

# Mergers and Acquisitions

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After completing the first investment stage – establishing a Romanian legal entity – foreign investors may, during the course of business, restructure their activities through mergers and acquisitions as stipulated by Romanian law.

Law 31/1990 (the Romanian Company Law), as amended and republished, and the methodological norms approved under Order 1376/2004 (regarding accounting procedures for mergers, spin-offs, dissolution, liquidation of companies, withdrawal and exclusion of shareholders, as well as the fiscal regime of such operations) represent the general legal framework for mergers and acquisitions in Romania. The Romanian Companies Law regulates both merger by absorption (whereby one or more existing companies are absorbed by another existing company) and merger by fusion (whereby a new company is created by integrating two or more existing companies), as well as spin-offs. The merger/spin-off should be decided separately, by each participating company voting in the General Meeting of Shareholders. Following this, a merger/spin-off plan is prepared and registered with the Trade Registry, in order for it to be examined by an expert and to get the approval of the delegated judge, as well as to have it published in the Official Gazette.

Regarding the completion of the merger/spin-off operation, two situations may arise:

- a) where pursuant to the merger/spin-off new companies resulted, the operation takes effect upon the incorporation date of the new company or the last of the new companies.
- b) for the other cases (e.g. merger by absorption, spin-offs where the transfer is made to already existing companies), the operation takes effect on the date when the resolution of the last company approving the operation is registered with the Trade Registry, save for where the participating companies jointly agree on a different date. However, this date cannot be prior to the end of the last financial year of the company/companies that transfer its/their assets and liabilities and cannot be later than the end of the current financial year of the absorbing or the beneficiary companies.

Government's Emergency Ordinance 52/2008 amending Romanian Company Law regulates both cross border mergers and Societas Europaea.

The amendments regulate the cross-border mergers involving limited liability companies (Romanian: societati cu raspundere limitata – SRL), joint stock companies (Romanian: societati pe actiuni – SA), joint stock partnerships (Romanian: societati in comandita pe actiuni – SCA) and Societas Europaea having their registered office in Romania and companies established pursuant to the law of a member state and having their registered office, central administration or principal place of business within the European Union.

Supplementary obligations are provided for the delegate judge and for the Romanian Trade Registry that shall undertake cooperation duties with similar institutions of the member states where companies involved in the merger process are headquartered, in order to verify the legality of the procedures.

Furthermore, the implication of the employees in the decision-making process of the companies that are parties of the cross border merger is evidenced.

The cross border merger procedure (meaning terms, conditions, documents, information to be provided and included in the respective documents) is more or less the same as the procedure provided by the Romanian Company Law with respect to the local mergers. Therefore, there are several steps that should be considered whenever such a project is envisaged, as follows:

- a) Drafting the merger project, containing specified information, shall be published at least 1 month before the date of the general meeting to decide upon the merger;
- b) Drafting the report of the management, report of an independent expert;
- c) The approval of the merger by the general meeting is also required;
- d) Publicity formalities related to the merger project and the merger resolutions.

The Romanian Company Law provides for simplified procedures in the case when a parent company merges by absorption with a subsidiary it wholly owns.

With regard to acquisitions, Company Law regulates the acquisition of shares in any type of company. In case of limited liability companies and joint-stock companies, the acquisition procedures are different as shares in a limited liability company are not freely transferable to third parties (a special quorum and a majority in the General Meeting of Shareholders are required), whilst shares in a joint-stock company are not subject to specific restrictions regarding their transferability to third parties, if not otherwise provided for.

There are also some instances where companies involved in a merger or acquisition are subject to certain competition regulations. However, as a general rule, there are no competition issues to be considered when companies participating in a merger and/or acquisition are part of the same group of companies. Mergers and acquisitions involving at least one public company must be done in accordance with Capital Market Law 297/2004 and by observing the regulations issued by the National Securities and Exchange Commission (CNVM).