Cross-Border Joint Venture and Strategic Alliance Guide (Romania)

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This Cross-Border Joint Venture and Strategic Alliance Guide (Romania) discusses relevant law and practice related to the formation and operation of cross-border joint ventures, including corporate and contractual joint ventures, in Romania. For other jurisdictions see the Cross-Border Joint Venture and Strategic Alliance Resource Kit.

Structures

What are the standard forms of joint ventures / strategic alliances and common features of each?

There is no standard form of strategic alliance or joint venture in Romania. Foreign investors seeking quick market access through know-how and existing capabilities of local partners may freely structure their entrance in the Romanian market. There is no express restriction on the choice of structuring strategic alliances, no matter the type of arrangement or agreement between businesses and individuals. Determinative factors usually include taxation, allocation of liability, and the distribution of profits to the parent company.

Romania is a freedom of contract jurisdiction, enabling both domestic and foreign entities to freely set the frame of their business collaboration, either contractually or through formation of entities (mostly limited liability companies (LLCs) and joint-stock companies (JSCs)) to conduct joint activities in a limited liability format.

Generally, joint ventures and strategic alliances fall into two categories:

- Contractual arrangements
- Entity-based structures

Contractual Arrangements

Contractual arrangements can cover a wide variety of forms, such as public procurement agreements, distribution or license agreements, joint production and development agreements, and construction project agreements. A contractual joint venture agreement does not require the establishment of a new entity distinct from its parties, and this structure entails no equity participation. Contractual joint ventures (Romanian: *asociere in participatie*) are established through partnership agreements, namely associations between parties to conduct business for profit. Parties may freely regulate the key terms of their arrangements in the partnership agreement, each partner retaining its distinct structure, but for the purpose of the business relationship. Income and losses of the partnership "flow through" to the parties and are consolidated with each party's other income and losses. Each party may act as an agent of the partnership for the purpose of its business, and has joint and several liability for all of the partnership's obligations.

Entity-Based Structures

An entity-based structure is governed by the provisions of Law 31/1990 on companies, as subsequently amended (Company Law), and involves the formation of a separate

entity, distinct from its founders, with each of its parties retaining an equity participation in the structure. Below are the main features of the most common forms of entity-based structures that are typically used in practice for purposes of establishing a joint venture or strategic alliance, due primarily to the limited liability of the co-venturers.

Limited liability company (Romanian: *societate cu raspundere limitata*). A limited liability company is the most popular corporate form in Romania and the typical corporate form of small- and medium-sized companies. Significant flexibility is provided in matters of capital value (the minimum share capital amounts to approx. €42), as well as in matters of corporate governance (LLCs are the only companies that a sole shareholder may establish). Typical characteristics of LLCs are that they cannot issue bonds, cannot be publicly listed/traded, and the procedure for the transfer of shares is more restrictive and conditioned on the approval of the other shareholders. There have been certain debates in the legal doctrine and practice over the enforceability of pledges constituted over shares in limited liability companies, due in particular to their intuitu personae character, which correspondingly limits the shareholders' freedom to transfer their shares to third parties. Since the share transfer restrictions towards third parties entail corporate approval by ¾ of the share capital (excluding the stake of the transferor) and elapse of a 30-day opposition period, the debate was whether the approval procedure and conditions are applicable in case the transfer of shares in a limited liability company takes place in the course of enforcement proceedings with respect to a mortgage over the relevant shares.. As a result, financial institutions often requested LLCs to convert into joint-stock companies as a condition precedent to the first disbursement of funds. A relatively recent change of legislation of the Companies Law has clarified to a large extent this topic, by expressly acknowledging the enforcement of pledges over shares in limited liability companies, hence prioritizing the creditors' interests over the *intuitu personae* character of the limited liability companies. We note however that financial institutions' preference for JSCs in granting financing has been maintained.

Joint-stock company (Romanian: *societate pe actiuni*). Joint-stock companies are the second most popular corporate form in Romania and typically used for larger companies. As in the case of LLCs, there is no prohibition with respect to the nationality of a person intending to become a shareholder. Sole shareholders are not allowed in JSCs and higher capital requirements must be observed (approx. €18,950).

What are some of the key corporate governance, tax, regulatory, and timing considerations that could impact the choice of structure?

Corporate governance. The limited liability afforded to shareholders of an LLC or JSC is a key factor to consider when choosing a structure. Furthermore, the more flexible corporate governance rules provided by LLCs make it a compelling option for entrance into the Romanian market. On the other hand, restrictions imposed on the transfer of shares (conditioned on the approval of shareholders holding at least three-quarters of the share capital and 30-day advance notice requirements) and financing institutions' preference for JSCs may equally influence the choice of structure in favor of JSCs.

Contractual joint ventures and strategic alliances, on the other hand, have no legal requirements on how to set the decision-making process in terms of, for example, decision making, voting rights, and quorum. Accordingly, the partners to a contractual joint venture or strategic alliance are free to set the board governance rules and to establish a coherent board structure/culture within the joint venture. This is a plus in the case of cross-border joint ventures, where companies are typically confronted with national differences in terms of board governance (e.g., board size and structure, pay levels, and other features of corporate governance).

Registration formalities. Other factors influencing the choice of structure may include, for example, the lack of registration formalities for entering into a contractual joint venture (except in the situation when at least one of the joint venture partners is a non-resident, in which case the partnership agreement must be registered with the fiscal authority), or, if a listing of the joint venture or strategic alliance on the stock exchange or a trading on over-the-counter market is planned. In such event, an entity-based structure under the form of JSCs is the best option since it is the only corporate entity that allows listing/trading on public markets.

Tax matters. In terms of tax, a contractual-based structure does not give rise to a distinct taxable person for corporate income tax and VAT purposes. As a result, the contractual arrangement is not required to be registered with the tax authorities as a distinct entity or to receive a tax identification number.

As regards corporate income tax, similar reporting rules apply for the partners irrespective of whether the (unincorporated) venture is made up solely of resident

entities or it involves non-resident entities as well. In particular, each partner needs to deal individually with the corporate income tax and include in its own taxable base the profits allocated to it from the activity of the venture. However, the venture needs to appoint one of the partners as the designated leader to deal with the tax and accounting reporting obligations in Romania.

Notwithstanding the above, structures implying reverse hybrids are classified as domestic taxpayers for profit tax purposes to the extent that the income is not taxed under the laws of other jurisdictions involved in the structure. Exceptions apply. Reverse hybrid mismatches occur where one or more associated non-resident entities, holding in aggregate a direct or indirect interest in 50 % or more of the voting rights, capital interests or rights to a share of profit in a hybrid entity that is incorporated or established in Romania, are located in a jurisdiction or jurisdictions that regard the hybrid entity as a taxable person, the hybrid entity shall be regarded as a resident of Romania and taxed on its profit to the extent that that income is not otherwise taxed under the laws of any other jurisdiction.

