

Construction and projects in Romania: overview

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OVERVIEW OF THE CONSTRUCTION AND PROJECTS SECTOR

1. What are the main trends in the local construction and projects market? What are the most significant deals?

Main trends

In 2013, the Romanian construction market followed the decreasing trend of the previous year, reaching a total value of EUR9,000 million (compared with EUR9,330 million in 2012).

The main causes of this decrease, among other things, were:

- The inability of the authorities to promote public-private partnership projects.
- The severe decline of direct investments.
- The increase of the insolvency rate amongst construction companies.
- The political tensions and disputes.

However, in the first quarter of 2014, the number of residential projects increased due to:

- Decrease of credits costs.
- Increase of the number of transactions as a result of the price decline during the previous years.
- Reinstatement of the "Prima Casă" (First House) Project, granting credit facilities to young persons of up to 35 years old.

Still, the number of employees in the construction sector shows a negative trend, decreasing from 342,600 employees in 2012 to 336,000 employees at the end of 2013. The activity in construction in the first seven months of 2013 dropped by 2.2% as compared to the same period of 2012. However, in July 2013 Romania reported the largest construction market rise in the EU, with an increase of 8.6% in July 2013 as compared with the figures for June 2013, while the rise at EU levels was 0.7%, according to data provided by Eurostat. The following matters are worth highlighting:

- In Bucharest alone, 763 building permits for residential projects were issued in Romania in 2013.
- In Bucharest, in the last quarter of 2013, a number of 614 dwelling places were constructed as opposed to only 464 dwelling places completed during the same period of 2012.
- The first quarter of 2014 marked an increase of 7.6% in the number of new dwelling places, up to 8,270 units.
- The total construction materials market rose in 2013 to EUR3,200 million, an estimated value that is about 2-3% higher compared to 2012. The increase was due to the increase in the price of construction materials.

Major projects

The main construction projects in Romania include:

- **Bucharest One (48,732 square metres).** This is an investment by Ioannis Papalekas, a Greek businessman. The project is located in the Northern part of Bucharest. The construction is to be completed towards the end of 2015. Globalworth Real Estate Investments intends to invest EUR60 million into this project.
- **Vulcan Value Centre (25,200 square metres).** In the third quarter of 2014, NEPI plans to complete the Vulcan Value Centre located in Rahova, Bucharest, which is already 93% booked. The total investment on the project is of EUR47 million.
- **Targu Jiu Shopping City (26,800 square metres).** In the last quarter of 2014, NEPI (EUR30.1 million) plans to finalise the first construction phase of Shopping City Targu Jiu, which is already 85% rented.
- **Cișmigiu Hotel (9,790 square metres).** This is an investment of the Spanish Company Hecesa (EUR15 million), completed in December 2013. The building is composed of stores, offices and a 4-star hotel.
- **Promenada Mall (35,000 square metres), developed by Raiffeisen Evolution (EUR95.5 million).** Construction of this project started in 2012 and lasted for about 22 months. It was built by the Strabag group and was opened on the 17 October 2013. The total investment is about EUR300 million and it is a part of the Floreasca City project.
- **Floreasca City Center (16,000 square metres) and Sky Tower (41,000 square metres), developed by Raiffeisen Evolution.** Sky Tower was built by the Austrian construction company Strabag and has 37 floors measuring 1,150 square metres each (50,000 cubic metres of concrete and 8,300 tonnes of steel were used). It required credit of EUR95.5 million from Raiffeisen Vienna.
- **AdePlast polystyrene factory.** Romanian construction materials manufacturer AdePlast opened a EUR3.2 million polystyrene factory in May 2013. The new factory has an annual production capacity of 700,000 square metres of polystyrene. Overall, AdePlast has invested around EUR22 million in its three local platforms.
- **Cosmopolis Residential Complex.** In 2012, approximately 820 homes were delivered by the project developer Opus Project and Development, part of the Buyukhanli constructions group, in the Cosmopolis Residential Complex. They were the result of a EUR200 million investment over the previous five years. The project began in July 2007 and is due to be completed in 2014: 6,000 homes occupying a total of one million square metres. The total investment amounts to EUR700 million, planned to be realised in 2014.
- **Extreme Light Infrastructure-Nuclear Physics (ELI-NP).** The European project ELI-NP started the construction of the

compound that will host the highest laser in the world. It will be completed in 2014. The funds required rise to nearly EUR356 million. The construction of these buildings will be carried out by a consortium led by the Austrian group Strabag. The consortium also includes Zublin and Aedificia Carpati.

- **West Gate project (new stage).** A new stage of the West Gate project (14,000 square metres) is to be completed.

PROCUREMENT ARRANGEMENTS

2. **Which are the most common procurement arrangements if the main parties are local? Are these arrangements different if some or all of the main parties are international contractors or consultants?**

The main parties in a construction project are the:

- Employer (principal).
- Architect or designer.
- General contractor.
- Subcontractors.
- Project manager (engineer).

It is mandatory that the principal appoints an independent site manager (*diriginte de șantier*) to supervise and verify the works on site (for example, hidden works) and the contractor appoints a technical expert (*responsabil tehnic cu execuția*) to ensure that the works are undertaken.

The principal usually concludes separate contracts with the architect, the contractor and the project manager.

The contractor concludes contracts with its subcontractors, but in most cases the principal requires that it be notified in advance of any subcontractor appointment or that its prior approval is necessary to appoint a subcontractor.

Contracts between the parties can be freely negotiated, except in the case of public procurement awards, PPP projects and in other specific situations (for example, EU-financed projects) when particular contract templates must be used and specific requirements must be fulfilled by the parties. Design and build agreements are the most commonly used.

These arrangements are used in the case of both national and international contractors.

