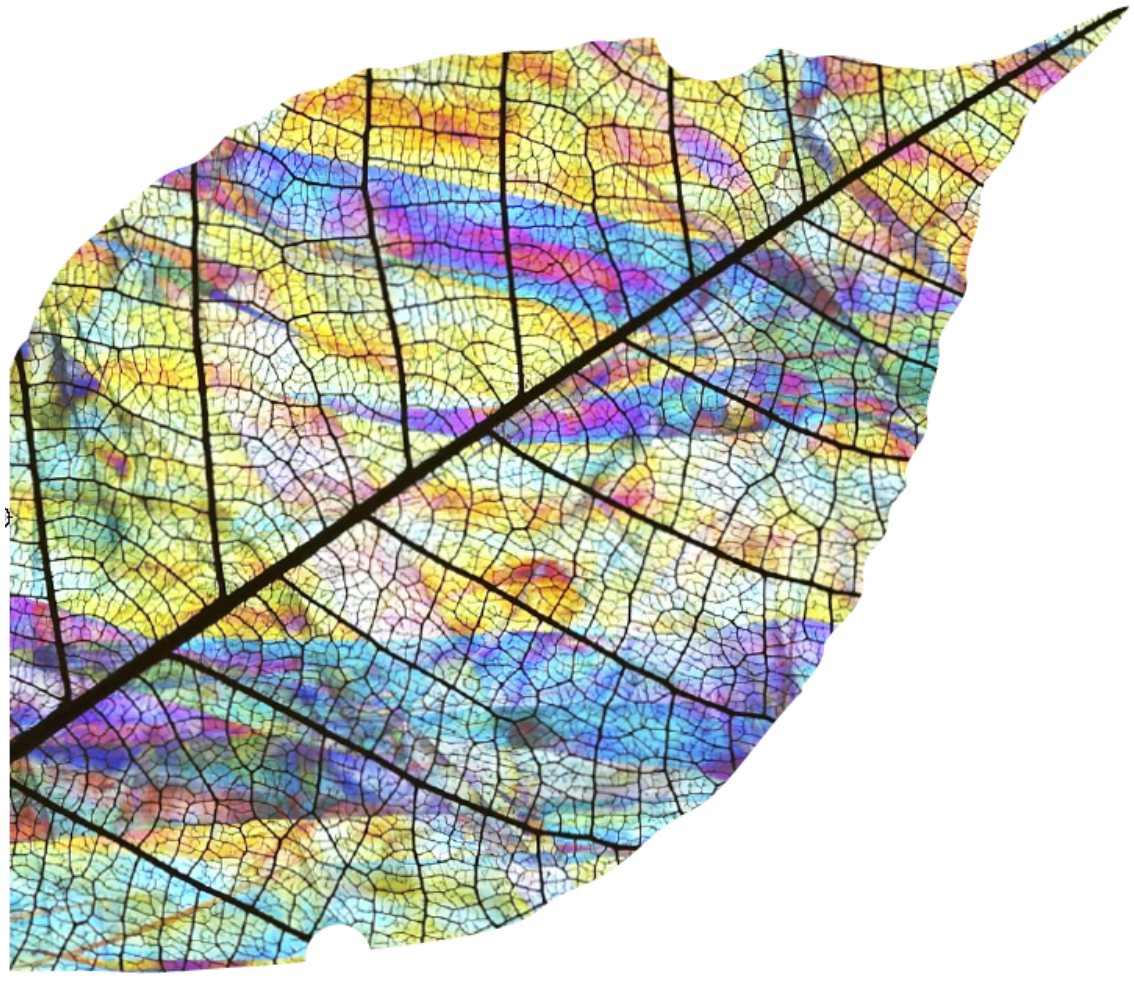
World Universities Comparative Law Project
Legal rating of Romania

A production of the Allen & Overy Global Law Intelligence Unit



August 2016

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carried out by students at Faculty of Law, University of Bucharest

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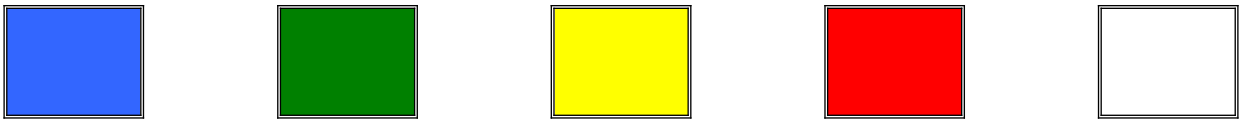

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World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Romania was carried out by students at the Faculty of Law, University of Bucharest.

The Faculty of Law is one of the oldest schools belonging to the University of Bucharest. Its academic staff includes remarkable legal scholars, working as members of the traditional chairs: the public law chair, the private law chair and the criminal law chair.

All the activities have been recently structured so as to meet the need to upgrade the education process, while taking into account the specific legal field-related features. As a result, curricula, syllabi and teaching methods have been streamlined. Consequently, there are more and more numerous students enrolled in study programs (BA degree, MA degree, PhD, specialized post graduate studies), who are also evermore so demanding as to the content and quality of our courses.

