSR under the sponsorship law.

Labor and environmental laws are not waived in order to attract or retain investment.

## **12. Political Violence**

Romania does not have a history or politically motivated damage to foreign investors' projects or installations. However, anti-shale gas protestors invaded the site of a U.S. energy company's exploratory well in October 2013, damaging the perimeter fence and some equipment. Major civil disturbances are not expected to occur in the country.

## **13. Corruption**

### ***UN Anticorruption Convention, OECD Convention on Combatting Bribery***

Despite some improvement, corruption remains a serious problem. Romania was ranked 69<sup>th</sup> of 177 countries in Transparency International's 2013 Corruption Perception Index, the fourth-lowest ranked among EU member states. According to the EC's 2014 Report on Progress under the Cooperation and Verification Mechanism in Romania, there are still obstacles to making progress in the fight against corruption. The report recommends that Romania should ensure that corruption laws apply equally to all on an equal basis, improve the consistency and dissuasiveness of penalties applied in corruption cases in all courts across Romania, step up efforts in the prosecution of petty corruption, and develop the National Anti-Corruption Strategy to introduce more consistent benchmarks and obligations for public administration, with results to be made publicly available.

U.S. investors have complained of both government and business corruption in Romania, with the customs service, municipal officials, and local financial authorities most frequently named. In some cases, demands for payoffs by low- to mid-level officials reach the point of harassment.

Romanian law and regulations contain provisions intended to prevent corruption, but enforcement is generally weak. However, the National Anti-Corruption Directorate (DNA) continued to investigate and prosecute corruption cases involving medium- and high-level cases political, judicial, and administrative officials throughout 2013. Conflicts of interest, respect for standards of ethical conduct, and integrity in public office in general remained a concern for all three branches of government. Individual executive agencies were slow in enforcing sanctions, and agencies' own inspection bodies were generally inactive.

The Ministry of Justice published in late 2011 a national anti-corruption strategy for 2012-2014, focusing on strengthening administrative review and transparency within public agencies, preventing corruption, and implementing anti-corruption legislation. The objectives include increased and improved financial disclosure, conflict-of-interest oversight, more aggressive investigation of money laundering cases, and passage of legislation to allow for more effective asset recovery.

In March 2002, to reduce corrupt practices in public procurement, the GOR inaugurated a web-based e-procurement system (<http://www.e-licitatie.ro/>), designed to provide a transparent listing of both ongoing and closed solicitations, with the names of the winners and the closing prices made available to the public. The use of "e-licitatie" has increased government efficiency, reduced vulnerability to corruption, and improved fiscal responsibility in government procurement. State entities, as well as public and private beneficiaries of EU funds, are required by law to follow public procurement legislation and use the e-procurement system, but compliance is inconsistent.

Romania's public procurement law, passed in 2006 and amended several times, establishes ex-ante controls on public procurement processes, stricter rules on eligible participants, and an appeals mechanism for complaints against the process. The National Agency for Public Procurement has general oversight over procurements and can draft legislation, but procurement decisions remain with the procuring entities. Following a July 2013 revision of the public procurement legislation, state-controlled companies are allowed to use internally drafted procurement procedures in lieu of the general public procurement legislation.

### **Resources to report corruption:**

**Contact at government agency** or agencies are responsible for combating corruption.

- **ORGANIZATION:** National Anticorruption Directorate (DNA)
- **ADDRESS:** Str. Știrbei Vodă nr. 79-81, București
- **TELEPHONE NUMBER:** +40 21 312 73 99
- **EMAIL ADDRESS:** [anticoruptie@pna.ro](mailto:anticoruptie@pna.ro)
- **WEBSITE:** <http://www.pna.ro/sesizare.xhtml?jftfdi=&jffi=sesizare>

**Contact at "watchdog" organization** (international, regional, local or nongovernmental organization operating in the country/economy that monitors corruption, such as Transparency International)

- **ORGANIZATION:** Expert Forum
- **ADDRESS:** Str Aurel Vlaicu 87, etaj II, apartament 3, București,
- **TELEPHONE NUMBER:** +40 21 211 7400
- **EMAIL ADDRESS:** [office@expertforum.ro](mailto:office@expertforum.ro)
  