TRANSACTION STRUCTURES

3. **What transaction structures and corporate vehicles are most commonly used in both local and international projects?**

Local projects

Special purpose vehicles (SPVs) are most commonly used in construction projects. The transfer of property is usually made by selling the SPV on completion of the construction project. In the case of office buildings, the SPV is usually sold after the office building has been rented out.

In some cases, SPVs are used with joint ventures. In this situation the parties of the joint venture are shareholders of the SPV.

International projects

The same types of transaction structures and corporate vehicles are used for both local and international projects.

FINANCE

4. **How are projects financed? How do arrangements differ for major international projects?**

Loans secured by collateral or parent companies' loans are the most used instruments for financing construction projects. Public authorities or publicly held companies also use bond issues and mezzanine finance.

EU funds are also used for financing constructions that are part of more complex projects.

SECURITY AND CONTRACTUAL PROTECTIONS

5. **What forms of security and contractual protections do funders typically require to protect their investments?**

Security

Funders typically require:

- Real property mortgages.
- Movable property mortgages (including share mortgages).
- Pledges.
- Parent or affiliated companies' guarantee letters.

Contractual

Funders usually require:

- Property and/or works' insurance.
- Put options.
- Assignment of contractual rights.
- Step-in rights.
- Veto rights.
- Rights of first refusal.
- Drag-along and tag-along rights.

STANDARD FORMS OF CONTRACTS

6. **What standard forms of contracts are used for both local and international projects? Which organisations publish them?**

Local projects

No standard forms of construction contract are produced in Romania.

National and international projects usually use international standard contracts, particularly those produced by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*) (FIDIC), unless the parties choose to use their own standard contracts. However, standard contracts are amended to incorporate Romanian law requirements on engineering, design and build. In most situations, contracts for engineering projects differ from designer and construction contracts.

Contractors of foreign origin prefer to have their own draft adapted to comply with Romanian law.

The following contracts must be used for public investment projects in the national transportation infrastructure, if the estimated value of the contract exceeds EUR5 million:

- **FIDIC Conditions of Contract for Construction.** These are used for building and engineering works designed by the employer.
- **Conditions of Contract for Plant and Design-Build Projects.** These are used for electrical and mechanical plant, and for building and engineering works, designed by the contractor.

The Particular Conditions issued by the Ministry of Transportation must be also considered.

For more complex projects, for example projects on the rehabilitation of power plants, the Conditions of Contract for Design, Build and Operate Projects (DBO) are also used.

For further information on FIDIC contracts, see *Practice note, FIDIC Forms of Contract*.

International projects

Construction contracts for international projects do not differ significantly from contracts for national projects. FIDIC standard contracts (as amended to comply with Romanian law) are often used for international projects.

For further information on FIDIC contracts, see *Practice note, FIDIC Forms of Contract*.

In Romania the most popular FIDIC conditions are FIDIC Conditions of Contract for Construction and Conditions of Contract for Plant and Design-Build Projects.

CONTRACTUAL ISSUES

Contractors' risks

7. What risks are typically allocated to the contractor? How are these risks offset or managed?

The contractor usually bears all risks related to construction until the principal takes it over. Risks related to material price escalation are generally borne by the contractor given that the parties usually agree lump sum prices or prices set based on fixed unit prices.

Risks related to the conditions of the ground are usually borne by the principal or by the designer.

Excluding liability

8. How can liability be excluded or restricted under local law?

Under Romanian law, the contractor is liable only for direct damages (effective damage and loss of profit), unless otherwise agreed by contract. Parties can contractually exclude responsibility of the contractor on any issue, provided that the damage was not caused intentionally or by serious fault of the contractor or it did not cause prejudice to life, health or bodily injury.

The designer's and the contractor's legal liability related to the quality of the construction works cannot be excluded for the legal liability period. In this respect, a legal liability period of ten years for hidden defects applies (from the date that the principal takes over the works). In addition, a lifetime liability period applies in relation to the foundation's defects. However, the designer or the engineer is not held liable for defects if it proves that the defects are not due to deficiencies of the appraisals and plans supplied by them, or lack of a diligence in co-ordinating or supervising the works respectively, or to decisions imposed by the principal with respect to choosing the land, materials, subcontractors, experts or construction materials, provided that the defects were notified to the principal. The contractor is not held liable if it proves that the defects are due to deficiencies in the appraisals and plans supplied by the designer or the engineer chosen by the principal, or to decisions of the principal with respect to choosing the land,

materials, subcontractors, experts or construction materials, provided that the defects were notified to the principal.

Caps on liability

9. Do the parties usually agree a cap on liability? If yes, how is this usually fixed? What liabilities, if any, are typically not capped?

There is no unified practice in relation to establishment of a cap on liability. If agreed, it is usually established as a percentage of the entire value of the contract (usually with a minimum of 10%). Usually only the delay penalties are capped.

Force majeure

10. Are force majeure exclusions available and enforceable?

Force majeure exclusions are available and enforceable under Romanian law. Force majeure is defined as an external, absolutely unpredictable and uncontrollable event. To avoid disputes relating to force majeure events, the parties usually define them in the contract.

On occurrence of an event, it must be certified as a force majeure event by the Romanian Chamber of Commerce and Industry (an independent body) and the parties must make themselves aware of when the event started and ended.

If the parties want to, they can agree in the contract that liability can still arise on the happening of a force majeure event.

Material delays

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

To avoid material delays to the project, delay penalties are usually contractually agreed for situations when the works for a certain construction stage or for the entire project are not completed on time, amounting to either:

- A percentage of the entire value of the contract or of a certain construction stage.
- A lump sum for each day of delay.

In most situations, the total value of delay penalties are capped to the contract's value or to a lower value agreed by the parties.

Immediate termination and site clearance clauses in the case of extended delay or suspension of works are often used.