The Faculty of Law has developed fruitful co-operation programs with similar institutions both at home and abroad, while trying to successfully participate in the national effort to integrate the global academic community.

The member of the Faculty of Law at the Bucharest University who assisted the students was:

Professor Lucian Mihai is an Of Counsel of RTPR in association with Allen & Overy LLP.

Dr. Lucian Mihai has over 30 years of experience as professor at the University of Bucharest, Faculty of Law, where he holds classes on civil law and intellectual property law. Professor Lucian Mihai is a former chairman of the Commission for drafting the New Civil Code and the Law for its Enactment, former President of the Romanian Constitutional Court (the highest legal position in Romania), member of the Venice Commission, as well as General Secretary of the Chamber of Deputies.

Professor Lucian Mihai is listed as arbitrator of the Court of International Commercial Arbitration, attached to the Romanian Chamber of Commerce and Industry since 1993, the Romanian Copyright Office since 1998 and LCIA since 2011. He has taken part in numerous international cases as counsel, arbitrator or expert-witness. Professor Lucian Mihai acted also as ad-hoc judge of the European Court of Human Rights.

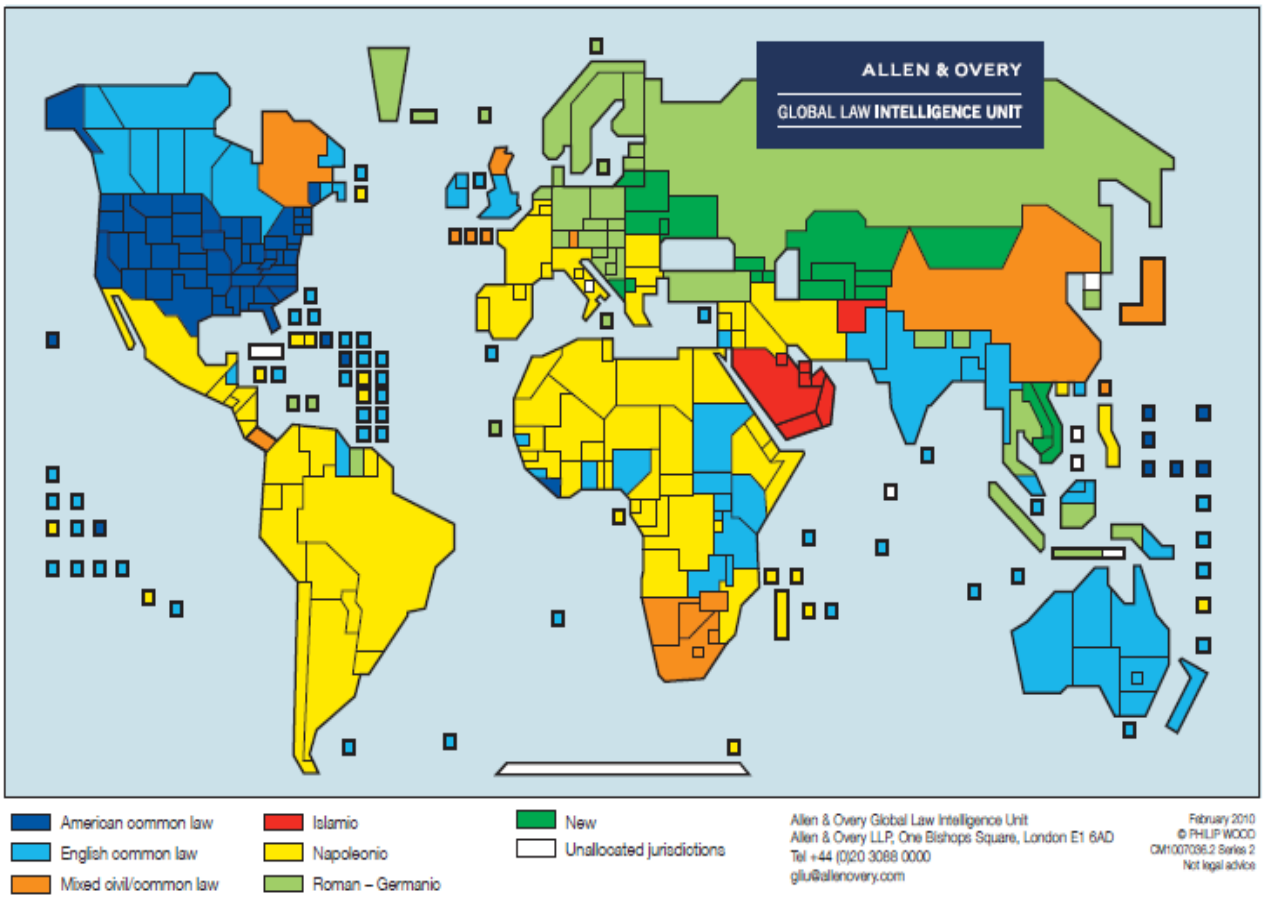
For more than 18 years Professor Lucian Mihai has been the "Honorary Legal Adviser" to the Ambassador of the United Kingdom in Bucharest.