The designated leader is responsible for registering with the tax authorities all partners of the unincorporated venture that are not already registered with the Romanian tax authorities, allowing each partner (resident as well as non-resident) to deal individually with its tax obligations in Romania. The designated leader is required to withhold the tax due by each non-resident partner, to the extent said tax is due in Romania according to the provisions of the applicable double tax treaty or national legislation, except for the case when a non-resident member of the partnership has a permanent establishment in Romania or derives income for which Romania has taxing rights, in which case such person is required to pay corporate income tax or personal income tax, as the case may be. For practical reasons, the leader of the partnership is usually a Romanian resident entity.

As regards unincorporated ventures made up of Romanian legal entities, where at least one of the joint venture partners is a micro-company (i.e., it pays tax on turnover, instead of tax on profits), the same rationale applies: each micro-company partner needs to deal individually with the turnover tax it owes and include in its own taxable base the revenues allocated to it from the activity of the venture. Its share of the joint venture expenses will be disregarded for tax purposes.

As regards VAT, unincorporated ventures have specific VAT rules, which apply for unincorporated partnerships set up for the purpose of supplying goods/services to third-party clients. Key points are set forth below:

- The free of charge contribution of goods and services to the partnership does not give rise to a VAT liability for the partners insofar as it is made within the limits of individual contributions.
- The allocation of the proceeds of the partnership from the leader to the other partners is not within the scope of VAT if the allocation is proportional to the individual quota in the partnership.
- The leader of the partnership is required to fulfill all the VAT compliance requirements relating to the partnership in its own name, but for the account of said partnership (e.g., it will issue invoices on behalf of the partnership in its own name, it will include the transactions of the partnership in its own VAT return, it will claim input VAT credit for the acquisitions made on behalf of the partnership, it will adjust the input VAT in connection with capital goods contributed to the partnerships depending on the output VAT treatment of the transactions of the partnership).

An entity-based structure, on the other hand, will be regarded as a distinct person liable for corporate income tax or micro-company tax, as applicable, and as a taxable person from a VAT perspective. Newly incorporated companies are required to apply the micro-company regime (i.e., tax on turnover of 1% or respectively 3%, depending on whether the company has employees or not) until a EUR 1,000,000 income threshold is reached, if they have not opted for applying the corporate income tax regime (provided certain conditions are met). Distributions of profits from said entities to its shareholders will be subject to a 5% dividend tax in Romania, which can be eliminated in certain cases.

An additional point to note is that the exit from a Romanian JV entity (e.g. via a sale of shares) will not lead to a taxable income in Romania if the seller is a Romanian profit-tax payer or a foreign entity from a country with which Romania has concluded a Double Tax Treaty, and it holds, at the moment of sale, at least 10% of the shares of that entity for an uninterrupted period of 1 year.

Regulatory matters. From a regulatory standpoint, anti-trust regulations apply to both contractual and entity-based structures, if certain thresholds are met indicating the existence of an economic concentration. If qualified as an economic concentration and to the extent it takes place in certain areas of activity impacting national security, governmental clearance from the National Defense Council (the equivalent of the Foreign Direct Investment clearance) may also become applicable. Furthermore, depending on the subject matter and scope of the joint venture or strategic alliance (either contractual or entity based), other

anti-trust rules may equally apply in connection to, for example, horizontal cooperation and R&D agreements. On 25 March 2020, the European Commission has issued guidelines to coordinate the EU's approach to investment screening in light of the COVID-19 crisis and to protect the EU's critical assets and technologies from potential hostile takeovers and investments by non-EU companies. The guidelines seek to anticipate the application of the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union – the so-called "FDI Screening Regulation", which will start to apply on 11 October 2020.

Certain activities are specifically reserved to JSCs and may be operated, provided certain licenses and authorizations have been obtained. For instance, this would include the banking, insurance and capital markets sectors. Certain industries represent a state monopoly, and may not be engaged in by either entity-based or contractual arrangements, such as gambling, the production of weapons, and the import/export of nuclear weapons.

Can a joint venture or strategic alliance be formed for any purpose?

Both entity-based and contractual joint ventures and strategic alliances may be established for any purpose provided it is not illegal or contrary to public order.

A contractual joint venture or strategic alliance almost always includes a definition of its intended purpose, generally detailing the rights and duties of each party to the joint venture, although a general clause to this effect may also suffice. Entity-based structures, on the other hand, are permitted to include in their articles of association business activities set forth in the Statistical Classification of Economic Activities (aligned with the EU statistical classification). Except for certain businesses reserved solely to JSCs and requiring particular regulatory approvals, entity-based structures typically include a main business activity as well as several secondary business activities for situations where the venture is subsequently expanding into new fields of activity.

Are there any forms of joint ventures or strategic alliances that are more typically used in certain industries (such as real estate, pharmaceutical, or technology)? Why are such forms favored?

Public procurement projects typically involve the use of contractual joint ventures or strategic alliances where bidding partners collaborate to submit a bid. This is primarily due to the fact that public procurement law refers to an "association" as the means for participation. Hence, as no additional rules on the term association are available, parties generally choose to "associate" under the form of contractual joint ventures for purposes of submitting bids. This is typically the case in large construction projects, where often design and construction companies, each with significant expertise in their field, collaborate to participate in the tender. In other instances involving large construction projects, where financing is required, typically a structure-based joint venture (JSC) is favored, or in some instances, even required as a component of the eligibility criteria in the tender documentation.

Contractual joint ventures and strategic alliances are also encountered in agricultural/farm businesses as well as in the processing and exploitation of technical gases. This is often the case since contractual arrangements offer more flexibility and are less formal than an entity-based structure, allowing the co-venturers to test the business relationship underlying the joint venture.

In drafting and implementing the partnership agreement, partners should carefully assess any potential competition concerns. If the wording or implementation of the agreement indicates the existence of "cooperative" rather than stand-alone joint ventures, this may entail a risk of interpretation by the Romanian Competition Authority as possible exclusionary practices (requalification of joint ventures as agreements to coordinate the market behavior) and application of fines of up to 10% of the involved parties turnover for the previous financial year.

On a side note, the European Commission, on 8 April 2020, adopted a Temporary Framework Communication, which sets out the main criteria that will be followed when assessing potential cooperation projects – specifically aimed at addressing shortages of supply of essential products and services during the COVID-19 outbreak. This Temporary Framework also provides for a temporary process that the European Commission has exceptionally set up to provide, where appropriate, ad hoc written comfort to undertakings in relation to specific and well-defined cooperation projects in this context.

Are there any industries that would not permit or would not be conducive to a joint venture or strategic alliance?