Material variations

12. What contractual provisions are typically negotiated to cover variations to the works?

The contract usually provides that the costs and effects on timing of variations to the works are to be agreed separately by the contractor and the employer at the time that such variations occur by concluding addendums to the contracts. Particularly in contracts where the pricing structure is based on unit prices, the parties contractually agree that variations will trigger a pro rata increase in the price as well as an extension to the duration of the works.

In some cases, the contract allows for a certain amount of variation in the contract as a percentage of the whole project's value (for example, a maximum of 10%), which does not trigger the modification of the initial timing and price agreed by the contract.

If material variation to the work exceeding the agreed maximum amount occurs, the parties must agree on the timing and costs triggered by that variation.

Other negotiated provisions

13. What other contractual provisions are usually heavily negotiated by the parties?

The parties usually heavily negotiate the following contractual provisions:

- Completion and taking over of works.
- Guarantees and securities.
- Penalties and limitation of liability.
- Termination and works suspension.
- Employer's step-in rights in agreements between the contractor and subcontractors.
- Transfer of property over the partial works.
- Risk of delay in completion due to delays caused by authorities or reasons outside the parties' control.

ARCHITECTS, ENGINEERS AND CONSTRUCTION PROFESSIONALS

14. How are construction professionals usually selected? Following selection, how are they then formally appointed?

In more complex projects, engagement letters are initially used, but construction professionals are usually appointed by contract or sometimes following a tender procedure. The tender procedures are usually used in the case of public procurement awards, PPP projects and EU-financed projects when particular contract templates and special procedures are imposed by the legal provisions or by the financing contracts.

15. What provisions of construction professionals' appointments are most heavily negotiated? Are liabilities routinely limited or capped in construction professionals' appointments?

The provisions of construction professionals' appointments that are most heavily negotiated concern the liability of the construction professionals. Often, and particularly in large projects, fit for purpose obligations are used. The liability of the construction professionals (including the designers) is not usually capped.

However, sometimes it is capped in design and build contracts, together with liability for the construction works, to up to 10% of the contract's value. Even where caps exist, the legal liability period of ten years for hidden defects (from the date that the principal takes over the works), and for the lifetime concerning the foundation's defects, cannot be excluded. Under the new Civil Code, the designer or the engineer cannot be held liable for defects only where it proves that the defects are not due to deficiencies of the appraisals and plans supplied by the designer or engineer, or lack of diligence in co-ordinating or supervising the works respectively, or they are due to decisions imposed by the principal with respect to choosing the land, materials, subcontractors, experts or construction materials, provided that the defects were notified to the principal.

PAYMENT FOR CONSTRUCTION WORK

16. What are the usual methods of payment for construction work? Are there ways for the contractor and consultants to secure payment or mitigate risks of non-payment under local law?

Methods of payment

Construction work is usually paid based on the contract either:

- In several instalments, due on completion of each stage of work, as established by an agreed work schedule.
- Monthly, depending on the works' development.

An advance payment is usually made on execution of the agreement or commencement of the works. The advance payment is usually deducted from each of the remaining payments, which are usually made by instalment (on a pro rata basis) or from the last instalment. The principal may also have to provide a bank or parent shareholder guarantee to secure the payment.

Statutory or legal procedures for paying the contractors are only imposed in relation to public procurement awards, PPP projects and in assimilated situations (for example, EU-financed projects).

Securing payment

Although not often used in practice in small or mid-sized projects, the contractor can also contractually require the principal to provide security over the land or property or other payment bond or parent guarantee up to the value of its payment obligations.

The architect, contractor and their employees will have a legal mortgage over the construction (not the land) to ensure the recovery of amounts they are entitled to for performing the construction works. The contractor's subcontractors and/or employees have a direct claim against the principal in relation to performance of the construction works if and to the extent the principal owes money to the contractor.

SUBCONTRACTORS

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

In relation to its subcontractors, the contractor acts as an employer. The principal has no contractual rights in relation to subcontractors. However, the contractor is fully responsible to the principal for the works performed by subcontractors.

The subcontractor is responsible to the contractor as it would be to a principal. As a result, the subcontractor indemnifies the contractor for the work it does and the latter indemnifies the principal in relation to the subcontractor's works.

Subcontractors can claim from the principal any payments they are entitled to for performance of the construction works, if and to the extent the principal owes money to the contractor.

LICENSING

18. What licences and other consents must contractors and construction professionals have to carry out local construction work? Are there any specific licensing requirements for international contractors and construction professionals?

Architect

Architects must both:

- Have an architecture university degree.
- Be registered on the National Architects Table (NAT) on fulfilment of professional experience criteria set by Directive 2005/36/EC on the recognition of professional qualifications and approval of their signatory rights.

This also applies to citizens of the EU, EEA and Switzerland. Those who are qualified architects and have signatory rights in their state of residence can perform their activity in Romania without obtaining further approvals. However, if the architect wishes to set up a permanent establishment in Romania, he must register in the NAT.

Site manager

The site manager must both:

- Be registered with the Registry of Site Managers.
- Hold a licence issued by the State Construction Inspectorate (*Inspectoratul de Stat în Construcții*) (ISC).

EU and EEA citizens can acquire a site manager licence under the same conditions as Romanian citizens. Those who have acquired a site manager licence in their state of residence can perform their activity in Romania without obtaining further licences. However, if the site manager wishes to set up a permanent establishment in Romania, he must register on the Registry of Site Managers.

Security and health co-ordinator

The security and health co-ordinator during the design drawing up or during the construction works performance must both:

- Have at least five years' professional experience.
- Provide proof of specialised training performed every three years.

Companies

All the companies involved in a construction project must carry out the activities to be performed in their normal line of business and be registered with the relevant trade registry.

