

# "Greenfield Investments versus Acquisitions in Romania"

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In recent years, foreign companies entered Romanian market either by acquiring a local producer (Acquisition) or by choosing to open new subsidiaries (Greenfield Investment). Depending on the actual situation, each of these alternatives has its pros and cons.

In this article, we aim to summarize the actual status of the legal framework and to underscore the advantages and disadvantages of Greenfield Investments and Acquisitions in various fields of law.

## **Corporate**

The Greenfield Investments do not present difficulties from a corporate perspective. Currently, a Romanian company may be established within three working days from the date the complete file is submitted to the jurisdictional Trade Registry. For Acquisitions, the procedure is significantly lengthier, usually involving a detailed Due Diligence and the negotiation of a share purchase agreement.

## **Competition**

For Greenfield Investments there are no specific issues to be considered. On the other hand, the Acquisitions must be carefully analysed, in order to be sure that the said transactions do not fall under the incidence of Romanian competition law (i.e. they do not fulfil the minimum thresholds provided for economic concentrations).

## **Taxation**

The Greenfield Investments should be carefully structured from a tax perspective. The investors usually establish Romanian special purpose vehicles, carefully considering every taxation aspect in advance (including the final taxation in case of an exit). By acquiring a local player, the future subsidiary is bought "as it is", with its current tax structure and its tax record.

## **Operating Permits**

For Greenfield Investments all the necessary operating permits (fire safety, health, labour and environmental protection permits) must be obtained by the newly established company, procedure that can prove to be rather lengthy and complicated. By acquiring a functioning company, in the vast majority of the cases, all these operating permits are already obtained by the acquired company.

## **Employment**

Obviously, for Greenfield Investments the entire human resources policy is developed from the very beginning. In case of an Acquisition, all the eventual employment issues (i.e. union conflicts, past employment litigation etc.) are indirectly inherited by the new shareholders.

## **Real Estate**

Romanian citizens and companies (irrespective of their shareholding) have the free and unrestricted right to acquire and own real estate. Until recently, Romanian legislation prohibited the acquisition of land by foreign entities. The Constitution of Romania was amended in 2003 in order to allow foreign companies the right to acquire land ownership rights in compliance with EU accession process. Regarding the building structures, the law does not provide any special conditions for the acquisition of ownership rights thereon. Foreign citizens may freely acquire ownership rights over building structures.

Residential and industrial construction works may be performed on the basis of a construction permit, which may be obtained by the titleholder or any other person holding a right to build on the land. During construction, the investor must observe the technical parameters and characteristics as per in the construction permit; any modification thereof requires a new construction permit.

Again, an advantage of Acquisitions is that the acquired company usually owns operating buildings or they already obtained all the necessary construction permits. For Greenfield Investments, all the necessary construction permits must be duly obtained, procedure that can be rather bureaucratic and time consuming.

In conclusion, each of the two presented investment options has its advantages and disadvantages and must be thoroughly analyzed on a case by case basis by the investor's legal, financial and tax advisors.

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