Certain businesses are restricted in what they are permitted to do, requiring either a specific corporate form or certain regulatory approvals (see above answer to questions: *What*

are some of the key corporate governance, tax, regulatory, and timing considerations that could impact the choice of structure? and Can a joint venture or strategic alliance be formed for any purpose?).

How is a joint venture or strategic alliance structured to minimize potential liability? Are there instances where parties to a venture or alliance may knowingly choose a vehicle without limited liability and, if so, why would such party make that choice?

Contractual Arrangements

In the case of contractual joint ventures or strategic alliances, subject to certain limitations, partners have a broad scope to agree on the proportion of sharing in the venture's profits or of undertaking the venture's losses. As such, contractual joint ventures will often include carefully worded provisions dealing with the allocation of risk between the partners, liability, and indemnification rights. Nevertheless, clauses reserving a minimum share of the venture's profits in favor of one or more partners, irrespective of the results obtained, or clauses securing the profits solely to the benefit of one partner, or clauses stipulating the exclusive sharing of the venture's profits by one or more partners, without incurring any risk of loss lack effect and are considered stricken from the agreement.

Entity-Based Structures

Entity-based structures, on the other hand, are duly incorporated upon registration with the trade registry. Nevertheless, where real estate assets are contributed to the initial share capital of the entity, the involvement of a public notary for the authentication of the founding documents (articles of associations) is required. Additionally, certain other ancillary documentation (e.g., shareholder and director affidavits, ultimate beneficial owner affidavit, directors' specimen signatories) should also be filed with the trade registry in authenticated form. On 16 March 2020, to address the COVID-19 pandemic, the Romanian presidency has declared the state of emergency on the Romanian territory through Decree no. 195/2020, further prolonged through Decree no. 240/2020. To ease the registration formalities during the state of emergency (as subsequently prolonged), the activity of the National Trade Registry Office as well as the activity of the regional trade registry offices near the respective tribunals will be performed through electronic means, and based on requests for registrations and documents having electronic signatures attached. It was further decided that, during the state of emergency, and to address the COVID-19 pandemic, all declarations on own responsibility (e.g., shareholder and director declaration, ultimate beneficial owner declaration, directors' specimen signatories) previously accepted only in notarized form (and bearing an apostille, where required), will be accepted for submission in private or electronic forms. The Romanian Government has further prolonged for a period of 6 months (15 November 2020) the right to submit the declarations on own responsibility in private or electronic form to address the expiry of the state of emergency starting with 16 May 2020. On the same note, the legal duty to submit the declaration on the ultimate beneficial owner has been postponed until 1 November 2020.

The Companies Law recognizes the concept of "piercing the corporate veil," namely, instances where creditors are allowed to ignore the liability shield and hold shareholders liable for the debts of the company. This applies whenever the shareholders have disregarded the separation of assets between themselves and the company and used the assets of the company for their own benefit. This is permissible only within the ambit of the company's dissolution or liquidation.

Statutory Framework

What is the applicable statutory framework for each structure discussed above?

Contractual Arrangements

Partners in contractual joint ventures are free, premised on the *lex voluntatis* principle, to select the choice of law governing all or part of the partnership agreement. To such effect, joint venture agreements most often include express provisions on the designation of the applicable law. The Romanian law further recognizes the principle of "splitting up" allowing partners to select more than one law as the governing law of the agreement.

Entity-Based Structures

For entity structures, the Company Law has embraced the so-called real seat doctrine, which determines the applicable law by reference to the country in which the entity has its real seat (center of its management). Hence, an entity joint venture or strategic alliance incorporated as a Romanian entity is required to observe the Romanian law.

Furthermore, stakeholders in an entity-based structure often regulate contractually the corporate governance of the entity by entering into shareholders agreements, and may choose to apply foreign law. In drafting these agreements, one should carefully assess the implications of the interplay between the contractual provisions of

the shareholders agreement, the rules of the foreign law and imperative norms of the Company Law governing the Romanian joint venture. Potential areas of risk may include the incidence of supplementary rights and obligations of the parties to the shareholders agreement derived from the applicability of foreign law common legal norms, which may add to those already negotiated, delaying, and making an interpretation of the shareholders' agreement more complex.

Are there statutory or other limits on the duration of a joint venture or strategic alliance?

There are no statutory or other limits on the duration of a joint venture or strategic alliance, either contractually or entity based. The presumption is that an entity structure exists perpetually. Alternatively, if the equity holders envision a less than a perpetual existence, the duration should be clearly stated in the articles of association, with the expiration of the term leading to the dissolution. Stakeholders may always prolong the duration of an entity, in which case dissolution is no longer in question. The articles of association must identify the mandatory dissolution and winding up of the entity (see answer to question: *How is a joint venture or strategic alliance terminated?*).

Parties to an entity-based or contractual joint venture often address in their private documentation (e.g., shareholders agreements) stated termination dates or provide for buy-out rights or other exit mechanisms. Special attention should be given while drafting provisions governing the duration of shareholders' agreements regulating the rules of governance in entity-based joint ventures. This is primarily the case since the majority of such agreements tend to define the duration as the period while the signatories remain shareholders in the respective entities. This may, in turn, be construed as an agreement concluded for an indefinite term, which gives any shareholder the right to unilaterally terminate such agreements at any time, without cause, subject only to a reasonable notice period.

Do joint ventures or strategic alliances have to be registered with any federal or local body other than the trade registry where the articles of association must be filed in order to effect the entity's formation?

Contractual Arrangements

There are no specific requirements in entering into a contractual joint venture. In fact, the written agreement is required only for evidentiary purposes.

Entity-Based Structures

Entity-based structures, on the other hand, are duly incorporated upon registration with the trade registry. Nevertheless, where real estate assets are contributed to the initial share capital of the entity, the involvement of a public notary for the authentication of the founding documents (articles of associations) is required. Additionally, certain other ancillary documentation (e.g., shareholder and director affidavits, directors' specimen signatories) should also be filed with the trade registry in authenticated form.

Although the default rule is that the only registration required for the entity's formation is the one made with the trade registry, certain regulated industries, such as banking, insurance, investment firms, require in most cases, as a prerequisite to the filing with the trade registry, certain other prior licenses/endorsements from the national regulating authority. Also, if the founders wish to include the word "Romania" in the entity's corporate name, separate prior approval from the government's general secretariat is required. There are also certain related registration formalities that must be undertaken while incorporating an entity with the trade registry, namely registration for VAT purposes with the fiscal authority and the registration with the Bucharest stock exchange as a public company, if applicable.

Regulatory Environment

Are joint ventures or strategic relationships specifically regulated?

Special regulations apply in the case of entity-based joint ventures or strategic alliances active in certain industries (e.g., banking, insurance, pensions, or securities).

Are there any antitrust matters to be considered in forming a joint venture or strategic alliance?