The practitioner with whom the students could discuss the questions in the survey was Adrian Cristea, associate with RTPR Allen & Overy from 2012. He is a member of the Bucharest Bar and of the National Union of Romanian Bar Associations. Adrian has experience in advising international companies on commercial transactions, including mergers and acquisitions, capital markets and privatisations.

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

We are delighted to present this legal risk rating of Romania, which is one of a series of similar risk ratings carried out by students around the world.

The aim was to produce a survey of the wholesale financial and corporate law in Romania looking at how Romania fits in with the rest of the world.

We hope that you will find the colour-coded methodology and the technique of selecting symbolic and resonant legal indicators to be an expressive and creative way of signalling some of the main contours of wholesale financial, corporate and related law in Romania. We certainly find the result to be most fascinating and helpful and we hope that the reader will agree.

We are most grateful to the students at Bucharest University for being willing to participate in this project.

Philip R Wood QC (Hon), BA (Cape Town), MA (Oxon), LLD (Lund, Hon)

Head, Allen & Overy Global Law Intelligence Unit
Special Global Counsel
Visiting Professor in International Financial Law, University of Oxford
Yorke Distinguished Visiting Fellow, University of Cambridge
Visiting Professor, Queen Mary University, London

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Romania with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

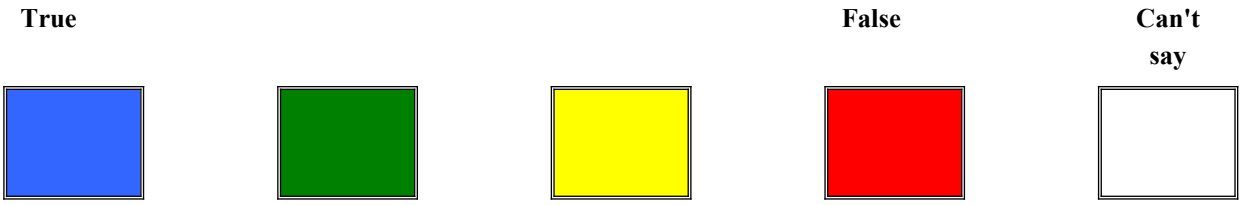
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at Faculty of Law from Bucharest University. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of Faculty of Law from Bucharest University, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Romania. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations

as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Romania, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True			False	Can't say
		X		

Comment:

In Romania, during the insolvency procedure, all the judiciary and extrajudiciary actions or enforcement measures against the debtor are suspended by law. Within this particular period of time, the debtor can make only the current payments under the supervision or direction of a judicial administrator. The other activities that are not deemed as current operations can be conducted only with the consent of the creditors.

However, according to the Law No. 85/2014 regarding insolvency prevention procedures and insolvency ("the **Insolvency Law**"), the insolvency proceedings does not affect the right of any creditors to set-off the mutual debts whenever the conditions provided by law in matters of legal compensation are fulfilled at the opening date of insolvency proceedings. According to the Law No. 287/2009 regarding the Civil Code ("the **Civil Code**"), the legal conditions for operating the set-off of mutual debts are: the existence of two certain, liquid and due debts which have as their object a sum of money or a certain quantity of goods of the same nature.

Under Insolvency Law, these rules shall apply accordingly to the mutual debts arising after the opening date of insolvency proceedings.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Romania, the law offers a security interest which is highly protective of the secured creditor.

True			False	Can't say
	X			

Comment:

Under Romanian law, a company might create a mortgage over the movable or immovable, tangible or intangible assets, in order to secure all its debts owed to its creditors (i.e. the banks). Furthermore, the security might be created over future assets, even over universalities of assets.

However, the security is valid only if it contains an accurate description of the assets that constitutes its object. For instance, if the mortgage agreement stipulates that the security is created over all debtors' assets or over all its present and future assets, it is not considered as accurately describing its object. Therefore, this is a validity condition, so that the failure to comply with it triggers the nullity of the mortgage agreement.

In addition, some particular legal formalities must be fulfilled in order to make the security enforceable against other creditors: the security must be registered. Under Romanian law, there are two major public registries in which the securities must be mentioned: the Land Book (for immovable assets) and the Electronic Archive for Movable Securities (for movable assets). By registering the securities with the above-mentioned public registries, the creditors benefit by priority in the registering. If the debtor fails to fulfil its obligations, the creditor is entitled to enforce the mortgage agreement even if the assets were transferred to a third party. Furthermore, if the mortgage agreement is authenticated, the creditor might enforce the mortgage out-of-court. In terms of immovable assets, the registration with the Land Book is a validity condition for the mortgage agreement.

Therefore, under Romanian law, a secured creditor benefits by high legal protection, especially if it has a mortgage over the debtor's immovable assets. Not only it might follow that particular asset even though they were transferred to a third party, but it might enforce the security with priority, according to the order in the registering.

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Romania has a universal trust for all assets.

True		False	Can't say
	X		

Comment:

Under Romanian law, there is no a perfect equivalent institution of the trust. However, the Civil Code regulates the legal institution of fiduciary duty (in Romanian language: *fiducie*), which is an agreement under which one party (the settlor) transfers to another one (the fiduciary) real rights, receivables, securities, other property rights or a specific set of such rights. The latter will exercise these rights over the assets in favour of the beneficiary, who may be the settlor or a third party. The assets over which the fiduciary duty is created form a distinct patrimonial fund (in Romanian language: *masă patrimonială*). It is worth mentioning that the fiduciary duty might arise from the parties' agreement or from the law.

