

# INVESTING IN ROMANIA



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### LEGAL BACKGROUND

In Romania the legal framework regarding employment relations is mainly regulated by the Labor Code, adopted by means of Law 53/2003 and subsequently amended by special laws, for the purpose of lining up with the provisions of relevant European legislation.

The Labor Code provides a set of minimum general principles to be applied in the employer-employee relations.

The provisions of the Labor Code are supplemented by the provisions of other normative acts that regulate specific domains and



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institutions which create the framework of social employment relations, such as Law 130/1996 (as republished) regarding the collective employment contract and Law 130/1999 regarding certain measures for the protection of employees, as amended, Law 108/1999 for establishing and organizing Labor Inspection, as republished and amended, Law 56/2007 regarding workforce employment and the relocation of foreign citizens on the Romanian territory etc., as well as by the provisions of the collective employment contracts.

Employment legislation is closely connected to the legal norms regarding social security. The main normative acts that regulate the social security system are: Law 19/2000 regarding the public system of pensions and other social rights, as further amended, Law 346/2002 regarding insurance against accidents at work and professional diseases, as further amended, Law 76/2002 regarding unemployment insurance system and encouraging employment, as further amended, Law 95/2006 on the reform in the health sector, as subsequently amended.

provisions and performed work by any other proving means.

As a rule, the individual employment contract is concluded for an indefinite period of time. As an exception, in certain cases expressly provided by the law, the individual employment contract can also be concluded for a limited period of 24 (twenty four) months at the most (examples of such situations are the temporary replacement of an employee the individual employment of whom is suspended, the performance of temporary activities, the temporary increase in the employer's activity volume and so on).

Individual employment contracts, either concluded for a limited period or for an indefinite time can refer to both full time work schedule (8 hours/ day, 40 hours/ week) and part time work schedule (part time contracts). Part time contracts can only be concluded in written.

The Labor Code also regulates some specific forms of temporary contracts, such as (i) employment contracts by a temporary labor agent (temporary employment contracts), (ii) employment contracts for work carried out at home.

### EMPLOYMENT RELATIONS

#### Individual Employment Contract

The work relations carried out in Romania are mainly regulated on the basis of an individual employment contract concluded between the employee, as an individual (the performer of the work), and the employer (the individual or legal entity for the benefit of whom/which the work is performed). The individual employment contract should set out a series of minimal clauses provided by the frame individual employment contract approved by means of Order no. 64/2003 of the Ministry of Labor and Social Solidarity, as further amended. Furthermore, the individual employment contract can also comprise specific clauses (for instance non-competition, confidentiality, mobility etc.), as negotiated by the parties. The Labor Code stipulates in charge of the employer the obligation of concluding a written individual employment contract with the employee. If the individual employment contract is not concluded in writing, it will be assumed that such is concluded for an indefinite period, and the parties can give evidence of the contractual

Temporary employment contracts are those contracts concluded by the employees with a "temporary labor agent" licensed by the Ministry of Labor and Social Solidarity which places the said employees at the disposal of a user for the purpose of having certain tasks, of temporary nature, fulfilled (temporary labor assignment). The duration of an assignment cannot exceed 12 (twelve) months and can only be prolonged once with a duration which if added to the initial one does not generate a total period of time of over 18 (eighteen) months. The employees are placed at the user's disposal by means of an assignment contract concluded in writing between the temporary labor agent and the user.

Employment contracts for work carried out at home are the contracts under which the employees perform at home tasks specific to their job. The employees working at home decide their own working schedule; nonetheless the employer is entitled to assess their activity as per the contractual provisions.

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**Collective Employment Contracts**

Pursuant to the law, collective employment contracts may be concluded at the level of units, groups of units, branches and at a national level. Collective employment contracts may not include provisions establishing rights of an inferior level to the one set by those collective contracts concluded at a superior level, and the individual employment contracts may not include provisions establishing rights of an inferior level to the one set by collective employment contract/contracts. Upon conclusion of collective employment contracts, the legal provisions related to employees' rights shall be minimal.

In the event that the law, the individual/collective employment contracts, the internal regulations or other regulations, contain different provisions, such provisions that are most favorable for the employee shall prevail.

**Collective bargaining**

According to the law, a company with at least 21 employees is obligated to initiate, on an annual basis, the procedure of collective bargaining with the union or, in the event that the employees have not formed a union, the chosen representatives of the employees in view of concluding the collective employment contract at the unit level or of renegotiating the provisions of the existing collective employment contract. The object of the collective bargaining is an attempt to reach an agreement with respect to at least the following items: the salaries granted to the employees of the unit, the duration of the work period, the work program and the work conditions thereof.

