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The International Comparative Legal Guide to:

Mergers & Acquisitions 2018

12th Edition

A practical cross-border insight into mergers and acquisitions

Published by Global Legal Group, with contributions from:

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Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

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Printed by

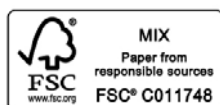
Ashford Colour Press Ltd
March 2018

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ISBN 978-1-911367-97-0

ISSN 1752-3362

Strategic Partners



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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

An EU Member State since 2007, Romania has incorporated the main body of the relevant European laws into its M&A legal framework, having already implemented all pre-eminent directives and regulations applicable in the field, such as the Second Directive 1977/91/EEC, the Merger Directive 2005/56/EC, the Prospectus Directive 2003/71/EC, the Takeover Directive 2004/25/EC, the Market Abuse Regulation 2014/596/ (MAR) and, most recently, the Alternative Investment Fund Managers Directive 2011/61/EU.

As such, M&A transactions in Romania are largely regulated by the Company Law No. 31/1990, the Trade Registry Law No. 26/1990, and by the Civil Code.

In addition to the regulations mentioned above, listed companies are subject to special rules provided by the Capital Markets Law No. 297/2004 and Law No. 24/2017 on issuers of financial instruments and market operations (Issuers Law) which repealed a significant part of the Capital Markets Law No. 297/2004, as well as to the regulations issued by the Financial Supervisory Authority (FSA). Among such specific regulations, Regulation No. 1/2006 on issuers and operations with securities and Regulation No. 6/2009 regarding the exercise of certain shareholders' rights in companies' general shareholder meetings stand out as the most significant.

The Romanian merger control rules are provided by the Competition Law No. 21/1996 under the Romanian Competition Council's instructions, guidelines and control, with the limitations deriving from the exclusive jurisdiction reserved by the European Commission under the EU Merger Control Regulation of 2004.

A significant concern within M&A deals is taxation, which is governed by Law No. 571/2003 on the Fiscal Code and its implementing regulations, as well as the employment part, which is governed by Law No. 53/2003 on the Labour Code.

1.2 Are there different rules for different types of company?

As mentioned above, listed companies are regulated by the Capital Markets Law and the Issuers Law and their implementing regulations.

M&A deals involving banks and non-banking financial institutions, insurance companies or other specialised vehicles are subject to additional sector regulations.

1.3 Are there special rules for foreign buyers?

There are no special rules for foreign buyers. However, depending on the parties' nationality and the market involved, there may be regulatory and tax restrictions.

1.4 Are there any special sector-related rules?

A change of control of Romanian companies operating in specific industries may require the regulatory authority's approval. For example, in the case of public companies and companies operating in insurance or the private pensions sector, FSA approval may be required; or for telecoms companies, the National Authority for Administration and Regulation may have an important role.

1.5 What are the principal sources of liability?

The principal source of liability is market abuse. Both the MAR and the Issuers Law regulate the general interdictions and sanctions applicable in this field, as follows:

(a) Insider dealing

An insider is either a member of a corporate body of the issuer, a person who has a holding in the share capital of the issuer, or a person who has access to inside information through the exercise of employment, profession or duties. Irrespective of whether or not the bidder is an insider, if he uses inside information in order to gain an advantage or a better position in the deal, he could be punished with a prison sentence of up to five years.

(b) Market manipulation

Market manipulation can be performed by: (i) disseminating information which gives, or is likely to give, false or misleading signals as to the price of a financial instrument; (ii) securing a dominant position; (iii) the buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors. Breaching rules on market manipulation is sanctioned with a prison sentence of up to five years.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

Public offers

The Issuers Law distinguishes between two types of public offer, as follows:

- (a) a voluntary takeover bid, under which the bidder makes a general offer to all shareholders in order to acquire more than 33% of the voting rights; and
- (b) a mandatory takeover bid, under which an entity which, as a result of its own acquisitions or of the persons with whom it acts in concert, owns more than 33% of the voting rights, is obliged to initiate an offer addressed to all shareholders for the acquisition of all their shares, in exchange for a reasonable price.

Squeeze-out

Following a takeover bid, a majority shareholder has a squeeze-out right against those shareholders who have not sold their shares during the takeover bid, with respect to all their shares.