A particular case in which the fiduciary duty mechanisms apply accordingly is the insolvency procedures. With respect to this matter, the Civil Code provides that the opening of insolvency procedures against the fiduciary does not affect the fiduciary patrimonial fund.

Even though the Insolvency Law does not expressly provide the applicability of the relevant provisions of the Civil Code in terms of fiduciary duty, the insolvency procedures imply a similar mechanism: at the very beginning of the insolvency procedure, there is appointed a special administrator, a bankruptcy trustee or a liquidator, who would develop a plan for the company and conclude the legal acts in the name and on behalf of the company. Therefore, during the insolvency procedures, the right of administration belonging to the company might be partially or entirely suspended, so that the rights over the company's assets are exercised by the administrator, trustee or liquidator both in the benefit of the company and of its own creditors, in a similar manner to the fiduciary duty.

Pursuant to the Insolvency Law, the major responsibilities are transferred to these trustees, such as: company management, filing the actions for cancellation of debtor's fraudulent acts, collecting the debtor's incomes,

selling the debtor's assets, etc. Considering these responsibilities it appears that the administrators that are involved in the insolvency procedure are similar to the trustees.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Romania the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True			False	Can't say
		X		

Comment:

The Insolvency Law provides eight determined situations which impose personal liability on directors for deepening the insolvency.

At the request of the bankruptcy trustee or the liquidator, the bankruptcy judge may order that a part of or the entire liability of the debtor (as legal entity that reached the insolvency state), without exceeding the damage occurred as a consequence of the particular act/fact that triggered the liability, to be incurred by the board members and/or supervisory board of the company, as well as by any other persons who have contributed to the insolvency of the debtor, through one of the following actions: i) used the legal entity's assets or loans in their own interest or of another person; ii) carried out production activities, trading or supply services for personal interests, under the cover of the legal entity; iii) ordered, in their personal interest, the continuation of an activity which conspicuously led the legal entity to cease the payments; iv) kept a fictional accounting, made some accounting documents disappear or did not keep the accounts according to the law; v) embezzled or concealed a part of the legal entity's assets or fictively increased its liabilities; vi) used destructive means to procure funds for the legal entity, in order to delay the cessation of payments; vii) within one month prior to the cessation of payments, preferentially paid or ordered the payment to a creditor, to the detriment of another creditors. In addition, the law provides in general terms that any other intentional act/fact which deepened the insolvency state of the debtor might trigger the personal responsibility of the board members and/or supervisory board.

The director is responsible for a part or for entire liability of the debtor's insolvency, but without exceeding the damage caused by his act. The Insolvency Law also provides that if two or more directors are responsible for the debtor's insolvency state, they will be jointly liable.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 Romania permits a company to grant financial assistance for the purchase of its own shares.

True			False	Can't say
			X	

Comment:

Under Romanian law, the assistance given by a company for the purchase of its own shares or the shares of its holding companies is prohibited, as it is for all EU member states, who are required to restrict financial assistance by public companies up to the limit of the company's distributable reserves, according to the Recital 5 of the EU Directive 2006/68/EC.

Pursuant to the provisions of the Law No. 31/1990 on companies ("**Companies Law**"), a company may not grant advance payments or loans to a third party in order to subscribe or acquire the company's shares. It is worth pointing out that these provisions do not apply to the transactions in the current operations of financial institutions, neither to the transactions regarding the acquisition of shares by/for company's employees, on condition that these transactions does not determine a decrease in the net assets under the net aggregate value of subscribed share-capital and in the reserves, according to the law or to the articles of incorporation.

In addition, the Companies Law provides that the administrator, manager, executive director, members of the supervisory board/directorate or legal representative of the company that grants advances and loans over the company's shares shall be punished with imprisonment from three months to two year or with fine.

Therefore, the Romanian legislation strictly prohibits a company from giving financial assistance in order to purchase its own shares.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Romania is open and has few restrictions.

True		False		Can't say
	X			

Comment:

In Romania, the public takeovers are regulated by Law No. 297/2004 on capital markets ("the **Capital Markets Law**"), as well as by secondary enactments, such as Regulation No. 1/2006 on issuers and operations with securities ("the **Regulation No. 1**"). The Capital Markets Law and Regulation No. 1 comprise special provisions regarding the public offers, including the takeovers. The authority supervising the takeover process on the regulated markets is the Financial Supervisory Authority ("the **FSA**").

Under Romanian law, there are two types of public takeovers: voluntary, respectively mandatory ones.

The voluntary public takeover offer is a public purchase offer addressed to all shareholders, for all of their holdings, launched by a person who is not obliged to do so, in order to acquire more than 33% of the voting rights in a company. The person who intends to conduct a voluntary public takeover would file with FSA a preliminary notice that would be approved by the latter. After its approval, the preliminary notice would be submitted to the company – which is subject of the public takeover – and to the regulated market on which the securities of the company are traded. In addition, it would be published at least in a national and a local newspaper. By publishing the preliminary notice, the offeror is obliged to file with FSA, within 30 days, the proper documentation regarding the public takeover offer, in terms and conditions no less favourable than those mentioned in the preliminary notice. FSA will approve the offer document within 10 days from the registration of the application. The price in the voluntary public takeover offer will be determined in accordance with the FSA's regulations.