Romanian competition regulations differentiate between "concentrative" and cooperative joint ventures. Such distinction may be, in practice, quite difficult to identify, as the issue has given rise to numerous debates and interpretations by the Romanian Competition Authority. Still to date, the competition authority has not issued a decision rejecting the qualification of a joint venture as concentrative if the transaction was initially presented as an economic concentration.

As a matter of rule, joint ventures having as their subject matter or effect the coordination of the undertakings' competitive behavior, and which remain independent, are qualified as cooperative joint ventures, whereas joint

ventures performing on a lasting basis all the functions of an autonomous economic entity, which do not give rise to coordination of competitive behavior of the parties amongst themselves or, alternatively, between them and the joint venture are qualified as concentrative joint ventures.

In case the joint venture is concentrative, it is subject to merger control clearance provided certain threshold requirements are met: the aggregated turnover of the undertakings concerned in the merger exceeds the RON equivalent of €10,000,000 and at least two undertakings concerned have each achieved a turnover higher than the RON equivalent of €4,000,000 in Romania in the year prior to the venture.

If the joint venture is cooperative, on the other hand, it should not have as an objective or effect, the prevention, restriction, or distortion of competition within the Romanian market, which include:

- Directly or indirectly fixing purchase or selling prices or any other trading conditions
- Limiting or controlling production, markets, technical development, or investment
- Sharing markets or sources of supply
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage
- Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts

Another area that is subject to a high degree of scrutiny by the regulators involves the exchange of sensitive information by the parties in the venture and their likelihood to extend their joint activities beyond the intended purpose of the joint venture. In such a scenario, the co-venturers should carefully assess the limits of the venture and the extent of the cooperation to address any potential restrictions on competition. Hence, the parties to the agreement should have clear rules and limits to the information exchanged and their conduct outside the joint venture (where they should act as competitors).

Formation

What are the procedures in forming a joint venture or strategic alliance?

Contractual Arrangements

Contractual joint ventures or strategic alliances lack legal entity; hence, no filing formalities are required.

Entity-Based Structures

Entity-based structures, on the other hand, in order to be validly formed, require the filing of the founding corporate documents (e.g., articles of association, corporate resolutions, shareholder and director affidavits, ultimate beneficial owner affidavit, and documents evidencing the value of the share capital) with the relevant trade registry where the entity's corporate seat is located. Registration formalities are rather straight-forward and similar in terms of process for both LLCs and JSCs, taking approximately three to five business days to complete. Often, the venture's expansion of its business in other regions of Romania, other than those where the corporate seat is located, is effected through the incorporation of business units lacking legal form, and for which a simple separate filing is required with the trade registry where the business unit is to be headquartered.

What documentation/agreements are required to form a joint venture or strategic alliance?

Contractual Arrangements

In the case of contractual-based joint ventures or strategic alliances, there are no specific formation requirements for validity purposes. Entering into an agreement is necessary only for evidentiary reasons.

Entity-Based Structures

The necessary filings with the trade registry to validly form entity-based joint ventures or strategic alliances require the mandatory submission of operative documents, more specifically of the articles of association, where the entity's corporate governance rules are regulated in detail. It is often the case that co-venturers enter also into shareholders agreements or investment agreements providing greater detail and specificity in areas of, for example, shareholders' rights and obligations, management of the company, buy-out options and generally exit mechanisms. As a shareholder agreement is typically a private document between the shareholders, for enforceability against third parties, the key provisions are also included in the articles of association that is filed with the trade registry. We further note that, when choosing a LLC for entity-based structure, one should also consider that share transfer restrictions in LLCs (creditors 'opposition right during a 30 day opposition term) and shareholder majority approval of at least 75% of the share capital (where the stake of the transferor is not included) typically raise certain enforceability concerns with respect to standard shareholders agreements exit mechanisms (e.g., drag-along rights).

What other steps are required to form a joint venture or strategic alliance?

The default rule is that an entity-based structure is validly formed upon registration with the trade registry where it is headquartered. Specific regulated industries (e.g., banking, insurance, pensions, or securities) require the procurement of licenses or authorizations from the relevant national regulatory authority prior to submitting the registration file with the trade registry (see answer to question above: *Do joint ventures or strategic alliances have to be registered with any federal or local body other than the trade registry where the articles of association must be filed in order to effect the entity's formation?*).

If there is no documentation forming the joint venture or strategic alliance, is there a standard form that exists by default? Are there any attendant risks of falling within that category?

Because a contractual joint venture or strategic alliance does not require either the entering into an agreement or a filing with any authority to be validly formed, a joint venture or association (Romanian: *asociere in participatie*) may be formed by default, if it is found that the partners associated for the purpose of jointly conducting business and sharing the resulting profits and losses.

It is ultimately the party's option in the underlying agreement whether to adhere to the so-called association as provided under the Civil code, in which case the latter's features would apply, such as the partners' joint and several liability for the debts of the partnership, or alternatively, set a neutral contractual frame for the venture and regulating in detail the subject matter and content thereof. Romania is a freedom of contract jurisdiction, and as such, the co-venturers are free to determine the content of the agreement within the limits set by good faith and public order.

What filings with governmental authorities (if any) are required to form the joint venture or strategic alliance?

If the co-venturers wish to include in the entity's corporate name the word Romania, an approval is required from the government's general secretariat prior to the submission with the trade registry. Additionally, special regulated industries require specific prior licenses or authorizations prior to incorporation (e.g., National Bank of Romania's prior approval for the incorporation of a credit institution, Financial Supervisory Authority's prior approval for the formation of insurers, reinsurers and insurance brokers, and the Financial Supervisory Authority's prior approval for the incorporation of investment firms).

Becoming a Member/Partner

What are the different levels of equity and voting participation in the various forms of joint ventures and strategic alliances? How flexible is each of the structures?

Contractual Arrangements

No express provisions exist relating to the decision-making process in the contractual arrangements; thus, the parties may freely decide the corporate governance rules (e.g., quorum or voting rights) in the joint venture agreement.

Entity-Based Structures

In entity-based structures, on the other hand, equity- and voting-related rules vary depending on the specific corporate form chosen for the joint venture.

The ownership interest in an LLC is a "share" (Romanian, *parte sociala*), which constitutes the equity stake of its owners. The minimum value of a single share is set at RON 10. The Company Law does not recognize different classes of shares in LLCs and the associated rights are equal. Shares in LLCs, on the other hand, are not tradable on the stock exchange and no preference shares are allowed.

