



Doing business in Romania

**Lake Tahoe
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General information about Romania

- Area: ~ 238,000 sq km;
- Population: 21.7 million;
 - 91% Romanian
 - 6.7% Hungarian
 - 1.1% Roma
 - German, Ukrainian, Tartar, etc.
- Expects accession to EU on 1 January 2007

General Economic trends

- Struggle for a free market economy , since 1990
- Leading industry: Manufacturing and engineering
- Possesses substantial energy resources and agricultural land
- Great potential in tourism
- Foreign investments in oil and natural gas, car manufacture, banking and finance, food processing, heavy engineering
- Telecommunications (mobile mainly), IT industry- software industry due to high educated and skilled people
- Real estate sector – significant growth opportunities, lately.

Doing business in Romania – useful guidelines

- There are no specific investment approvals required for setting up a business in Romania.
- The procedure requires fulfilling certain formalities and register the business with the appropriate Trade Register – where the main office will be established.
- Romanian territory is divided into 41 counties and in each county's capital there is a County Chamber of Commerce and Industry and a County Trade Register Office.
- In Bucharest there are the Chamber of Commerce and Industry of Romania (CCIR), Chamber of Commerce and Industry of Bucharest, Bucharest Trade Register Office and National Trade Register Office.
- County chambers of commerce and industry are members of Chamber of Commerce and Industry of Romania
- All chambers of commerce and industry are independent legal persons, non-governmental, self-sustaining and non-profit organizations.

Doing business in Romania – useful guidelines

- County Trade Register Offices are organized by the Courts of Law in each county capital, have no juridical personality and belong to the National Trade Register Office.
- National Trade Register Office is a governmental institution with legal personality, under the coordination of the Ministry of Justice .
- After the revolution in 1989, County Trade Register Offices were organized by each County Chamber of Commerce and Industry, while National Trade Register Office was by Chamber of Commerce and Industry of Romania.
- The Emergency Government Ordinance no. 129/10 October 2002 took the trade registers from chambers of commerce and placed them under the Ministry of Justice coordination.
- Last hour: Romanian Parliament debates the Law which will return trade registers to chambers of commerce

Legal formalities for registering a business in Romania

- All information in the Trade Register is public;
- The Trading Companies' Law 31/1990 is under amendment, to fully comply with the EU Directives;
- Main steps to establish a business in Romania are:
 - Choose the appropriate corporate form
 - Choose the object of activity (NACE - Classification of Economic Activities in the European Community);
 - Choose the location of your main office;
 - Establish the social capital to be paid;
 - Choose the name of the company;
 - All documents must be in Romanian, or translated and authenticated in Romanian.

Choosing a corporate legal form

Limited Liability company (SRL) – most popular legal form for a company;

- Minimum capital requirement is of 200 RON (~ \$70);
- Managed by one or more administrators, who may have full or limited powers;
- The administrators can be individuals or legal persons, Romanian or foreign, but having Romanian residence;
- Simple administrative requirements, greater flexibility, low capital requirement, etc.

Choosing a corporate legal form

- **Joint stock company (S.A);**
 - Minimum capital requirement is of 2.500 RON (~ \$900) – after becoming member of the EU it will become 25.000 Euros;
 - Minimum of 5 shareholders (2 after amendments);
 - Can be open to public or private subscription.
 - For some objects of activity (Insurance, administration of financial vehicle, and others) minimum legal capital is larger -125.000 Euros for the above examples;
- **Branch of foreign company**
 - They are registered as SRL or SA;
 - Poor legislation on this issue

Choosing a corporate legal form

■ Partnership

- *General partnership* - the partnership's obligations are guaranteed by the capital and by the unlimited joint liability of all partners;
- *Limited partnership* – as above and limited partners are liable only up to the value of their share contribution.

■ Consortium

- It does not lead to the creation of a legal entity;
- Usually, one party is in charge of keeping books of the joint venture.

■ Representative office

- Foreign companies can set up representative offices;
- They cannot carry out commercial activities in Romania;
- They can carry out preparatory or ancillary activities, such as market research or advertising
- Register with the Ministry of Economy and Trade

Choosing a corporate legal form

- Economic Interest Group (EIG) and European Economic Interest Group (EEIG)
 - Association of two or more individuals or legal entities, with the objective of developing the activities of its members
 - The development of EIG or EEIG is secondary;
 - An EIG can have no more than 20 members and it is set up for a definite period;
 - Unlimited joint liability of its members (EIG);
 - An EIG is not allowed
 - To issue shares, bonds or other negotiable instruments;
 - To own shares in one of its members or another EIG;
 - An EEIG can be set up in any EU member state, but may function in Romania through subsidiaries, branches, representative offices, etc.

Best practice

- Best ways to set up business in Romania are:
 - Address a request to the Chamber of Commerce and Industry of Romania (www.ccir.ro; email: crotaru@ccir.ro)
 - Establish what are your needs, and what is best way to be taken in order to fulfill your goals;
 - Re-direct you to the appropriate County Chamber of Commerce for registration formalities;
 - Smallest costs for service;
 - Address a request to a lawyer.
 - Some lawyers can charge you 3 or 4 times more the usual
 - Address a request to a Consultancy Company
 - Only if you want a more exhaustive service, comprising market research, finding partners, etc;
 - The charge can be enormous!