The squeeze-out right may be exercised only if the majority shareholder:

- (a) holds at least 95% of the company's share capital; or
- (b) has acquired during the takeover bid at least 90% of the company's share capital.

Although the squeeze-out institution is applicable only in the case of public companies, there are mechanisms which unlisted companies can use to achieve the same effect. As such, a minority shareholder has the right to request the majority shareholder to buy its shares each time it disagrees with amendments made to the company's articles of association.

2.2 What advisers do the parties need?

The parties, and especially the bidder, should engage a legal counsel for the legal part of the transaction, including for the due diligence process and related documentation, as well as financial and tax advisers. Sometimes, investment banks or independent experts are engaged in relation to the source and the value of the funds.

2.3 How long does it take?

The Issuers Law provides detailed rules on the bid timetable. The offer document and the takeover announcement must be filed with the FSA for endorsement. The FSA has to issue its decision within 10 working days as of the submission date. The FSA's positive resolution ceases to produce effects if the takeover bid is not initiated within 10 working days following its approval. The bidder is entitled to announce the takeover to the public only after the FSA's approval has been granted. The takeover bid must be completed within the timetable provided in the offer document, which should not exceed 12 months.

2.4 What are the main hurdles?

The main hurdles for making a takeover bid are:

- (a) obtaining relevant documents/information and completion of due diligence;
- (b) obtaining FSA approval;
- (c) obtaining the cooperation of the minority shareholders; and
- (d) obtaining the approval of the Competition Council.

2.5 How much flexibility is there over deal terms and price?

There is a general principle, provided by the Issuers Law, that the takeover bid should ensure equal treatment between investors.

As regards the price, the law provides for minimum values for each type of offer, as follows:

- (a) For mandatory takeover offers – the price has to be at least equal to the highest price paid by the bidder for shares in the respective company in the 12 months preceding the takeover bid.
- (b) For voluntary takeover offers – the price has to be at least equal to the highest of the following:
 - (i) the highest price paid by the bidder during the past 12 months;
 - (ii) the average weighted trading price for the past 12 months; or
 - (iii) the price obtained after dividing the value of the company's net assets by the number of shares on issue, as per the company's latest financial statements.
- (c) For purchase offers – the price shall be at least equal to the highest of:
 - (i) the highest price paid by the bidder during the past 12 months;
 - (ii) the average weighted trading price for the past 12 months; or
 - (iii) in cases where neither of the above is applicable, the price shall be the net assets per share, as per the company's latest financial statements.

2.6 What differences are there between offering cash and other consideration?

The price may be freely established by the bidder in money, in securities or by blending the two; however, shareholders should always be given the possibility to receive money. If the price is offered as securities, the bidder must also establish a cash estimate in order for investors to be able to opt for a cash equivalent.

2.7 Do the same terms have to be offered to all shareholders?

Yes, all shareholders must be treated equally.

2.8 Are there obligations to purchase other classes of target securities?

An offer must be made to all classes of securities.

2.9 Are there any limits on agreeing terms with employees?

In accordance with FSA Regulation No. 1/2006, in case of voluntary takeovers, the company's board of directors should inform employees with respect to the terms and conditions of the offer. Employees have the right to issue a written opinion related thereto and, further, to disclose it to the bidder. Employees cannot be dismissed as a consequence of the takeover.

2.10 What role do employees, pension trustees and other stakeholders play?

M&A deals are not subject to employees' approval. Aside from being informed and having their written opinion reviewed, as detailed under question 2.9 above, there is no other role played by employees. As regards pension trustees, these are not very common in Romania. Other stakeholders cannot oppose the transaction.

2.11 What documentation is needed?

The first document required in a public takeover is a press announcement which provides information about the issuers, the securities being offered and the procedure to be followed to obtain the offer document.

Another important document in a takeover deal is the offer document, which should be approved by the FSA. This provides information about the bidder and persons acting in concert, the offered price and the calculation method, starting and closing dates of the offer, subscription information, etc.

In addition, the bidder must provide a guarantee of at least 30% of the total value of the offer in a bank account of the intermediary, or a bank letter of guarantee covering the entire value of the offer, issued in favour of the intermediary.

2.12 Are there any special disclosure requirements?

As detailed under question 2.11 above, the minimum content of the takeover documentation is expressly provided by the law.