In JSCs, the ownership interest is called "share" (Romanian, *actiune*) and its minimum value is set at RON 0,1. The Company Law recognizes two types of shares: ordinary shares, until recently, further split in nominative and bearer shares and preference shares with no voting rights attached. Law No. 129/2019, on preventing and combatting money laundering and terrorism financing, and amending and supplementing certain legal acts for companies, which transposed (EU) Directive 2015/849 of the European Parliament and of the Council, has introduced a ban on the issuance of bearer shares and the obligation to convert all existing bearer shares into registered shares. This has been based on rationales that bearer shares protect the anonymity of a company's investors and hence, they make it harder to ascertain a company's exact ownership, raising concerns regarding money laundering and terrorisms financing. Although the Fourth AML Directive provided that EU Member States must take appropriate measures only to prevent the misuse of bearer shares and bearer shares warrants, Romania has taken a

much stricter approach by banning bearer shares from the market. More precisely, starting with 21 July 2019, all companies that have issued bearer shares are under a legal duty to convert them into registered shares and record such share ownership with the trade registry. Companies' failure to comply with this obligation may lead to written warning or fine up to winding-up of the company at the request of any interested party.

Different from common-law jurisdictions, which afford virtually unlimited freedom in creating preference stock funding structures, Romanian joint stock companies may issue ordinary shares and preferred shares, allowing however their holders only a higher claim to dividends and no voting rights, this being the main reason why this category of shares is not particularly attractive to investors (in particular venture capital investors), which typically look to have a say in the decision making process in the companies they invest in. Nevertheless, investments in Romanian entity-based structures make use of the same concepts specific to venture capital industry, however adapted to the local specificities. Since the issuance of preferred classes of shares is currently not a viable option, the same results are largely achieved through contractual mechanisms where founders and investors agree on special rights and benefits granted to investors, without the latter being attached to a certain class of shares.

In terms of the decision-making process, certain minimum rules must be observed in both forms of companies, while the parties retain the right to provide otherwise in the articles of association. The general decision-making structure applicable in any type of entity-structure joint venture is the general meeting of shareholders, the highest ranked body in the decision-making process in both LLCs and JSCs.

The Company Law provides specific quorum and voting requirements for the general meeting of shareholders upon first and second convening. The date for the second convening is generally announced in the convening announcement and it aims to ensure that a proposal requiring shareholder approval can be still be passed if it was not adopted upon the first convening—due to absence of (higher) quorum. The default rule in LLCs on first convening is the double majority principle that provides that a decision is adopted by the vote of the absolute majority of both shareholders and shares, unless the articles of association provide otherwise. A simple majority passes the resolution on second convening. Certain amendments to the articles of association (e.g., share capital increase/decrease; merger/de-merge; dissolution; change of name, headquarter, and legal status) require unanimity of votes, unless provided otherwise in the articles of association.

JSCs, on the other hand, validly convene in the presence of shareholders representing at least one-fourth of the voting rights and pass decisions by the majority of votes cast by the shareholders present at the meeting, unless the articles of association provide otherwise. The majority of votes may pass second convening resolutions. Certain actions of greater importance (e.g., share capital increase/decrease, merger/de-merger, change of name, corporate seat, scope of activity, and opening/closing secondary offices) are presented in extraordinary shareholders meetings. These meetings validly convene in the presence of shareholders representing at least one-fourth of the voting rights at first convening and one-fifth of the voting rights on second convening, and decisions pass upon the vote of a majority of attending shareholders.

Within the context of the COVID-19 pandemic, the Romanian Government enacted Emergency Ordinance no. 62/2020 allowing a certain degree of flexibility in convening and keeping the general meetings of the shareholders (both LLCs and JSCs) as well as the management meetings through any means of distance communications (provided certain technical conditions are met). The rule applies even for companies where the articles of association is silent or expressly excludes the holding of the meeting through correspondence or any means of distance communications. Furthermore, through the same act, the term within which companies must hold the general meeting of shareholders resolving on the approval of the annual financial statement is prolonged until 31 July 2020.

What forms of contributions (e.g., cash versus in-kind) may be made by members/partners?

All forms of contributions, in cash and in kind, are permitted for contractual and entity-based joint ventures or strategic alliances.

Contractual Arrangements

A co-venturer may use all kinds of contributions (both tangible and intangible) in the case of a contractual venture, which may include cash, know-how, or assets (including anything from real estate and intellectual property). As the venture is not an entity distinct from its partners, by contributing to the venture a partner retains the ownership right over the assets contributed, unless a clear specification in the agreement is made that the assets contributed shall be held jointly by the co-venturers. Partners may also resolve to transfer contributed assets to one of the partners specifically to achieve the business of the venture, provided express mention exists in the agreement and related publicity formalities have been complied with (where necessary). If addressed in the joint

venture agreement, partners may also provide for the right to have the in-kind contributions returned to them upon termination of the joint venture or strategic alliance.

Entity-Based Structures

All forms of contributions, in cash and in kind, are permitted for contractual and entity-based joint ventures or strategic alliances.

In entity-based structures, contributions in cash, in part, are mandatory. Formation of a company exclusively by contribution in kind or know-how is not permitted.

Contributions in kind may consist of both tangible, as well as intangible assets (know-how, intellectual property rights, etc.).

Contributions in certain entity-based structures active in specific regulated industries, such as banks or capital markets, must consist of all cash.

Where the entity-based joint venture is a JSC, the shareholders must mandatorily contribute 30% of the subscribed share capital upon incorporation, while the remaining 70% must be contributed within one year for cash contributions, and two years for contributions in kind.

Should contributions to the joint venture or strategic alliance be documented? If so, what is the typical form of documentation?

In entity-based structures, the articles of association must detail the value of the entire share capital, the contribution of each shareholder, whether it is in cash or in kind, as well as the value of the contribution in kind and the valuation means.

Cash contributions are documented by payment orders, while contributions in kind are documented with ownership/use title over the asset that may consist of invoices, sale-purchase agreements, lease agreements, heir certificates, or excerpts from the shareholders' registry. In most cases, authorized accountants should prepare valuation reports of the assets contributed.

Are there any statutory or other requirements regarding the number (i.e., minimum or maximum) or type of members (as in age requirements or legal status; individual or juridical person) in the joint venture or strategic alliance?

Contractual Arrangements

There are no statutory or other limits in the number or type of partners in a contractual joint venture.

Entity-Based Structures

On the other hand, certain statutory limits on the number of shareholders in corporate-based structures may become relevant, depending on the corporate form of choice for the joint venture. LLCs, on one hand, are the only type of entity that a sole shareholder may establish. However, the number of shareholders of an LLC cannot exceed 50. In contrast, JSCs may be validly formed with a minimum of two shareholders. There is no restriction with respect to a maximum number of shareholders of a JSC. Certain additional limitations apply to the entity-based structure involving a sole shareholder LLC, namely (1) a person/entity can hold shares in several LLCs, but it cannot be a 100% shareholder in more than one Romanian LLC and (2) a Romanian LLC may not have as sole shareholder another LLC (of Romanian or foreign nationality) owned entirely by one shareholder. A draft bill was passed by the Parliament's decisional chamber in January 2020 (more than two years after they were initiated) announcing changes to the Company Law with the aim to make it easier for investors and entrepreneurs to set up new companies. The draft bill proposed on one hand the removal of the restriction to act as the sole shareholder in more than one LLC and on the other hand to reduce headquarter-related paperwork. The draft bill was eventually rejected by the Romanian president.