Electronic Archive of Secured Transactions

Historic considerations

- The Electronic Archive of Secured Transactions is the result of a large project initiated by World Bank in 1996
- One of the main purposes of the project was to create a unique center for filing and access to information about security interests in collaterals for all of the Romanian territory
- One of the results of the project was The Law on Security Interests in Personal Property, enforced in May 1999 introducing the 'Electronic Archive of Secured Transactions' as unique system of publicity for movable assets

Historic considerations

- In the '90s Publicity of pledges was made through the *Registers of pledges* (paper registers)- kept by the Courts of Law;
- Around '96-'97 World Bank consultants began to induce in the Romanian economic environment the necessity of a General Electronic Registry to make legal publicity of movable collaterals;
- The Electronic Archive is a unique database, containing a recording system of ranking priorities on movable collaterals and publicity.

The role of the Electronic Archive of Secured Transactions

- Consulting the Archive before any conclusion of a contract for movable guarantee is an efficient method of protection of any creditor against the bad faith of the debtors.
- The security interest grants to the secured creditor the right to satisfy the secured obligation with the collateral before any unsecured creditor, and before other creditors whose security interest or rights in the collateral has a lower ranking of priority.
- Creditors are able to calculate more accurately the risk of the transactions to be done after consulting the archive.

Use of the Archive information in forced execution

- According to Article 17 of Law 99/1999, the security agreement is a writ of execution.
- If the secured party cannot repossess the property by peaceful means, the secured party may by means of the judicial executors or the bankers executors or with the support of any other similar competent authority to take possession of the collateral. The creditor request must be accompanied by a certified copy of the filing, a copy of the security agreement, and a description the property to be seized.
- In according to Article 29 paragraph 2 of Law 99/1999, filing in the Archive does not make valid a guarantee that is null and void.

The Archive Operators and agents

- According to the Law only licensed operators and their agents (individual and legal persons) have the right to process filings in the Archive.
- Any person interested in getting an operator authorization shall submit an authorization application to the Ministry of Justice. The authorization is granted through an Order of the Minister of Justice for a three year period and can be periodically renewed.
- The most important authorization criteria are:
 - territorial covering
 - well-known, good name and reputation
 - sufficient technical and financial resources
- By Instructions, depending on the circumstances on the operators 'services market' the Ministry of Justice is able to complete or to reduce the number of these criteria.
- The operators are allowed to empower agents to act on their behalf and directly file the financing statements in the Archive. According to the Law, the operator is **jointly liable** for all the damages the agent cause in exercising the duties assigned to it.

Licensed Operators

- At present, the following entities are Licensed Operators:
- Chamber of Commerce and Industry of Romania,
- The National Union of Notaries Public of Romania,
- The Romanian Bar Association
- The Commercial Romanian Bank
- Ministry of Public Finance

Oversight Authority

- The Oversight Authority is The Ministry of Justice
- Supervises the Operators and Authorized Agents to ensure their compliances with the Law on Security Interests in Personal Property and current regulations
- Has power to issue any administrative rules to implement any provisions in these regulations
- Has the power to inspect the operation of the Archive
- License the Operators and approve the authorization of Agents by the Operators
- Revoke license of Operators or authorization of Agents