2.13 What are the key costs?

The main costs are: the price; the advisers' fees; FSA fees; and internal costs.

2.14 What consents are needed?

As detailed under question 2.3 above, the takeover should be approved by the FSA. Moreover, the approval of the bidder's competent corporate body is necessary. Subject to the field in which the target operates, the approval of certain authorities might be required (e.g. the National Bank, the Insurance Authority, etc.).

2.15 What levels of approval or acceptance are needed?

The Romanian legislation does not require a specific level of acceptance. However, in voluntary takeovers, the bidder may impose a minimum threshold in order for the offer to be considered closed. In the case of takeovers by way of exchange offers, the offeror's shareholders should increase the company's share capital in order to have the shares offered as consideration. In this specific case, the articles of association may include restrictive rules on approving the share capital increase and, further, with respect to transfer of shares. However, the target's shareholders may decide to remove the restrictions related to voting rights and transfer of shares from the articles of association, as detailed under questions 3.2 and 10.1 below.

2.16 When does cash consideration need to be committed and available?

The subscribed shares should be paid within no more than three working days following the settlement date. Within a maximum of seven working days following the closing date of the takeover bid, the bidder should inform the FSA and the stock exchange with respect to the results of the bid.

In addition, there is the guarantee that should be provided by the bidder. For more details, please refer to question 2.11 above.

3 Friendly or Hostile

3.1 Is there a choice?

Although permitted, hostile bids are very rare on the Romanian capital market.

3.2 Are there rules about an approach to the target?

After the offer document is approved by the FSA, the market announcement is the second step. The takeover bid may be initiated at least three working days after the date on which the announcement is published.

Romania has also implemented the provisions of the Takeover Directive related to the shareholders' right to decide the exclusion of the restrictions on voting rights and on the transfer of shares from the articles of association during the takeover bid.

3.3 How relevant is the target board?

As a rule, during the period between the receipt of the preliminary notice and the offer closing, the target board cannot take any action or conclude any act that could affect the financial situation or the result of the takeover bid, except for day-to-day acts of management.

However, the management board may call an extraordinary general meeting of shareholders, to inform shareholders of its position with respect to the bid. During such meeting, the board may propose several measures which, theoretically, may affect the financial status of the bid, such as share capital increases, stock splits, transfer of assets, etc.

3.4 Does the choice affect process?

A hostile board may make the due diligence process difficult, by refusing to provide the bidder with information about the company. In such case, the bidder should only rely on public data.

4 Information

4.1 What information is available to a buyer?

In a hostile bid, the only information available to the buyer is the public information, which mainly consists of the following: (a) basic corporate information about the shareholders, directors and management, including copies of the articles of association, resolutions of general meetings of shareholders and, generally, copies of the corporate documents available in the Trade Registry database; (b) financial information available on the Ministry of Finance website; (c) share information and reports submitted by the target board to the stock exchange and FSA; and (d) information from the Electronic Archive for Security Interests in Movable Property and from the Land Book Register. Further, information on a pending insolvency procedure and, generally, litigations of the company, may be obtained from the insolvency bulletin and the websites of the relevant courts of law.

4.2 Is negotiation confidential and is access restricted?

As a rule, both the management and the board are prohibited from disclosing inside information to any third party, including the buyer.

Therefore, confidential information between the bidder and the target's representatives cannot refer to inside information.

4.3 When is an announcement required and what will become public?

The announcement is required in case of a takeover bid. It will be released to the public once it has been approved by the FSA, together with the offer document. As regards the information to be included in the announcement, please refer to question 2.11 above.

4.4 What if the information is wrong or changes?

The occurrence of any event or change in the information initially presented in the offer document, which affects the investment decision, should be notified to the FSA and, further, disclosed to the public.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

The bidder and persons acting in concert may buy shares outside the offer, provided that the following cumulative conditions are met:

- (a) the purchase price is higher than the offering price; and
- (b) the acquisition is made with at least eight working days before the closing of the offering.

In case of acquisitions outside the offer, the bidder has to increase the takeover price in order to be at least equal to the highest price paid by the bidder outside the takeover.

5.2 Can derivatives be bought outside the offer process?

Yes, provided that the derivatives are convertible into shares in the target and all the conditions mentioned under question 5.1 above are met.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

If a buyer directly or indirectly acquires or sells shares of the target so that its voting rights reach, exceed or fall below 5%, 10%, 15%, 20%, 25%, 33%, 50% or 75%, the target, FSA and stock exchange must be notified.