- **TITLE:** Director
- **ORGANIZATION:** Freedom House Romania
- **ADDRESS:** Bd. Ferdinand 125, Bucuresti
- **TELEPHONE NUMBER:** +4021 253 28 38
- **EMAIL ADDRESS:** [guseth@freedomhouse.ro](mailto:guseth@freedomhouse.ro)

#### **14. Bilateral Investment Agreements**

The U.S.-Romanian Bilateral Investment Treaty (BIT) on the Reciprocal Encouragement and Protection of Investment (signed in May 1992 and ratified by the U.S. in 1994) guarantees national treatment for U.S. and Romanian investors. The agreement provides a dispute resolution mechanism, liberal capital transfer, prompt and adequate compensation in the event of an expropriation, and the avoidance of trade-distorting performance requirements. The U.S. Government negotiated an agreement with the EU and eight accession countries, including Romania, to cover any possible inconsistencies between pre-existing BITs and the countries' future EU obligations. This revised BIT was ratified by the U.S. Senate and the Romanian Parliament in 2004, and went into effect on February 9, 2007. Other bilateral trade agreements with third countries were terminated upon Romania's EU accession.

#### ***Bilateral Taxation Treaties***

Romania has a bilateral taxation treaty with the United States; the treaty was signed in 1973 and entered into force in 1974.

#### **15. OPIC and Other Investment Insurance Programs**

The Overseas Private Investment Corporation (OPIC) began operations in Romania in late 1992, and continues to actively finance projects in the country. Romania has been a member of the Multilateral Investment Guarantee Agency (MIGA) since 1992.

#### **16. Labor**

Romania has traditionally offered a large, skilled labor force at comparatively low wage rates in most sectors. The labor pool has tightened in highly skilled professions, in particular the information technology sector, despite relatively high levels of unemployment and underemployment overall. The university system is generally regarded as good, particularly in technical fields, though foreign and Romanian business leaders have urged reform of outdated higher education curricula to better meet the needs of a modern, innovation-driven market.

Since Romania's revolution in December 1989, labor-management relations have occasionally been tense, the result of economic restructuring and personnel layoffs. Trade unions, much better organized than employers' associations, are vocal defenders of their rights and benefits. In January 2014, after extensive negotiations between unions, employers' associations, and the government, the national minimum wage was set at 850 RON (about USD 256) for full-time employment of 169.333 hours per month, or approximately 5.02 - RON (USD 1.51) per hour.

The law allows workers to form and join independent labor unions without prior authorization, and workers freely exercised this right. Although the law permits strikes by most workers, lengthy and cumbersome requirements make it difficult to hold strikes legally. Companies may claim damages from strike organizers if a court deems a strike illegal.

The law does not effectively protect against antiunion discrimination because there are no accompanying sanctions for such discrimination. Some union representatives alleged that, due to extensive legal loopholes, enforcement remained minimal, in particular in small and medium sized private businesses. The government generally respected the right of association, and union officials state that registration requirements stipulated by law were complicated but generally reasonable.

The law prohibits all forms of forced or compulsory labor, and the government effectively enforced the law. The minimum age for most forms of employment is 16, but children may work with the consent of parents or guardians at age 15. The law prohibits minors from working in hazardous conditions, provides a basis for the elimination of hazardous work for children, includes a list of dangerous jobs, and specifies penalties for offenders.

The 2010 amendments to the Labor Code give employers more flexibility to evaluate employees based on performance, and significantly relax hiring and firing procedures. Labor laws and regulations are not waived or derogated to attract or retain investments.

Payroll taxes remain steep, resulting in an estimated 25-30% of the labor force working in the underground economy as "independent contractors" where their salaries are neither recorded nor taxed. Even for registered workers, under-reporting of actual salaries is common.

Current legislation makes it very costly to engage non-EU citizens in Romania. Foreign companies often resort to expensive staff rotations, special consulting contracts, and non-cash benefits. Work permits are issued for a maximum of one year for a fee of 200 euro (payable in the RON equivalent of that day's exchange rate), except for students and seasonal workers, who pay 50 euro. These permits are automatically renewable with a valid individual work contract.