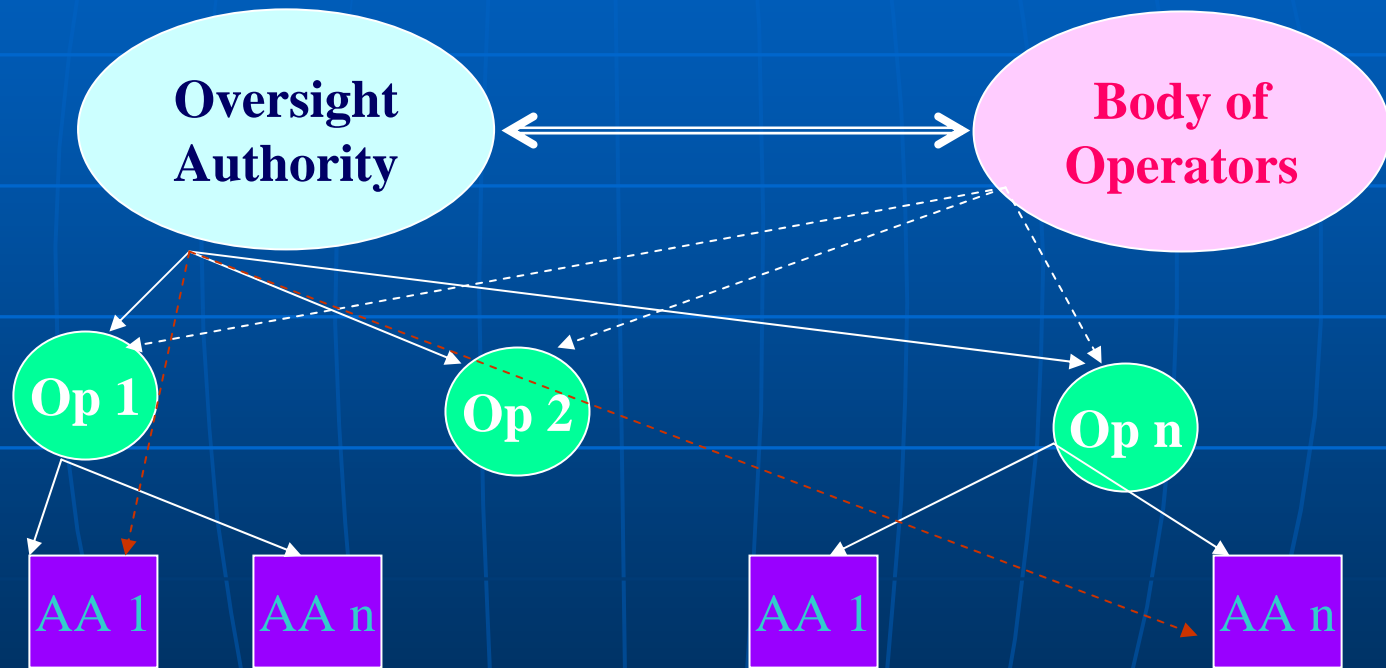
Body of Operators

- Non Governmental Organization of Public Utility
- All Licensed Operators are members of the Body of Operators
- The Body of Operators was established in 2001, according to the provisions of the Governmental Decision of the Romanian Government 802/1999 and the Governmental Ordinance 89/2000
- The Body of Operators administrates the Electronic Archive of Security Interests in Personal Property
- Represents the interests of its members (Operators) against third parties

Romanian Model

Op = Licensed Operators

AA = Authorized Agent



Filing of finance statements into the Archive

- The operators/agents register the finance statements without checking their legality or other aspects. The registration is an administrative activity, and the operators do not have the right and cannot be obliged to check the legality or the accuracy of the data.
- They have just the obligation to verify if the applicant is an interested person (represents the creditors or, sometimes, the debtors) , performing any necessary verification.
- In the event of a dispute, only the court is able to check the legality of the legal facts that determined the filing of the finance statement in the Archive.
- The filing of the finance statements in the Archive is valid for 5 years long. The creditor may renew the registration, for another period of 5 years.

Documents needed to file a financing statement

- Filled in and signed financing statements forms. The forms may be paper-based or electronic. If electronic they have to be signed using the extended electronic signature of the signatory.
- Mandate authenticated by a notary public, if the petitioner represents the secured party or the debtor,
- Any other proof that the petitioner is (or represents) the secured party (for instance the contract signed by himself, proof from the Trade Register, etc.)
- All documents must be in Romanian, or translated into Romanian and authenticated

Access to the Archive

- According to the regulations, the Archive is public and it must provide access to the public in order to allow the search and copy of the information in the Archive. Any person may search, read or copy the information free of charge.
- Official websites:
- www.co.romarhiva.ro and www.mj.romarhiva.ro
- Search in the Archive can be performed according to some criteria (name or other identification elements of the creditor or debtor, brand of vehicle, serial number of the vehicle's engine, identification number - ID and others.)
- Operators and authorized agents could perform retrieval services and copy information from the archive database, in accordance with the criteria and the terms indicated by the applicant. These operations would be done based on a fee.
- Only Operators and their agents can supply certified copies of the filing from the archive

Statistics

- Total number of filings 2000 –2005

2000	2001	2002	2003	2004	2005
95	65.227	171.170	189.653	282.230	358.996

Conclusions

- The Electronic Archive of the Secured Transaction circumvents traditional legal obstacles and permits using a modern technology that allows broad public access for searching and inexpensive system of entering filings.
- Permits mixed public/private operation of the filing archive, concluding the traditional problems with Romania's paper-based public archives –poor public access, difficult and costly filing and weak security.
- Decentralizes operating throughout the country, permitting the use of non-governmental organizations (private organizations, associations and other juridical entities) to operate filings.
- The filing activity, even though is a public service, is carried on by authorized operators and their agents, fulfilling this activity with the purpose of obtaining profit. They will compete with each other to provide the best services to Romanian businesses, and have flexibility in setting competitive fees.

Last Hour

- New Laws, enforced this year, regarding Securitization and Mortgage-Backed Securities give electronic archive new responsibilities in realizing the publicity of the pool of financial assets that will be sold to the financial vehicle for bonds issuing.
- Mortgage-Backed Securities will be registered into the electronic archive and not into the Land Book (Register for immovable publicity)
- It will be possible to radiate a mortgage from the Land Book only if an operator or agent certifies whether there is any Mortgage-Backed security for that specific immoveable
- The Body of Operators started the necessary changes into the IT program to comply with the Laws enforcements

Thank You for your attention

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