5.4 What are the limitations and consequences?

There are no restrictions on the bidder's right to purchase shares of the target outside the general bid process.

6 Deal Protection

6.1 Are break fees available?

There are no express legal provisions related to break fees; therefore, these are not common in practice.

6.2 Can the target agree not to shop the company or its assets?

Counter-offers are allowed in the general bid process.

6.3 Can the target agree to issue shares or sell assets?

The target's board cannot take any action and cannot conclude any act that could affect the financial situation or result of the takeover bid. It is considered that the issuance of new shares, share capital increases or transfer of assets may affect the target patrimony and the takeover bid.

6.4 What commitments are available to tie up a deal?

The target's board may recommend a preferred bidder to the shareholders or to the employees' representatives.

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

In the case of voluntary takeover bids, the bidder may make its offer conditional upon the Competition Council's approval. Generally, mandatory takeover bids may not be conditional.

7.2 What control does the bidder have over the target during the process?

The bidder does not have control over the target's board or employees; it should rely on information obtained from the sources indicated under question 4.1 above.

7.3 When does control pass to the bidder?

The transfer of the ownership right over the target shares occurs after the registration of the bidder with the shareholders register, kept by the Central Depository, upon the settlement of the offer.

7.4 How can the bidder get 100% control?

The majority shareholder who, following the completion of a takeover bid, owns shares representing at least 90% or 95% of the share capital of the company, may initiate the squeeze-out of minority shareholders. The minority shareholders must sell their shares, provided that the established price is fair. However, please note that, under Romanian law, a joint-stock company must have a minimum of two shareholders. In such case, an insignificant percentage of the target is sold to an affiliate.

8 Target Defences

8.1 Does the board of the target have to publicise discussions?

The bidder has to inform the public of its intention to launch a bid, by publishing the announcement bid.

8.2 What can the target do to resist change of control?

The target's board cannot directly oppose the takeover, but it may refuse to provide information to the bidder. In addition, the board should issue its opinion on the takeover and it should inform the employees with respect to the terms and conditions of the offer.

8.3 Is it a fair fight?

In principle, the Romanian legal framework requires the target to ensure equal treatment to all bidders in terms of information provided, access to documents, etc.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

Key to a successful takeover are: (a) value; (b) obtaining clear and positive information on the target; and (c) the bidder's relationship with the target's shareholders and board.

9.2 What happens if it fails?

If an initial bid fails, the bidder is not prevented from initiating another takeover with respect to the same target, except in the case of voluntary takeovers, where the bidder or its affiliates cannot initiate another bid for one year as of the closing date of the initial bid.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in your jurisdiction.

In 2017, the Capital Markets Law was substantially amended and essentially replaced by the Issuers Law. The Issuers Law takes the old rules reflected by the Capital Markets Law and harmonises them with the European regulations. As such, the Issuers Law implemented at a national level the provisions of various EU Directives, such as Directive 2013/50/EU, Prospectus Directive 71/2003, Directive 25/2004 on takeover bids, and Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse.

In terms of takeovers, one of the most significant amendments brought in by the Issuers Law is the introduction of the EU concept known as the "breakthrough rule". Subject to equitable consideration, the target's shareholders may decide that:

- (a) any restrictions on the transfer of securities provided by the target's articles of association, or by contractual arrangements between the target and/or its shareholders, executed after the entry into force of the Issuers Law, shall not apply in relation to the offeror during the subscription period;
- (b) restrictions on voting rights provided for in the articles of association of the offeree company shall not produce effects at the general meeting of shareholders in which a decision on any defensive measures is made;
- (c) multiple-vote securities shall carry only one vote each at the general meeting of shareholders in which a decision on any defensive measures is made; or
- (d) where, following a bid, the offeror holds 75% or more of the capital carrying voting rights, no restrictions on the transfer of securities, on voting rights, or on any extraordinary rights of shareholders concerning the appointment or removal of board members provided for in the articles of association of the offeree company, shall apply.

Last but not least, the Issuers Law introduced, either directly or by cross-references, all of the significant provisions of the MAR, which became directly applicable in Romania on 3 July 2016.



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