19. What licences and other consents must a project obtain?

Before

To carry out construction works, contractors generally must provide the principal with, or obtain for the principal, all of the following:

- Zoning certificate issued by the local public authorities.
- Local zoning plan (PUZ) to amend zoning conditions (where relevant), issued by the local public authorities.
- Detailed zoning plan (PUD) to detail the specific construction modalities, issued by the local public authorities.
- Building permit, issued by the local public authorities.
- Approvals and/or permits requested for the issuance of the building permit, which are issued by different bodies, depending on the construction project (for example, approval by utilities suppliers, permits issued by the environmental authorities and any approvals from the emergency services body).

During

During construction of a building, the contractor is responsible for seeking verification from the State Construction Inspectorate (*Inspectoratul de Stat în Construcții*) (ISC) (*see box, Main construction organisations*) in relation to:

- Essential phases of the works.
- Conclusion of the related protocol.

- Takeover of the works by participation of an ISC representative (as decided by ISC) and in relation to the conclusion of the takeover protocol.

The ISC must be immediately notified if there is a technical accident on site.

Environment protection authorities must be notified if accidents affecting the environment occur or the conditions considered for granting the environment permit have changed.

On completion

A takeover commission verifies the completion of the works. The takeover commission is usually composed of the employer's representative, the local administrative authority's representative and three construction specialists, one of which could be appointed by ISC. The completion of the works is ascertained officially by a takeover protocol. For buildings of exceptional importance, the takeover commission has seven members. Five of these members are construction specialists, one of which is mandatorily an ISC representative. The designer is entitled to establish if the buildings are of exceptional importance depending on their vital implication in society and in the natural environment and their risk level from the security and health perspective, the operational implication of the buildings in the socio-economical field, within the built environment and within the natural environment (building utilisation) and the particularities of the building, such as its complexity and economic impact.

On expiry of the contractual defects liability period, the parties execute a final takeover protocol, following the takeover commission's verification of the works.

The beneficiary must obtain fire safety and civil protection permits for the building issued by the local inspectorates. Depending on the envisaged use of the works/building and local requirements, additional permits may be required.

PROJECTS INSURANCE

20. What types of insurance must be maintained by law? Are other non-compulsory types of insurance maintained under contract?

Compulsory insurance

The only construction-related insurance required by Romanian law relates to professional indemnity insurance (for example, the designer's).

Non-compulsory insurance

The parties usually agree that the designer or contractor and other parties involved in the construction work obtain insurance policies covering:

- Personal, third party and employees' injury caused on site by the work or equipment.
- Property damage (including damage to the works and damage to the contractor's equipment).

LABOUR LAWS

21. Are there any labour law requirements for hiring (local and foreign) workers?

The general labour law requirements apply in relation to the hiring of construction employees.

Local workers

An employment contract must be concluded and registered with the employees' general registry held by the local labour authorities

for each employee. To hold certain positions, employees must comply with educational and professional experience requirements specified by the Classification of Occupations (*Clasificarea ocupațiilor din România*).

Foreign workers

Provisions regarding national employees are also applicable to foreign employees.

In addition, foreign employees must obtain a:

- **Residence certificate.** This applies to foreign employees who are EU or EEA citizens working and residing in Romania for more than three months.
- **Labour permit.** This applies to non-EEA citizens who work in Romania. A labour permit is valid for one year but its validity is extended automatically for periods of one year until the termination of the employment agreement. The number of labour permits granted each year is determined by Government Decision (for example, in 2014 there are 3,000 permits for permanent employees and 900 permits for posted employees). Certain persons, such as managers of Romanian subsidiaries or representative offices of foreign companies, and workers with permanent residence in Romania, are exempted from applying for a labour permit.
- **Long stay visa for labour purposes.** This applies to non-EEA citizens from certain countries in addition to and based on the labour permit.
- **Temporary stay permit for labour purposes.** This applies to non-EEA citizens working in Romania with a labour permit who require an extension of their staying period initially granted by long stay visa. The temporary stay permit for labour purposes can be renewed for successive one-year periods if the employee meets the conditions for the validity of his labour permit.

22. Which labour laws are relevant to projects?

An employer in the construction field should observe the conditions set by the Labour Code (*Codul muncii*) and other applicable legislation, such as:

- Government Decision No. 871/2013 setting the minimum gross wage for an employee at RON900.
- Law 215/1997, establishing the employer's obligation to:
 - contribute 1.5% of its monthly proceeds to the Construction Social Organisation (*Casa Socială a Constructorilor*) (CSC);
 - ensure that employees contribute to the CSC to protect employees during work interruption due to unfavourable weather conditions.

23. Must an employer pay statutory redundancy or other payments at the end of a project? Are all employees eligible?

Under Romanian law, there is no obligation to pay statutory redundancy or other payments at the end of a project.

HEALTH AND SAFETY

24. Which health and safety laws apply to projects?

Government Decision (GD) No. 300/2006 on security and health minimum requirements for temporary and mobile sites, sets health and safety requirements for construction projects (*Hotărâre privind*

cerințele minime de securitate și sănătate pentru șantierele temporare sau mobile). The principal's and/or project manager (engineer)'s (if any) main duties are:

- To appoint a security and health co-ordinator when designs are drawn up, if several designers are involved in the project.
- To appoint a security and health co-ordinator during performance of the works if several contractors, subcontractors or freelancers are involved in the project.
- To ensure that a security and health plan is drawn up before the site opens.
- If the estimated length of the works is more than 30 days, and will be performed by more than 20 workers simultaneously, or if the works will be performed by more than 500 workers a day, to post a notice in a visible location, which sets out, among other things:
 - details of the project;
 - the estimated length of the works;
 - details of the principal, project manager, and security and health co-ordinators;
 - information on the number of contractors, subcontractors and estimated number of workers on site.

The principal is liable for all duties performed by the security and health co-ordinators on the project.