The mandatory public takeover offer occurs whenever a person who has acquired more than 33% of the voting rights in a company, as a consequence of its own acquisitions or of the persons with whom it is acting in concert. In such situation, that person is obliged to launch a public offer that is addressed to all shareholders regarding all of their holdings, within 2 months from the date of reaching that level of holdings. Until the public offer is conducted, the rights regarding the shares surpassing the level of 33% of the voting rights are suspended. In addition, the shareholder and the persons with whom it is acting in concert cannot acquire shares in the same company by any other means. The price in the mandatory public takeover offer is at least equal to the highest price paid by the offeror or by the persons with whom it is acting in concert, during a period of 12 months prior to submission to the FSA of the tender documentation.

However, in Romania the capital market is still in its early stages, so that the public takeovers are not frequent in practice. However, the prospective development of the capital markets and the accession to the European Union may lead to an increase in the number of takeovers.

In conclusion, the Romanian public takeover regime has few restrictions, but those that exist are very strict; their breach implies the sanctioning of the company and, eventually, the punishment of its representatives who failed to fulfil their legal obligations on behalf of the company.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Romania, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True			False	Can't say
		X		

Comment:

Under Romanian legislation, the heads of terms do not represent a legal institution expressly provided by law. However, their effects might be binding for the parties with respect to some particular conditions that are presented below. As a starting point, the Law No. 287/2009 regarding the Civil Code ("the **Civil Code**") contains particular provisions based on which the actual effects of the heads of terms can be determined.

First of all, it is worth mentioning that Romanian law system is sometimes extremely formal, by comparison with other legal systems (i.e. common law). Therefore, some legal instruments present an additional juridical rigor. One particular case is represented by the agreement in principle (in Romanian language: *accord de principiu*) that may occur in the pre-contractual phase, when parties negotiate the main elements of the future agreement. It establishes the common elements of the negotiation that the parties agreed upon and eventually outlines the guidelines for subsequent negotiations on secondary aspects. Regarding the binding or non-

binding effects of this agreement, it is worth mentioning that the Civil Code regulates the good faith in carrying out negotiations in order to conclude an agreement. Therefore, it is contrary to good faith, *inter alia*, the conduct of a party who initiates or continues negotiations with no intention to conclude the agreement. The party that initiates, continues or breaks the negotiation contrary to the good faith is liable for the damage caused to the counterparty.

A particular type of the agreement in principle is the one containing all the essential elements of the agreement that the parties intend to conclude. In this particular context, it should be taken into account that the Civil Code provides that an agreement is concluded through negotiations carried out by the parties or through the unreserved acceptance of an offer. The agreement is deemed to be concluded if parties have agreed upon its essential elements, even if they let some aspects to be agreed upon later or entrust their determination to another person.

Therefore, even if the agreement in principle contains the phrase "subject to contract" or another similar expression, in the event of a dispute, there is the risk that Romanian courts might consider this document as an actual agreement. The agreement in principle might be binding for both parties, even though it doesn't contain the secondary elements that might be agreed upon even after the conclusion of the agreement. Considering the formalism of the Romanian private law as mentioned above, the courts might interpret the collocation "subject to contract" as expressing the common will of the parties in terms of the contractual commitment over essential elements of the agreement.

Furthermore, the Civil Code provides that a valid agreement obliges not only to the express stipulations, but also to all the consequences that practices established between parties, usages, law and equity assigns to the agreement, considering its nature. If the terms of the agreement aren't clear enough, the heads of terms might be taken into account in order to interpret the contractual clauses. Therefore, this pre-contractual document might be binding for the parties as the actual agreement, whose essential elements are agreed upon in the article in principle.

In conclusion, in Romania, heads of terms might be binding in the particular conditions mentioned above.

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Romania, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True			False	Can't say
	X			

Comment:

The conventional termination operates by virtue of a termination clause (commissary pact), through which the parties establish in advance which breach of the agreement would result in the termination of the contract. The advantage of commissary pacts consists in eliminating the arbitrary way in which the failure to comply with the contractual obligations is appreciated as being significant or not.

The termination clause should clearly specify the events that will trigger the termination of the agreement. If the pact is unclear, the court can censor it.

Another condition for the conventional termination to operate is the notice of default, through which the party should point out expressly the particular conditions in which the commissary pact operates. Exceptionally, the notice of default is no longer necessary in case of the most dynamic commissary pacts, which provides that the termination of the agreement simply results from the failure to comply with its provisions, without further formalities. . In order for the conventional termination to function, the formal condition of specialized notification is needed. Therefore, even if the requirement of notice of default is excluded through the commissary pact, in order for the conventional termination to effectively operate, a specialized notification is necessary – which represents the commitment of the obligee to notify the obligor through a notification about the fact that he invoked the termination of the contract and the conditions in which this operates.