## **17. Foreign Trade Zones/Free Ports**

Free Trade Zones (FTZs) received legal authority in Romania in 1992. General provisions include unrestricted entry and re-export of goods, and exemption from customs duties. The law further permits the leasing or transfer of buildings or land for terms of up to 50 years to

corporations or natural persons, regardless of nationality. Foreign-owned firms have the same investment opportunities as Romanian entities in FTZs.

Currently there are six FTZs, primarily located on the Danube River or close to the Black Sea: Sulina, Constanta-Sud Agigea, Galati, Braila, Curtici-Arad, and Giurgiu. The administrator of each FTZ is responsible for all commercial activities performed within the zone. FTZs are under the authority of the Ministry of Transportation.

## **18. Foreign Direct Investment and Foreign Portfolio Investment Statistics**

Romania did not attract significant foreign direct investment (FDI) until after the 1990s, due to delays in post-Communist economic reforms. According to data provided by the National Office of the Trade Registry, the cumulative net stock of FDI from January 1990 to December 2013 totaled 50.54 billion, about 27.9% of Romania's GDP. Romanian direct investments abroad from January to November 2013 totaled USD 415.8 million.

Major sectors for foreign investment include:

- Automobile and automotive components (Renault, Daimler Benz, Ford, Siemens, Continental, Alcoa, Delphi Packard, Johnson Controls, Honeywell Garrett, Michelin, Pirelli);
- Banking and finance (Citibank, Société Générale, MetLife, Royal Bank of Scotland, ING, Generali, Volksbank, Raiffeisen, Erste Bank, Unicredit, Alpha Bank, National Bank of Greece, Intesa Sanpaolo, Millenium Bank, Garanti Bank, Credit Agricole, Allianz, );
- Information Technology (Hewlett Packard, Intel, Microsoft, Oracle, Cisco Systems, IBM);
- Telecommunications (Orange, OTE, Telesystem International Wireless Services, Vodafone, Liberty Media/UPC);
- Hotels (Hilton, Marriott, Best Western, Howard Johnson, Sofitel, Crowne Plaza, Accor, Ramada, Radisson);
- Manufacturing (Timken, General Electric, Cameron, LNM, Marco, Flextronics, Holcim, Lafarge, Heidelberg, Plexus, Lufkin, Toro);
- Consumer products (Procter and Gamble, Unilever, Henkel, Coca-Cola, PepsiCo, Parmalat, Danone, Smithfield Foods);
- Retail chains (Metro, Delhaize, Dm Drogerie, Carrefour, Cora, Billa, Selgros, Auchan, Kaufland).

According to Romanian Trade Registry statistics, the value of U.S. direct investment in Romania as of December 2013 was about USD 1.2 billion. The U.S. is the 12th-ranked foreign investor nation, after the Netherlands, Austria, Germany, Cyprus, France, , Greece, Italy, Spain, Luxemburg, Panama, and Switzerland, . U.S.-source investment represented 2.4 % of Romania's

total FDI. As official statistics do not fully account for the tendency of U.S. firms to invest through their foreign, especially European-based, subsidiaries, the actual amount of U.S. FDI is higher. Romanian statistics also over-emphasize physical, capital-intensive investments, while overlooking the impact of foreign investment in services and technology. Significant U.S. direct investors (including investments made through branches or representative offices) include:

- Advent Central and Eastern Europe - investment fund;
- AECOM - engineering and design;
- Chartis - general insurance;
- Alico (Met Life) - life insurance;
- Alcoa - automotive, aluminum processing;
- Bunge - grain trading;
- Cargill - grain export and food processing;
- Citibank - banking;
- Coca-Cola - beverage, food;
- Cooper Cameron - gas field equipment manufacturer;
- Delphi - automotive parts;
- EuroTire - mining and heavy equipment tires;
- Flextronics – medical, telecom, automotive;
- Ford - automotive assembly;
- General Electric - diversified industrial products;
- Hewlett Packard - IT equipment, services;
- Hoeganaes - iron powder for automotive;
- Honeywell Garrett - automotive;
- IBM - IT equipment;
- Intel – software development services
- Johnson Controls - automotive;
- Kodak - film processing;
- McDonald's - food;
- Microsoft - software services;
- New Century Holding - investment fund;
- Office Depot - office and business supplies;
- Oracle - IT services, consulting;
- Pepsico - beverage;
- Philip Morris - tobacco products;
- Procter and Gamble - consumer products;
- Qualcomm - telecommunications;
- Sigma Bleyzer - investment fund;
- Smithfield Foods - food production and distribution;
- Timken - industrial bearings;
- Liberty Media UPC - cable television operator;
- Visa - financial services;
- URS - engineering.