In addition, general health and safety legislation applies:

- Law No. 319/2006 on work safety and health (*Legea securității și sănătății în muncă*).
- GD No. 355/2007 on the surveillance of workers' health (*Hotărâre privind supravegherea sănătății lucrătorilor*).
- GD No. 1091/2006 on minimum safety and health conditions in the workplace (*Hotărâre privind cerințele minime de securitate și sănătate pentru locul de muncă*).
- GD No. 971/2006 on minimum signalisation requirements in relation to safety and health conditions in the workplace (*Hotărâre privind cerințele minime pentru semnalizarea de securitate și/sau de sănătate la locul de muncă*).

ENVIRONMENTAL ISSUES

25. Which local laws regulate projects' effects on the environment?

Projects' effects on the environment are mainly regulated by Emergency Government Ordinance (GEO) No. 195/2005 on environmental protection, regulating the basic principles and procedures applicable to environmental protection in Romania, including in relation to construction projects.

Air

The following matters must be considered:

- The Technical Conditions for Air Protection 1993 (*Condiții tehnice privind protecția atmosferei*), setting statutory emissions limitations for buildings and installations. The environment protection authorities monitor observance and issue environmental approvals.
- Law No. 104/2011 on quality of the air, regulating the measures to be taken and the requirements to be fulfilled for ensuring protection of the quality of air.
- Contractors must also consider emissions limitations when selecting their equipment.

Water

The following matters must be considered:

- Law No. 107/1996 on water. Construction works on, near or in relation to water can only be undertaken if the approval of the Romanian water management authority (*Administrația Națională "Apele Române"*) and a water management permit has been obtained.
- In some situations, additional approval of the location of construction works and operations must be obtained (for example, water dam parameters modification). If the construction works interfere with water transportation routes, an authorisation from the transport authorities is required.

Waste

Law No. 211/2011 on the waste regime and GD No. 856/2002 on evidence of waste management and waste (which contains provisions on dangerous waste) must be considered. Construction waste must be treated, transported and eliminated by the principal, the contractor or by an authorised third party in accordance with the contract and the requirements imposed by local authorities, in view of complying with the waste recycling and recovery target until 2020.

Environmental impact assessments (EIAs)

Legislation on environmental impact assessment consists mainly of:

- Methodology for environmental impact assessments for public and private projects, approved by Order No. 135/2010.
- Law No. 278/2013 on industrial emissions.
- Procedures for the issuance of environmental authorisations, approved by Order No. 1798/2007.
- GD No. 445/2009 regarding the assessment of the impact of some public and private projects on the environment.
- An environmental impact assessment and approval is required for projects with a significant environmental impact. Approval is necessary to obtain a building permit. After completion, but before operation of the construction or plant, an environmental permit must be applied for and obtained.

Examples of activities that have a significant environmental impact are:

- Thermo power plants.
- Oil and gas facilities.
- Nuclear power plants.
- Power lines.
- Steel and other metal processing facilities.
- Glass processing facilities.
- The construction of railways, airports, ports, roads, water purification facilities, cellulose and cardboard manufacturing facilities.

Particular environmental requirements for certain construction projects are also set by General Urban Planning Regulation (*Regulamentul general de urbanism*), approved by GD No. 525/1996 (for example, construction projects with technological risks, in forests, natural sites or reservations, or concerning railway infrastructure).

Sustainable development

There are no special provisions on sustainable construction practices, but aspects related to construction are considered in the national strategy for sustainable development, approved by GD No. 1460/2008 on approval of the national strategy for sustainable

development (2013-2020-2030). This aims to bring Romania into line with other European countries by 2030.

26. Do new buildings need to meet carbon emissions or climate change targets?

Romanian legislation includes several provisions that emphasise the importance of energy efficiency.

In relation to buildings, the most relevant regulation to construction is Law No. 372/2005 on buildings energy efficiency, which sets (among other things) minimum requirements for new buildings, as determined by the ministry in charge of construction activities, the Ministry of Regional Development and Tourism (*Ministerul Dezvoltării Regionale și Turismului*). Also, the new regulations introduced by Order of the National Energy Regulatory Agency no. 38/2013 on the approval of the Regulation on authorising buildings' energy efficiency auditors (*auditori energetici pentru clădiri*) and the Regulation on attesting energy efficiency managers and accreditation of companies supplying energetic services must be considered.

Several obligations concerning energy efficiency are imposed on public and private entities by Law No. 121/2014 on energy efficiency.

In 2010, the Ministry of Economy, Commerce and Business Environment executed the National action plan in the field of renewable energy (*Planul național de acțiune în domeniul energiei din resurse regenerabile*), setting compulsory targets to be reached by 2020.

Several regulations on the joint implementation mechanism set by the Kyoto Protocol imposing energy efficiency conditions on qualifying eligible projects have also been adopted.

PROHIBITING CORRUPT PRACTICES

27. Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

Rules

There are several generally applicable legal provisions prohibiting corrupt business practices (for example, illegal state grants, blackmail and using state grants or credits for purposes other than those they were granted for) and bribery, but not specifically targeted at the construction industry. In particular, the Criminal Code (*Codul penal*) and Law No. 78/2000 on the prevention, disclosure and sanctioning of corrupt actions are important.

Penalties

The penalties for committing a criminal offence in this area are:

- Imprisonment for between one to 18 years (including extensions for serious offences and function of the offender) plus, in certain cases, prohibition on the ability to exercise certain civil rights. These penalties apply to natural persons only.
- A fine of between RON100 and RON5,000 per day applied for a period between 30 and 300 days, which is increased by one third if the offending company obtains a patrimonial benefit, but without exceeding 600 days and, if deemed necessary by the court of law, one or several of the following:
 - dissolution of the offending company;
 - suspension of the entity's activities or a particular activity for between three months and three years;
 - closure of a work unit for between three months and three years;

- a prohibition on participating public procurement procedures for one to three years;
- judicial supervision of the offending company;
- publication of the court's decision (for legal entities).