Moreover, the parties should respect the principle of good faith if they would call upon the termination of the agreement in the above-mentioned conditions.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Romania, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True			False	Can't say
	X			

Comment:

Under the Civil Code, the parties are liable only for the direct damages, unless otherwise agreed by contract. The parties are free to increase their liability, so that they could be liable not only for the direct loss, but also for the loss of profit or business.

Furthermore, exclusion of liability clauses related to breach of contractual provisions or to damages caused by hidden defects of the products or services are generally valid and binding. There are some exceptions to this general rule. Therefore, such clauses may be considered null and void to the extent that they try to

exclude liability for: (i) wilful misconduct;(ii) gross negligence; (iii) serious damages (i.e. physical injuries or other damages to a person's health or to a person`s life) that have a connection with the use of the products or services; (iv) agreements concluded with individuals as consumers.

The parties can contractually exclude the liability on any issue, with the above-mentioned exceptions. However, the exclusion is not effective against third parties that have incurred damages in connection with the products or services that were supplied.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Romanian courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Romanian public policy and mandatory statutes.

True			False	Can't say
X				

Comment:

Since Romania is member of the European Union, the EU Regulation 593/2008 on the law applicable to contractual obligations ("the **Rome I Regulation**") is directly applicable in Romania. Rome I Regulation preserves the parties' right to choose the law that will govern their agreement, this choice being expressly

made or clearly demonstrated by the terms of the contract or the circumstances of the case .It is worth pointing out that the choice of law may apply to the whole or just to a part of the agreement.

However, Rome I Regulation contains specific rules regarding the relationship with the mandatory provisions of the member state's legislation, which would have been applied by the courts, if a choice of law had not been made by the parties. These provisions have the effect that the parties' choice of law cannot derogate from the mandatory rules , if the agreement contains all the other elements relevant to the situation at the time of the choice of law located in a state other than that whose law has been chosen. This provision affects parties where mandatory rules of the law of the exclusively connected state conflicts with the rules of the chosen law. In these situations, the choice of law is subordinated to mandatory rules.

It must also be noted that in certain situations, the Rome I Regulation imposes limits on the autonomy of the will of the parties to select the applicable law in a contract, for example in the case of insurance, employment, carriage of goods and consumer contracts.

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Romanian courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True			False	Can't say
X				

Comment:

In Romania, as a member state of the European Union, Regulation 1215/2012 is in force from 10 January 2015. The new regulation has left the core features of the previous provisions on jurisdiction in civil and commercial matters (from Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters - Brussels I Regulation) largely unchanged.

According to Regulation 1215/2012, a contract between parties that provides exclusive jurisdiction to a specific country's courts will be upheld by the national courts, even if there is no connection between the chosen country and the contract.

The rules relating to jurisdiction and choice of court agreements have been amended in the Regulation 1215/2012 (Article 25).

Firstly, it is expressly stated that jurisdiction agreements are separable: "An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract." Therefore, the validity of the jurisdiction agreement cannot be called into question solely on the fact that the contract is not valid.

Secondly, the scope of jurisdiction agreements is now widened by the Regulation 1215/2012, which has removed the requirement that existed in Brussels I Regulation, regarding the fact that at least one party has to be domiciled in a Member State.

One of the requirements of the jurisdiction clause is that the courts of a Member State should have jurisdiction (Article 25). This means that any jurisdiction clause in which a non-Member State Court is chosen will fall outside the Regulation.

Another amendment addresses the rule on international lis pendens by strengthening the protection given to jurisdiction agreements.

Article 31(2) of the Regulation 1215/2012 mentions that "where a court of a Member State on which an agreement as referred to in Article 25 confers exclusive jurisdiction is seized, any court of another Member State shall stay the proceedings until such time as the court seized on the basis of the agreement declares that it has no jurisdiction under the agreement." The court that was chosen by the parties has preference over all other courts (the moment when the proceedings are started does not affect the priority given by the Regulation to the court chosen by the parties).

The agreement conferring jurisdiction shall be either:

- in writing or evidenced in writing;
- in a form which accords with practices which the parties have established between themselves; or
- in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Domestic provisions

According to the Code of Civil Procedure, Book VII in patrimonial matters, the parties may select a competent court to solve a present or a future litigation arising from an agreement having international elements. Such a selection may be made in writing or by telegram, telefax, copy machine or any other such communication mean that may constitute evidence. The text also mentions that such a competence is an exclusive one, in the absence of a legal provision providing the opposite.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Romania, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Romanian courts.

True			False	Can't say
X				

Comment:

Generally, in Romania, sophisticated contracting parties can submit contract disputes to a foreign arbitral tribunal, in accordance with Book IV and Title IV of Book VII of Romania's Code of Civil Procedure. According to these regulations, parties who have full capacity of exercise may agree to settle disputes by arbitration, except those concerning rights on which the parties cannot dispose and those which cannot be settle by an arbitral tribunal according to the law of the state of the tribunal.

We must make a distinction between disputes involving a foreign element and disputes that do not involve a foreign element.