**Collective Employment Contract concluded at a national level**

The collective employment contract no. 2895/2006 concluded at national level is effective for 4 years, namely, it applies for years 2007 – 2010 (until December 28, 2010). In the event that neither party terminates the contract within thirty (30) days prior to the expiry of the period for which the contract was concluded, such contract's validity shall be extended until a new contract is concluded, but not longer than twelve (12) months.

The main provisions of the collective employment contract concluded at a national



level refer to: the work period, the work conditions and labor protection, salaries and other money rights, vacation and days off, conditions of conclusion, performance and termination of the individual employment contract, professional training, etc. According to the said contract, the normal work period is eight hours per day or 40 hours per week. Nonetheless, pursuant to the negotiations at the level of unit, in order to conform the program to the production requirements, one may set out a weekly program of 36 up to 44 hours, provided that the monthly average should be the equivalent of an average of 40 hours per week, and the program determined should be announced one week in advance. For certain activities, jobs and categories of personnel, set forth by the collective employment contract at unit level, one may set out partial working hours. The salary rights of the employees working in such conditions are granted pro rata with the time worked.

According to the provisions of Government Resolution no. 1051/2008 setting the guaranteed national minimum gross basic salary, the guaranteed national minimum gross basic salary is set at RON 600 per month, for a full time job averaging 170 hours per month in 2009, which means RON 3.529 per hour.

**SOCIAL SECURITIES SYSTEM****Types of social securities systems**

Up to January 1, 2005, in Romania there had existed only one social securities system, namely the public system. Subsequently, two other types

of social securities systems were regulated, namely optional pensions and privately administered pensions, as follows:

**Facultative pensions**

Law no. 204/2006 regarding optional pensions was adopted on July 3, 2006. The participants in an optional pension fund include employees. The employees' contribution in an optional pension fund may be of up to 15% of the gross salary incomes, and it may be divided between the employer and the employee in accordance with the provisions of the CEC or, in the absence of such CEC, in a separate protocol concluded with the employees' representatives.

The employer withholds and transfers the contributions of such of its employees who participate in an optional pension scheme and shall be held criminally liable for any failure to pay such contributions or for their incomplete payment.

The optional pension fund is set up under a civil company contract, and the plan underlying the operation of said fund must be previously authorized by the Private Pension System Monitoring Commission, an autonomous administrative authority, with juridical persona, under the control of the Romanian Parliament. Occupational pensions are paid periodically, additionally and distinctly from the pensions provided by the public system. In the event of demise before pension time, the relevant personal assets evaluated at the date shall be allotted to the beneficiaries, according to the succession document and to the norms of the Private Pension System Monitoring Commission.

**Privately administered pensions**

Law no. 411/2004 regarding pension funds privately administered came into force on July 21, 2006.

The purpose of the fund for privately administered pensions is to secure a distinct private pension, which supplements the pension granted by the public system, on the basis of collection and investment, for the interest of the participants, of a portion of the individual social securities individual contribution.

The pension fund is established under a civil



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company agreement and it must have at least 50,000 participants, a number which should be achieved within the first three years following its establishment.

Employees aged up to 35 years old should join such a privately administered pension fund. Private pensions shall be paid periodically, additionally and distinctly from the pensions provided by the public system, both to the participant who paid the contribution and, in the event of the participant's death, to the beneficiary designated by the same.

The calculation basis, the withholding and the due dates of the payments of the contribution to the pension fund are the same as the ones established for the contribution to social securities fund. Upon the commencement of the collecting activity, the contribution amounts to 2% of the calculation basis, and subsequently increases to 6% within a period of 8 years. The contribution to the privately administered pension fund is part of the individual social securities contribution due to the public pension fund

### Due contribution to the pensions and social securities system

Contrary to the previous law, which related to the seniority and the level of the wages of the insured, the current system of pensions and other social rights in Romania granted to the insured is based upon the principle of contributions, brought by

the individuals or legal entities participating in the public system. Within the legal framework created, social securities rights are due to the insured under the paid social securities contributions.

The social securities rights and obligations in the public system are monitored using the personal social securities code, which is the personal number.

At present, the quotas of contribution to the social securities in the public system are as follows:

- (a) 31.3% for normal work conditions (20.8% paid by the employer and 10.5% paid by the employee);
- (b) 36.3% for specific work conditions (25.8% paid by the employer and 10.5% paid by the employee);
- (c) 41.3% for special work conditions (30.8% paid by the employer and 10.5% paid by the employee).

In addition to the aforementioned contribution, there is a series of contributions that must be paid to the fund required for the payment of unemployment support, to the health insurance budget and to special funds (education, social solidarity, etc.)



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