BANKRUPTCY/INSOLVENCY

28. What rights do the client and funder have on the contractor's bankruptcy or insolvency?

Although a principal usually wishes to ensure by contract its right to terminate the contract on the contractor's insolvency, any contractual clauses providing for termination of the contract due to insolvency proceedings are void (*Insolvency Prevention and Insolvency Law No. 85/2014 (Lege privind procedurile de prevenire a insolvenței și de insolvență)*).

The judiciary administrator or liquidator both:

- Can unilaterally terminate any contract to assist the debtor's finances if the contract will not be performed completely or substantially by all involved parties.
- Must respond within 30 days to the other party's (who can be also the principal) notification that the contract is to be terminated. If it does not, the contract will be deemed unilaterally terminated. The other party (the principal) can then claim damages from the contractor (debtor).

Under the recently enacted *Insolvency Prevention and Insolvency Law No. 85/2014*, a limitation period of three months from the opening of the insolvency proceedings has been instated in relation to the right of the judiciary administrator or liquidator to unilaterally terminate any contract, as well as to the right of other party's (who can be also the principal) to notify the judiciary administrator or liquidator that the contract is to be terminated, as mentioned above.

Employment contracts and respectively lease agreements (by the lessee) can be terminated only by observing the legal prior notice periods. Special provisions apply for termination of financing lease agreements and agreements providing retention of title. Damages can be claimed from the insolvent debtor before the insolvency judge.

Still, to recover any outstanding amounts from an insolvent contractor, the principal must make a creditor declaration and become involved in the insolvency procedure. It must wait until the completion of the liquidation procedure, when the insolvency proceeds are distributed pro rata to the contractor's creditors, after the secured debts have been paid.

Under certain conditions, creditors with debts secured by mortgage, pledge or any other mobile security or retention right can require enforcement of their security in advance.

PPPS

29. Are public private partnerships (PPPs) common in local construction projects? If so, which sectors commonly use PPPs?

PPPs have been regularly used in construction projects in Romania, particularly in infrastructure development (transport, energy and water), national security and defence, environment, industry and commercial centres.

30. What local laws apply to PPPs?

Law No. 178/2010 on public-private partnership and Government Decision No. 1239/2010 approving the regulations for application of Law No. 178/2010 establish rules for the initiation and performance of PPP projects for public works in various domains of activity, with private financing.

Other relevant legislation includes:

- Law No. 215/2001 on local public bodies.
- Law No. 50/1991 on authorising construction works.

Although not included in the classic PPP legislative framework, relevant legislation regulating collaboration between public authorities and private entities is:

- GEO No. 34/2006 on the award of public procurement contracts, public works assignment contracts and services assignment contracts.
- GEO No. 54/2006 on the legal regime governing public property concession contracts.

A draft new PPP law was proposed in 2013 and is subject to approval by the Romanian Parliament.

31. What is the typical procurement/tender process in a PPP transaction? Does the government or another body publish standard forms of PPP project agreement and related contracts?

The main stages of the tender process for the conclusion of PPP agreements are:

- Publication of intention announcement.
- Distribution of tender documentation.
- Submission and registration of intention letters and corresponding bidders' files.
- Opening of intention letters and files.
- Assessment of intention letters and related documents.
- Drawing up of assessment report and its approval by the public partner.
- Invitation of the selected bidders to negotiate and conclude a project agreement.
- Negotiation with all selected bidders concluding the project agreement for the purposes of choosing the winner.
- Presentation of final offer of the private partner resulted following negotiation.
- Conclusion and publication of PPP contract with the winner.

DISPUTE RESOLUTION

32. Which are the most common formal dispute resolution methods used? Which courts and arbitration organisations deal with construction disputes?

Formal dispute resolution methods

The most common dispute resolution method used for construction contracts is arbitration. However, for contracts of lower value, disputes are commonly resolved by litigation before the law courts.

Courts and arbitration organisations

There are no specific construction courts or tribunals in Romania. Depending on the nature of litigation, the civil, commercial or administrative courts determine the matter.

Construction disputes are usually arbitrated by the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (see <http://arbitration.ccir.ro/engleza/index.htm>).

33. What are the most commonly used alternative dispute resolution (ADR) methods?

Apart from arbitration, ADR is rarely used in Romania. The most common ADR methods are adjudication (especially in FIDIC contracts), the effective enforceability of which in Romania is debatable, and expert determination.

For more information on ADR under FIDIC contracts, see *Practice note, Dispute boards: what are dispute boards?*

TAX

34. What are the main tax issues arising on projects?

Value added tax (VAT)

As a general rule, the supply of any of the following is VAT exempt:

- A building or a part of it.
- The land where the building is situated.
- Any other land.

Those eligible to pay VAT can choose to pay VAT for the exempt transactions in relation to the types of land and buildings mentioned above by application to the tax authorities.

However, new buildings or their parts, or any land that can be used for building, are subject to 24% VAT. A building or its parts is new (this includes buildings structurally modified or for which modification costs amount to a minimum of half of the market value after modification, excluding land) if it was supplied to the owner (buyer) at the latest up to 31 December in the year following the first occupation or use of the building or a part of it following construction or modification.

A reduced VAT rate of 5% is applicable for the delivery of social dwellings (including corresponding land), namely:

- Nursing homes.
- Orphanages and rehabilitation centres for disabled minors.
- Dwellings ready for use and acquired by single persons or families, who have not previously benefited from the 5% VAT reduced rate. This only applies to buildings with a surface area of up to 120 square metres, that are worth (including land) up to RON380,000, excluding VAT, and are built on land not exceeding 250 square metres.
- Buildings supplied to local governments that are to be leased at a low rent to low income persons or families.