In addition to these companies, the European Bank for Reconstruction and Development (EBRD) remains the single largest investor (debt plus equity) in Romania, with some USD 8.5 billion invested. The U.S. is a 10% shareholder in the EBRD.

Foreign Portfolio Investment:

In 2012, foreign portfolio investment inflows amounted to USD 587.1 million, whereas their outflows reached USD 455.6 million, resulting into a net inflow of 131.5 million.

**TABLE 2: Key Macroeconomic data, U.S. FDI in host country/economy**

	Host Country Statistical source* (National Statistics Institute)		USG or international statistical source		USG or international Source of data (Source of Data: BEA; IMF; Eurostat; UNCTAD, Other) World Bank
<b>Economic Data</b>	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) <i>(Millions U.S. Dollars)</i>	2012	169,580.9	2012	192,700	<a href="http://www.worldbank.org/en/country">http://www.worldbank.org/en/country</a>
<b>Foreign Direct Investment</b>	Host Country Statistical source* National Office of the Trade Register, National Statistics Institute		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country <i>(Millions U.S. Dollars, stock positions)</i>	End-2013	1,233.2 Rank 12-th	Insert (Year)	Amount N/A	(BEA) click selections to reach. <ul style="list-style-type: none"> <li>• Bureau of Economic Analysis</li> <li>• Balance of Payments and Direct Investment Position Data</li> <li>• U.S. Direct Investment Position Abroad on a Historical-Cost Basis</li> <li>• By Country only (all countries) (Millions of Dollars)</li> </ul>
Host country's FDI in the United States <i>(Millions)</i>	Insert (Year)	Amount N/A	Insert (Year)	Amount N/A	(BEA) click selections to reach <ul style="list-style-type: none"> <li>• Balance of Payments and Direct Investment Position</li> </ul>

<i>U.S. Dollars, stock positions)</i>					Data <ul style="list-style-type: none"> <li>Foreign Direct Investment Position in the United States on a Historical-Cost Basis</li> <li>By Country only (all countries) (Millions of Dollars)</li> </ul>
Total inbound stock of FDI as % host GDP ( <i>calculate</i> )	Insert (Year) End-2013	Amount 27.9%	Insert (Year) 2012	Amount 45.1%	Source: IMF, National Bank of Romania's Balance of Payments. Comment: The IMF and Romania's BOP data are consistent; the annual fdi includes intra-group credit and re-invested profits, on the top of the registered capital reported by the National Office of the Trade Register.

\* Provide sources of host country statistical data used.

**TABLE 3: Sources and Destination of FDI**

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations (US Dollars, Millions)					
Inward Direct Investment			Outward Direct Investment		
Total Inward	76,308	100%			
Netherlands	17,608	23%			
Austria	13,249	17%			
Germany	8,735	11%			
France	6,700	9%			
Italy	3,841	5%			

"0" reflects amounts rounded to +/- USD 500,000.

**TABLE 4: Sources of Portfolio Investment**

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			Equity Securities			Total Debt Securities		
World	3,044	100%	World	1,016	100%	World	2,027	100%
Luxembourg	565	19%	Luxembourg	463	46%	United Kingdom	336	17%
Austria	557	18%	Austria	390	38%	United States	315	16%
United	339	11%	France	41	4%	Netherlands	225	11%

Kingdom								
United States	318	10%	Germany	30	3%	Spain	200	10%
Netherlands	225	7%	Poland	25	2%	Austria	167	8%

**19. Contact Point at Post for Public Inquiries**

- **NAME: Monica Dragan**
- **TITLE: IRC Director**
- **ADDRESS: B-dul Dr. Liviu Librescu 4-6**
- **TELEPHONE NUMBER: +40-21-200-3705**
- **EMAIL ADDRESS: DraganM@state.gov**