What documentation would typically govern the relationship between partners/members?

Contractual joint ventures or strategic alliances are governed by the joint venture agreement. For entity structures, the corporate governance rules are mandatorily set in the entity's articles of association as well as in private agreements, namely shareholders agreements that partners typically enter into.

Can a public sector body be a member/partner in the joint venture or strategic alliance?

Under Romanian law, it is possible for a public sector body to act in the capacity of a member in the joint venture and strategic alliance structures described in this Guide.

What restrictions, other than contractual ones, are there on a member/partner transferring its interest in the joint venture or strategic alliance?

Contractual Arrangements

There is no ownership interest issued in a contractual joint venture or strategic alliance since no separate entity is formed, distinct from its members.

Entity-Based Structures

As regards entity-based structures, certain limitations may become applicable, depending on the entity chosen for the formation of the joint venture. In LLCs, the default rule is the free transferability of shares between shareholders, while the transfer of shares to third parties is conditioned upon approval of the shareholders holding at least three quarters of the share capital. Additionally, transfers of shares to third parties are subject to a 30-day opposition term, during which creditors or third parties proving a legitimate interest may oppose the transfer. Share transfers become effective upon the expiration of the 30-day term (if no opposition is filed) or upon final settlement of the opposition by the court. Considering the formalities with the trade registry and the Official Gazette of Romania, the transfer of shares in LLCs may take approximately two months to complete. In late April 2019, a draft bill was announced with the declared aim to reduce tax evasion and increase debt collection owed to the State budget. The draft bill was essentially pre-conditioning the transfer of shares in LLCs by the payment in full of all debts towards the State budget. The draft bill was eventually rejected.

Shares issued by JSCs, on the other hand, are freely transferable, provided no restrictions are set in the articles of association. The transfer mechanics vary, depending on the type of shares issued by the company (i.e., nominative materialized shares (paper shares) and nominative dematerialized shares). The transfer of material registered shares (paper shares) must be recorded in the shareholders' register and by endorsement on the share certificate. The registration of the transfer of shares with the trade registry is not mandatory. In the case of nominative dematerialized shares, the transfer of ownership from a seller to a buyer is performed based on the transfer documents, subject to its registration within the company's shareholders registry.

Restrictive Covenants

What restrictive covenants can apply to members/partners relating to corporate opportunity, noncompetition and non-solicitation?

It is standard practice that a joint venture or strategic alliance will require a non-compete provision prohibiting any venture partner (including affiliated entities, controlled entities, or entities under common control) from competing with the venture. The rationale is to incentivize co-venturers to concentrate on making the joint venture business successful. It is often the case that non-compete provisions are documented in the joint venture agreement itself, or in case of entity-based structures, in the shareholders agreements.

While non-compete covenants are allowed for a maximum period of five years (for compliance with competition-related limitations), there are arguments supporting the application of a non-compete for the entire period of the joint venture. The Romanian Competition Authority has not issued a formal decision on this matter; however, typically, in practice, this is the accepted approach.

In addition, the non-compete clause should be limited to the territories and the activities of the joint venture and should not extend beyond such scope (as this could result in a general non-compete clause that is restrictive of competition).

The non-solicitation and confidentiality covenants should follow the same restrictions as the non-compete clause.

Management

How is the joint venture or strategic alliance managed in the different structures? Are there statutorily mandated supermajority provisions?

Contractual Arrangements

Under the law, there are no provisions governing the management of a contractual joint venture; hence, the parties are free to mutually agree on such governance aspects in the joint venture agreement.

Entity-Based Structures

As a general rule, directors in entity-based structures may be both individuals and legal entities, both Romanians and foreign citizens/nationals. Shareholders in either of these structures may also hold the position of directors.

JSCs may either be managed in a one-tier system (i.e., one or more directors constitute a board) or in a two-tier system (directorate and supervisory council). Generally, the two-tier system is more often encountered in JSCs active in regulated industries, such as banking, insurance, etc. The board has representation powers in relation to third parties and in court, through its president, unless otherwise provided in the articles of association. The board may also delegate a portion of its authority to a general manager. The duration of a directors' mandate is set through the articles of association but may not exceed four years, with the exception of the first members of the board, whose mandate may not exceed two years.

The management-related provisions applicable to LLCs are more flexible than the ones applicable to JSCs. Usually, directors appointed in LLCs do not form a board, unless the shareholders specifically agree to implement a board. Every director has the right to represent the LLC in front of third parties, unless limitations are imposed through the entity's operative documents.

What mechanisms are there for resolving deadlocks on major decisions?

All joint ventures or strategic alliances, either contractually or entity based, eventually end. Upfront clarity on how the business venture will play out often has unintended positive consequences. Consequently, joint venture agreements generally include carefully negotiated provisions dealing with the resolution of conflicts between the co-venturers. In the absence of clear contractual provisions to this effect, which most often are contained in shareholders' agreements, the court may be vested with absolute authority to settle the deadlock, which may include dissolution for serious disagreements between the parties.

Although there are no clear-cut solutions to a deadlock situation, the following include certain ways in which a deadlock may be addressed:

- "Russian roulette," "Dutch auction," or similar mechanism
- Private arbitration or tie-breaking mechanisms
- Put/call option provision giving one of the members the right to buy out the other at a predetermined minimum floor price

What procedures apply for electing and removing managers in joint ventures and strategic alliances?

In entity-based structures (both LLCs and JSCs), it is the responsibility of the general meeting of shareholders to appoint and terminate the directors of the venture.

A filing is required with the trade registry to effect the corporate change.

Allocating Profits, Losses and Distributions

How are profits, losses, and distributions allocated among partners/members? Are there legal or regulatory restrictions that may limit the ability of the partners/members to make such allocations on their own?

Contractual Arrangements

Subject to certain limitations, partners in contractual joint ventures have broad authority to agree on the allocation of profits or losses. As such, contractual joint ventures will often include provisions dealing with the allocation of risk between the partners, liability and indemnification rights. However, certain provisions lack effect and are considered stricken from the agreement, having no legal effect, including clauses:

1. Reserving a minimum share of the venture's profits in favor of one or more partners, irrespective of the results obtained
2. Securing the profits solely for benefit of one partner –or–
3. Stipulating the exclusive sharing of profits by one or more partners, in each case without incurring any corresponding risk of loss.