The contractor's services are subject to 24% VAT, which is calculated on the basis of the service's invoiced price.

The transfer of shares in a property company is VAT exempt.

Stamp duty/transfer tax (or equivalent)

The rate of property transfer tax depends on whether:

- The seller is a legal entity. In this case, the property transfer is subject to a tax on profit, which is currently 16%.

- The seller is a private individual. In this case, the capital gain obtained from the transfer of property is calculated on the basis of how long the seller owned the property:

- for buildings and land owned for less than three years: 3% of the price if the price is less than RON200,000 or, if the property price exceeds RON200,000, RON6,000 plus 2% of the amount that exceeds RON200,000;
- for buildings and land owned for at least three years: 2% of the price if the price is less than RON200,000 or, if the price exceeds RON200,000, RON4,000 plus 1% of the amount in excess of RON200,000.

Other important charges related to the transfer of property are:

- **Notary public fees.** These are calculated based on the value of the property agreed in the sale and purchase agreement, which cannot be less than the minimum value of similar property as established by the local notaries public chamber. The fees to be paid are set out in the Annex to the regulations governing notary public's fees (Order No. 46/2011) (*Norme cu privire la tarifele de onorarii pentru serviciile prestate de notarii publici*).
- **Land Book registration tax.** Regulations governing this are contained in the Order of Ministry of Administration and Internal Affairs (Order No. 39/2009) (*Ordin privind aprobarea tarifulor pentru serviciile furnizate de Agenția Națională de Cadastru și Publicitate Imobiliară și unitățile sale subordonate și a taxei de autorizare pentru persoanele care realizează lucrări de specialitate din domeniile cadastrului, geodeziei și cartografie*). The Order sets the amount of the fee to be paid, which is based on the value of the property (as established in the sale and purchase agreement).

Other relevant taxes/duties

Other construction project related taxes or duties that should be considered are:

- Zoning certificate tax. Further tax is payable if the zoning certificate's validity is extended.
- Building permit tax. Further tax is payable if the building permit's validity is extended and if the building permit is modified.
- Excavation permit tax.
- Architectural tax (0.5% of the investment value) to be paid at the same time as the building permit tax.
- Tax on the issuance of approvals and endorsements that enable the building to be connected to utilities.
- Taxes related to obtaining other approvals specified within the urban planning certificate (for example, environmental approval).
- Taxes related to zoning and quality control.

Once an entity or person owns a building and registers it with the tax authorities, the owner is eligible to pay ownership tax on the building. The tax rate depends on the building's dimensions, technical characteristics and location.

As of 1 January 2014, a new tax has been introduced on constructions other than buildings, which are included in group 1 of the Catalogue regarding classification and normal operation periods of fixed assets (approved by Government Decision no. 2139/2004). There are several exceptions concerning, for example, buildings consolidation and state-owned property modification or consolidation. The tax is computed by applying a 1.5% rate to the accounting value of the constructions existing in patrimony as of 31 December of the previous year, except for certain elements, such as the value of buildings. The persons liable to pay construction tax are the Romanian legal entities (with certain exceptions, which include public institutions, foundations and so on), the permanent

establishments in Romania of foreign legal entities and the legal entities set up in Romania as per European legislation.

Revenues resulting from construction services performed by Romanian companies (and/or foreign companies with a permanent establishment in Romania) are included in entity's taxable base and may be subject to profit tax at the rate of 16%.

Unless a double tax treaty applies, revenues from construction services performed by foreign companies (without a permanent establishment), under certain circumstances, are also subject to profit tax at the rate of 16%.

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

No common methods are used to mitigate tax liability on construction projects. However, several incentives or exemptions from local taxes due for building permits and/or approvals are applicable depending on:

- Who the principal is (for example, a public entity, social organisation or church organisation).
- The type of works (for example, infrastructure and residential).
- The circumstances (for example, if there is an emergency situation).

In particular, building permit tax is not payable on:

- Emergency works where a building represents a public danger.
- In relation to holy places and historical monuments (except for buildings in which commercial activities are performed).
- Works to improve public transport infrastructure.
- Works of public, local or county interest.
- Works whose beneficiaries are public institutions.
- Works regarding highways and railways conceded under GEO No. 34/2006.

Tax incentives apply in relation to buildings' energetic audit, design and regeneration works to ensure dwelling buildings thermal energy efficiency, where the project has been approved by the relevant ministry and within the limits of the approved budget.

OTHER REQUIREMENTS FOR INTERNATIONAL CONTRACTORS

36. Are there any specific requirements that international contractors or construction professionals must comply with?

There are no special requirements for foreign contractors operating in Romania. They are governed by the same rules as national contractors. In this regard, they must:

- Be qualified to perform the works.
- Obtain all necessary building permits and/or approvals.

- Comply with all on site obligations.

Foreign contractors must also comply with compulsory Romanian construction standards and legal provisions regarding the quality of construction works, including the legal defects liability period.

Foreign contractors normally have at least a permanent establishment in Romania, given that construction projects usually last at least six months and they require a construction site for their performance.

REFORM AND TRENDS

37. Are there any proposals to reform construction and projects law? Are there any new legal or regulatory trends affecting projects?

Reform proposals

Significant changes to the tax on buildings system are envisaged. The draft law is still under public consultation and to date it has already been subject to successive amendments.

A new PPP law has been expected to be introduced since 2013. The new PPP law is expected to better define the type of projects within its scope of application, to regulate a unitary awarding procedure, to offer better securities to the financiers and to create the premises for a more flexible method for defining the technical and economical parameters of the project. The draft law is subject to approval by the Romanian Parliament, following the decision of the Romanian Constitutional Court on unconstitutionality of some provisions in its previous version.

There are no other current significant proposals for reform of the construction and projects legislation.