Disputes that do not involve a foreign element are regulated by the Book IV of the Code of Civil Procedure, including disputes between sophisticated parties. These are usually settled by Romanian arbitral tribunals, but there is no prohibition for the parties to appeal to a foreign arbitral tribunal, even if there is no foreign element.

In practice, most often the disputes that are submitted to a foreign arbitral tribunal are those involving a foreign element. These are regulated by the Title IV of Book VII of the Code of Civil Procedure. Also, these disputes can be settled by Romanian arbitral tribunals, but the parties can chose a foreign arbitral tribunal. In order to appeal to an arbitral tribunal, an arbitration agreement must be concluded in writing by any means of communication that prove its existence. The arbitration agreement must be valid under any of the following laws: the law established by the parties, the law governing the object of the dispute, the law of the contract when the arbitration agreement is part of a contract or the Romanian law. The Romanian Civil Code provides that an arbitration agreement must be expressly accepted in writing by the other part, when it was included in the contract without negotiation.

Romania is part of the New York Arbitration Convention of 1958 from 1961, so the decision of a foreign arbitral tribunal is recognized in Romania, in accordance with the provisions of this Convention. Any foreign arbitral decision can be recognized and enforced in Romania as long as the dispute could have been settled by a Romanian arbitral tribunal and respect the public order of Romanian Private International Law. Also, Romania is part of the Geneva European Convention on International Commercial Arbitration of 1961 and part of the International Centre for Settlement of Investment Disputes (ICSID) Convention, so foreign investors are protected, being able to address to ICSID, under the conditions of the Convention.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In Romania, class actions where the class is bound if they do not opt out are generally not allowed.

True			False	Can't say
		X		

Comment:

In Romania, class actions are not specifically regulated.

However, the Romania law allows certain entities to start lawsuits in order to protect the rights of some groups or individuals. These actions can be started by trade unions, consumer associations and non-governmental organizations which fight against discrimination, but even if these trials are started by some entities, the individuals who are protected may waive the trial. Other group actions can be started in areas such as administrative disputes, when more claimants harmed by an administrative act start together a lawsuit in order to cancel the act or company law disputes, when a court decision obtained by only one claimant can benefit to other persons (e.g. if a decision of the shareholders is annulled by the court).

The Romania's Code of Civil Procedure provides that more individuals or corporations can be together claimants if the object of the lawsuit is a common right, if their rights have the same cause or if there is a strong connection between their rights. The acts of procedure, the defences or the conclusions of one claimant cannot harm the others. Anyway, if the nature of the judicial report or a provision of the law makes the court decision to have effects on all claimants, the acts of procedure of one claimant can profit to the other parties. In other cases, if the judicial report requires and there are other third parties that have strong connections with the lawsuit, the court must introduce them in the trial. In all these cases the court or the claimants can choose a single representative for all the claimants.

The Code of Civil Procedure also provides that the court decision is binding and effective only between parties and opposable to third parties, establishing the principle of relativity of effects of the court decision. So, in cases of group actions, if some parties waived the lawsuit, the decision will become effective for the remaining parties, having no effects for those who quit at lawsuit or other groups that are in the same situation and did not participate on trial.

So, in Romania, only in case that a party had started a group action and did not opt out, that part can be bound by the court decision. Other parties that are in similar situations and did not participate in the lawsuit cannot be bound by the court decision.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Romania nationals and local corporations are entitled to own land absolutely.

True			False	Can't say
X				

Comment:

Generally, in Romania, nationals and local corporations are entitled to own land absolutely. According to Romanian Constitution, the right of property in guaranteed, private property being guaranteed and protected equally by the law, regardless of ownership. Foreign citizens and corporations can own land absolutely, based on the treaties of adhering of Romania to the European Union or other international treaties, on mutual basis, under the conditions of an organic law or by legal inheritance (only individuals can inherit).

The Romania's Civil Code provides that private property is the right of the holder to possess, use and dispose of a good exclusively, absolute and perpetual. Having an exclusive right gives the owner the right to use it without needing someone else's help or approval and the right to transmit to others some prerogatives of the right, such as the usufruct or to rent or lease the good. Having an absolute right means that the owner is entitled to perform all legal acts necessary to cover his needs and interests. Finally, having a perpetual right means that the right of property will exist as long as the good will exist.

So, the rights of national and local corporations are not restricted to lease or rights of occupancy of the land. Their right is not limited in time, and they can sell, mortgage or bequeath the land. However, the Civil Code provides certain limits of the right to private property, like the use of water spring or right of way.

Currently, the individuals and corporations from European Economic Area and Swiss Confederation can own land in Romania under the same conditions as Romanian individuals and corporations. Anyway, with respect to the agricultural land located outside cities, the law establishes a pre-emption right in favour of co-owners, leaseholders, neighbour owners and the Romanian state, in this order, at equal price and conditions.

Beside the right to own land absolutely in private property, individuals and corporations (in this case national or foreign) can lease a land, which is public property, for a period up to 49 years, having the obligation to exploit the land and pay a royalty, subject to some conditions imposed by the law and the concession contract.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Romania is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True		False		Can't say
	X			

Comment:

In Romania, the land is registered in a public registration system called the Land Book, managed by the National Agency for Cadastre and Real Estate Publicity.