Entity-Based Structures

In entity-based structures, on the other hand, absent provisions to the contrary in the articles of association, the default rule calls for distribution of profits and losses among shareholders pro rata to their equity stakes in the venture. Until July 2018, the distribution of profits in the form of dividends was possible only annually upon approval of the financial statements in the annual general shareholders meeting. Consequently, any interim distribution of dividends was not possible. Starting 15 July 2018, the legal provisions allowing Romanian companies to distribute dividends on a quarterly basis came into force, namely Law no. 163/2018, which amended the Accounting Law 82/1991, the Companies Law 31/1990, and Law 1/2005 on the organization and function of cooperative companies. Now, entity-based structures have the option to decide whether to distribute dividends to shareholders on a quarterly basis, pro rata with their participation in the paid-up share capital and based on the interim financial statements within the time limit set by the general meeting of shareholders, or annually, after any adjustments made through the annual financial statements, unless the articles of association provide otherwise. Should the entity-based structures choose to distribute dividends on a quarterly basis, the payment of the remaining differences at the end of the financial year shall be made through the annual financial statements within 60 days from the date of approval of the annual financial statements for the financial year ended.

These newly acquired corporate rights have been widely welcomed within the Romanian business market because they offer shareholders more flexibility to decide how to handle their profits and bring Romanian legislation more in line with that of other European countries. Nevertheless, such novelties tend to be treated with certain reluctance by

Romanian entrepreneurs, since interim distribution of profits from the present year incurs the risk of having to recall the profits received as dividends if the company registers a loss or the dividends granted throughout the year are greater than the company's profits at year end.

A draft ordinance has been launched for public consultation by the Romanian Ministry of Public Finance on 14 August 2019 proposing certain measures for undercapitalized companies. Said measures ranged from prohibition to make advance payments or loans to shareholders/affiliated entities in companies which opt for interim distribution of dividends until full adjustment of the amounts distributed during the financial year to clarification on rules regarding dividend distribution from certain reserves at company's level. However, the most noteworthy proposed provision regarded the conduct of shareholders of companies whose net asset value has fallen to less than half of their subscribed share capital, where the draft ordinance imposed a legal duty for such companies to increase their share capital through conversion of any shareholders' debts into shares, failure of which may raise the risk of winding-up. The draft ordinance was no longer pursued following the fall of the respective Government.

Indemnification

What Indemnification provisions would apply in a joint venture or strategic alliance?

Joint ventures agreements or other operative documents often include specific and carefully negotiated and worded provisions on indemnification allocating risks between co-venturers.

Exiting or Termination

How does a partner/member exit a joint venture or strategic alliance?

Contractual joint ventures and strategic alliances, as well as operative documents in entity-based structures, often include built-in mechanisms allowing partners an exit from the venture. It is most often the case that parties clearly define in the agreement what happens and on what basis when any party wishes to end the venture, so that courts will not interfere with the mechanism that is provided in the joint venture agreement.

Furthermore, to ensure the partners' commitment to their investment in the venture, operative documents often preclude transfer of interests for an initial period of time (lock-up periods), allowing transfers after such period to outside third parties subject to the execution and delivery of adherence documents and various other limitations. Other customary mechanisms include rights of first offer and refusal, put and call options, and tag- and drag-along rights. Additionally, operative documents may include mandatory withdrawal in certain situations, which force a partner committing a material breach or defaulting on its obligations in the venture (e.g., failure to comply with voting rights covenants) to sell its interests to the other co-venturers. Provisions can also address the ability of members to borrow funds rather than be subject to involuntary capital calls, and can provide for such loans to be convertible into equity on defined terms.

In entity-based structures, certain exit limitations exist that may influence the choice of entity for the joint venture. Withdrawal and exclusion tools cannot apply to capital companies like JSCs but are more suitable for *intuitu personae* companies like LLCs. Also, exit procedures by the sale of shares are smoother and easier to implement in capital companies—the sale of shares in JSCs is effected by statement in the shareholders' registries (in case of nominative nonmaterial shares), while in LLCs, transfer of shares have to undergo a two-phase process. See answer to the question: *What restrictions, other than contractual ones, are there on a member/partner transferring its interest in the joint venture or strategic alliance*?

How is a joint venture or strategic alliance terminated?

Contractual Arrangements

As no statutory regime exists, contractual joint ventures will address the terms of dissolution in the governing agreement. Typical scenarios would include:

1. The fulfillment of the joint venture's goal
2. Mutual agreement between the parties –or–
3. (If all of the shares are concentrated and owned by one partner (after having purchased the participations held by the other partners in accordance with the terms of the agreement)

Entity-Based Structures

An entity-based structure can be terminated for reasons relating to any of the following:

1. The time period for the company's duration has elapsed
2. The company's activity can no longer be performed
3. The company is declared null
4. The shareholders decide to terminate the joint venture

5. The court issues a decision terminating the joint venture at the request of any shareholder (for valid grounds, such as disagreement among shareholders preventing the company from operating)
6. The company is bankrupt –or–
7. Other legal provisions or situations set forth in the company's articles of association

The company may also be subject to dissolution if the number of shareholders in the entity-based structures decreases to one for various reasons (e.g., incapacity, exclusion, withdrawal, death, or bankruptcy of the other shareholders). This would not apply to LLCs that may continue their existence with a sole shareholder. See answer to the question: *Are there statutory or other limits on the duration of a joint venture or strategic alliance?* We further note that the winding-up of an entity-based structure may also result from regulations (other than the Company Law) as a penalty for infringements, one example consisting in the changes introduced by the legislation transposing the Fourth Anti-Money Laundering (AML) Directive (2015/849) including, among others, important changes for private companies in the realm of reporting duties and ownership transparency - law no. 129/2019, on preventing and combatting money laundering and terrorism financing, and amending and supplementing certain legal acts for companies. Existing companies had initially until 21 July 2020 to register their beneficial owners in the Central Register of Beneficial Owners of Private Companies, term which was subsequently changed to 14 August 2020 and 1 November 2020 through the Romanian Government Emergency Ordinances (nos. 29/2020 and respectively 70/2020) issued in the context of the COVID-19 pandemic. If the company's legal representative fails to comply with this obligation, fines will be applied and in the next 30 days the company may be wound-up if the statement is not filed in the meantime.

Is the termination of a joint venture or strategic alliance subject to the approval of any governmental body?

Contractual Arrangements

The termination of a contractual joint venture or strategic alliance is not subject to any governmental body's approval. Nevertheless, the termination of a joint venture operating in a regulated industry may require regulatory approval.

Entity-Based Structures

In entity-based structures, on the other hand, a filing is required with the trade registry to effectively de-register and terminate the joint venture. A de-registration certificate is issued. The de-registration certificate must then be filed with the tax authorities to de-register the company from the tax records.