Trends

Construction projects may be influenced in the future by the additional formalities required for sale of land located outside the build-up areas regulated by the recently enacted Law no. 17/2014. This law provides a pre-emption right in favour of co-owners, lessees, neighbours and Romanian state, at equal price and under the same terms, for purchase of such land, which implies delays in the process of acquisition of the land and potential challenges or claims in relation to such acquisition.

Case law in the construction and project field continues to develop in light of the new relevant provisions of the Civil Code that entered into force on 1 October 2011. An important amendment introduced by the new Civil Code relates to the transfer of immovable property. Starting with the moment when the local cadastral works for each cadastral area in Romania are completed, the transfer of immovable property will be effective only as of the registration of the new owner with the Land Book. Until this date, the transfer of immovable property is effective as of the conclusion of the sale-purchase agreement (unless otherwise agreed by the parties), the registration with the Land Book being performed only for publicity purposes. Most of the local cadastral works are not completed yet and no significant progress has been registered in this respect recently.

It is deemed that the evolution of the construction market in 2014 depends on the state budget for infrastructure works and on the measures for upgrading public procurement legislation.

MAIN CONSTRUCTION ORGANISATIONS

State Construction Inspectorate (*Inspectoratul de Stat în Construcții*) (ISC)

Main activities. The ISC ensures observance with rules governing urban planning and construction. It also ensures uniform application of legal provisions concerning the quality of construction.

W www.isc-web.ro

Ministry of Regional Development and Public Administration (*Ministerul Dezvoltării Regionale și Administrației Publice*)

Main activities. This Ministry is in charge mainly of regional planning and development, cross-border, transnational and inter-regional co-operation, urban planning and zoning, construction of dwellings, construction discipline, public works and central and local administration, regional and local finances, community public services development, state aid granted by the local public administration, the scheduling, co-ordination, monitoring and control of use of the EU funds regarding the projects from its field of activity.

W www.mdrt.ro

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

Main activities. This is a non-profit non-government organisation, which promotes use of valuation methods and techniques in several sectors, including real estate.

W www.anevar.ro

Ministry of Environment and Climate Changes (*Ministerul Mediului și Schimbărilor Climatice*)

Main activities. This Ministry is in charge of environmental protection, water administration, environmental conservation, management of environment-related project financing programmes, and implementation of EU law in this area. It also issues approvals for construction projects that have environmental implications.

W www.mmediu.ro

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

Main activities. This is a non-profit professional non-government association that supports its member companies' economic and technical interests.

W www.araco.org

ONLINE RESOURCES

Official Gazette of Romania

W www.monitoruloficial.ro

Description. This is the official website of the *Official Gazette of Romania* where all the normative Acts and other deeds are published as under the legal requirements. The documents published in the *Official Gazette of Romania* can be read online free of charge for ten days as of their publication. The *Official Gazette of Romania* is maintained by the Self-Governed Company "Monitorul Oficial", an autonomous public interest entity under the authority of the Deputies Chamber of the Romanian Parliament.

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Professional qualifications. Romania, 2005

Areas of practice. Real estate and construction; infrastructure and utilities; energy, natural resources and environment; public procurement, concessions and PPPs; employment and benefits; insurance.

Recent transactions

- Advising and assisting a Toronto-based company in acquiring 11 micro-hydro power generation plants throughout Romania in a very complex high volume transaction on the local renewable energy market.
- Advising and assisting one of the world's biggest energy producers in contractor agreements for rehabilitation works in view of oil exploration, development and production.
- Advising and assisting one of the leading retail companies in the DIY market in relation to the acquisition and development of several retail units in some of Romania's biggest cities.
- Advising and assisting an international energy company in developing a 25 MW photo-voltaic park in Romania.
- Advising and assisting a multinational client in relation to the design and build contractor agreement regarding the reconversion of one of its properties into an office building.

Languages. Romanian, German, English

Professional associations/memberships. Bucharest Bar Association.

Publications

- *Types of partnerships between the Romanian authorities and private investors, Practical Law Multi-jurisdictional Guide 2013/14, co-author with Nicolae Ursu and Sonia Vigdorovits.*
- *Romania chapter, Practical Law Construction and Projects Multi-jurisdictional Guide 2013/14, co-author with Cristina Mihai.*
- *Romania chapter, Practical Law Construction and Projects Multi-jurisdictional Guide 2012/13, co-author with Cristina Mihai.*

Professional qualifications. Romania, 2005

Areas of practice. Anti-trust and merger control; infrastructure and utilities; real estate and construction; banking and finance; insurance; corporate and insolvency.

Recent transactions

- Advising a major international player in the agricultural products and services market during the acquisition of the trading business of Romanian companies with respect to several aspects of the transaction, including among others, property issues.
- Advising a world-renowned company with respect to a hotel franchise envisaged to be concluded in Romania and the related real estate aspects.
- Advising and assisting an international steel-based technology and capital goods group on the initiation and erection of one of the biggest industrial projects built in Romania during recent years, a steel service centre, and the related construction litigation.
- Advising the world's largest producer of bricks on the validity of the building permit for developing an energy-efficient dwelling building, by using the most innovative technology available in the field.
- Advising and assisting an international client in all of the lease agreements related to one of its properties that have been previously converted into an office building.

Professional associations/memberships. Bucharest Bar Association.

Languages. Romanian, English, French

Publications

- *The Legal defects liability period in view of the new Romanian Civil Code, Construction Law International, volume 7, issue 4, January 2013, co-author with Flavius Florea.*
- *Romania chapter, Practical Law Construction and Projects Multi-jurisdictional Guide 2013/2014, co-author with Anca Albulescu.*
- *Romania chapter, Practical Law Construction and Projects Multi-jurisdictional Guide 2012/2013, co-author with Anca Albulescu.*