Dissolution of an entity-based structure is typically decided by all shareholders. If there is no disagreement regarding asset distribution, the dissolution may be performed without liquidation proceedings (no receiver is appointed). Alternatively, the dissolution and liquidation are effected through the appointment of a receiver.

Foreign Members/Partners

What statutes or rules govern joint ventures or strategic alliances with foreign parties?

Romanian entities are permitted to establish joint ventures or other contractual or entity-based arrangements with foreign members. Likewise, with very few exceptions, foreign members can enter into contractual or entity-based ventures engaged in business activities in Romania. Limitations applicable to prospective Romanian and foreign founders/directors in entity-based structures include a requirement that such parties not have a criminal record for activities including embezzlement, forgery, fraud, money laundering, misappropriation, bribery, and/or corruption. Law 162/2019 brought certain amendments to this rule, according to which for this prohibition to operate, a court must expressly prohibit the criminal offender from incorporating companies, through the issuance of a complementary sentence to the conviction. The list of criminal offences ranges from corruption offenses, to misappropriation, forgery, tax evasion, and criminal offences provided by Law 656/2002 on the prevention of money laundering, as well as for the introduction of measures to prevent and combat the financing of terrorist acts. Therefore, if a person has committed one of the abovementioned criminal offenses, the conviction alone is no longer enough to prohibit them from having the status of a company founder/manager. It is further necessary that the court expressly forbids them from holding such positions.

What constitutes a "foreign" member or partner of a joint venture or strategic alliance? If there is an attribution rule that traces the ultimate ownership of a local member/partner to a foreign entity, what are the equity-holding and voting-rights thresholds for deeming "control" at each ownership chain?

The foreign nature of a member/partner of a joint venture or strategic alliance depends on the respective member's

nationality (if individual) or country in which the company has its real seat (center of its administration) (if legal entity).

Usually, a person will be regarded as being in control of another if it:

1. Owns, directly or indirectly, more than 50% of the share capital of the entity or voting rights in the entity's shareholders' meeting or equivalent corporate body –or–
2. Otherwise possesses, directly or indirectly, the power to determine the composition of the majority of, or the outcome of decisions on financial or operating policies by, the board of directors or other governing authority of the person

Prevention of money laundering and terrorist financing is currently regulated by Law 129/2019 on the prevention and sanctioning of money laundering, as well as for setting up some measures for the prevention and combating terrorism financing acts, as republished ("Law 129/2019").

Law 129/2019 was published in the Official Gazette of Romania No. 589 dated 18 July 2019 and became effective on 21 July 2019. This legislative act seeks to transpose in the national law the Fourth Anti-Money Laundering Directive of the European Parliament and of the Council and it repeals Law No. 656/202 for the prevention and combating of money laundering.

Law 129/2019 contains provisions with respect to the types of customer due diligence procedures (standard, simplified, enhanced) expected to be followed by obliged entities (e.g., banks, leasing entities, public notaries) with a view to identify the beneficial owners of the Romanian entities with whom they are dealing.

Certain of the new requirements for private companies are of particular importance, since the latter are designed to fight money laundering and terrorism financing. Specifically, private companies are required to keep a record of their economic beneficiaries (i.e., beneficial owners) and disclose them to reporting entities or government authorities. A written statement for registration with the central register of beneficial owners of private companies must be filed (i) upon incorporation of new companies, (ii) on a yearly basis, and (iii) whenever a change in the company occurs. Companies already registered with the trade registry must comply with the duty to declare beneficial owners until 21 July 2020, subsequently prolonged to 1 November 2020.

Beneficial owner is defined by reference to individuals who own, directly or indirectly, the full package of shares or in any case a sufficiently large number of shares so as to allow the individual to exercise controlling rights. The bill presumes that control exists for a shareholding of 25% plus one share. If, after having exhausted all possible means and provided that there are no grounds for suspicion, no person meeting the above mentioned criteria is identified or there is any doubt that the persons identified are beneficial owners, the natural persons who hold the position of director will be presumed to be beneficial owners.

Do such statutes or rules have any limitations regarding foreign members/partners in a joint venture or strategic alliance (e.g., levels of participation, investments, management, etc.)?

There is no specific limit on the number or powers of foreign members/partners in either a contractual or entity-based joint venture.

On the contrary, the legal regime regulating incentives for direct investments provides equal treatment between Romanian and foreign investors, with respect to their investment on Romanian territory.

What permits, consents or registrations are required by foreign members/partners of a joint venture or strategic alliance?

There are no specific governmental or other regulatory approvals required for the formation of either a contractual or entity-based joint venture by virtue of its including a foreign member or partner. The same regulatory regime applies by reference, in particular, to the industry in which the joint venture is active.

The incorporation process of an entity-based joint venture may require additional documentation from a foreign founder. This would typically include trade registry excerpts from the trade registry office of the country where the foreign member is located, stating its existence, incorporation number, identity of its legal representatives, and business address.

Are there any economic incentives for foreign direct investments in a joint venture or strategic alliance?

The general framework governing the economic incentives available to foreign investors is the Emergency Ordinance No. 92/1997 on incentives for direct investments, through which foreign investors are afforded certain facilities, including, in particular, customs and tax facilities.

Are there mandatory minimums or maximum equity investments or contributions for a foreign joint venture or strategic alliance member/partner?

There are no legal provisions determining any minimum/maximum mandatory equity contributions for a foreign participation in a local joint venture or strategic alliance, other than those generally applicable under the Company Law.

Are there any restrictions regarding distributions to, or repatriation of profits by, foreign partners/members?

No restrictions typically apply to repatriation of profits. Also, as previously mentioned, Romanian companies are now allowed to the quarterly interim distribution of dividends. (see above answers to questions: *Allocating Profits, Losses and Distributions – How are profits, losses and distributions allocated among partners/members? Are there legal or regulatory restrictions that may limit the ability of the partners/members to make such allocations on their own?*) Furthermore, dividends may be subject to 5% withholding tax. This tax can be reduced to nil under certain conditions.

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Mădălina Neagu is partner with Schoenherr Romania and a member of the Bucharest Corporate/M&A practice. Since joining Schoenherr in 2008, Madalina has been advising clients on a number of projects involving takeovers, on both the buy and the sell side, corporate restructurings and dispute settlements. Her experience includes assisting on headline M&A transactions, competition matters, acquisition finance, and the privatization of State-owned companies, including advisory on the sell side in one of Romania's largest privatization processes in the banking system. Her client portfolio includes important Romanian and international companies.

Clients call on Madalina's legal expertise especially in large-scale transactions, with recent examples including deals in retail, fast moving consumer goods, industrial production, oil & gas and financial services, to name a few. As a part of the international team fielded by Schoenherr in its offices across Central and Eastern Europe, Madalina has been involved in a series of cross-border transactions, advising clients looking to establish a local presence in Romania, as well as investors looking to reduce their presence in the local economy.