The Land Book is regulated by the Title VII of Book III of Romania's Civil Code. This Title of the Civil Code provides that in The Land Book are described the lands and the buildings and are shown the rights over these assets. There are three types of registration, including real rights, real rights affected by a condition and other legal acts and facts that must be registered.

The Civil Code also provides that the real rights over immovable assets shall be acquired and transferred between parties and third parties, only by registration in the Land Book, based on the legal act or fact that justify the registration. The legal act that transfers or establishes a real estate right which will be registered in the Land Book must be in authentic form.

However, the Law No. 71/2011 for implementation of the Civil Code postponed the provisions of the Civil Code regarding the acquiring and transferring of real estate rights by registration in the Land Book, until the completion of cadastre for each territorial administrative unit. Until the completion of this work, which is schedule for year 2023, the registration in the Land Book will only ensure enforceability against third parties.

At this moment, we cannot say that most of the land in Romania is registered in the Land Book, but considering that the Land Book is the only system that ensures enforceability against third parties, the real estate transactions should always be registered within the Land Book.

Even if in Romania this registration system exists which records the major interests in land, like ownership, mortgages, leases and others, sometimes, sophisticated parties may appeal to title insurances. This practice exists, first of all, because as we said, not all the lands and buildings in Romania are registered in the Land Book, and even so, a certain registration in the Land Book may be rectified under certain conditions, resulting in loss of opposability and/or ownership. Second of all, title insurances are used because in Romania, after Second World War, most of the land was nationalized and now there is a risk to appear people who could claim those lands.

So, in Romania not all the land is registered in the Land Book system, but by the year 2023 the Government wants to complete the registration of all the land, and then the real rights over lands and buildings will be acquired and transferred only by registration in the Land Book.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Romania, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True			False	Can't say
			X	

Comment:

The commercial development is permitted only on the basis of a building permit issued under conditions expressly provided by the law (Law authorising the construction works No. 50/1991). To obtain the building permit, it requires firstly a city planning certificate. The city planning certificate is the information document of compulsory character by which the county or local public administration authority shall make known the juridical, economic and technical regime of the real estate and the necessary conditions for the carrying out of certain investments, real estate transactions or other real estate operations. The city planning certificate shall be issued at the request of any applicant, natural or legal person that may be interested in knowing the data and the regulations to which the respective immovable good is subjected. Once the city planning is issued, a copy together with other documents such as the technical documentation, the land book extract and other special studies are submitted to the competent authority. Thus, it is not difficult to find Romania has a strict review system for commercial development.

Generally, the location of any kind of new constructions shall be made within the localities' built-up area. By way of exception, some constructions which, by their nature, may cause pollution effects to environmental factors may be located outside the built-up area. In this case, the locations shall be established on the basis of prior impact ecological studies, endorsed by specialized bodies with regard to the environmental protection. Likewise, there shall be excepted constructions which, by their nature, cannot be located within the built-up area, as well as sheds for animals.

However, there is a possibility to build outside the built-up area, but in such case, the change of use of land may be required. The transfer of agricultural land in the built-up area is based on the Regional Urban Planning and General Urban Planning. The final removal from the agricultural and forestry circuit of land located outside the built-up area shall be made with the payment of certain taxes. For the temporary removal of land from the agricultural and forestry production, the holder of the endorsement shall have the obligation to deposit a guarantee in cash equal to the tax provided for the final removal of land from the agricultural and forest circuit, in a special account of the fund for the improvement of the land resources. The final or temporary use of agricultural land for other purpose than agricultural production shall be approved by different authorities, depending on the surface of the land. This procedure is governed by secondary legislation.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Romania, there are few controls on hiring and firing employees or on the terms of employment.

True			False	Can't say
		X		

Comment:

Generally, the legislation in the field of labour law is very detailed. There are multiple laws which regulate the relationship between the employer and the employees. However the main act regulating this relationship remains the employment contract, a manifestation of will of both parties: employer and employee. The Romanian legislation sets minimal rights of the employee that are mandatory to be observed by the employer.

The Territorial Labour Inspectorate is competent to control the terms of observing the employment legislation. There are different types of controls, as following:

- a general control in the field of labour relationships

This kind of control aims to check how employers observe the legal provisions and the terms of collective labour agreements, as well as an analysis of overall activity in the field of labour relations and records of work in order to eliminate deficiencies and raise the employer’s awareness to comply with labour legislation. It is a far-reaching control that tends to cover all the issues of labour relations in a unit.

- a topic control

It is a control that covers a limited number of areas regulated by the labour law and takes place in a short period of time. These types of controls provide a partial image of the organization and conduct of the employer's activity.

- An unexpected control

- Type campaign: This kind of control comes from the annual program of activities of the Territorial Labour Inspectorate. This control aims large areas of activity and the issues arising from labour relations, as well as health and safety at work.

- Grievance procedure: This type of control is a very important component of the control of labour relations, and a veritable source of inspiration to conduct unexpected controls.

Moreover, the activity of hiring and firing employees is supervised by an online application called Revisal. The employers are forced to fill in this electronic register of employees.

The firing procedure is strictly regulated by the Labour Code. As a consequence, the employers choose the way of negotiations in order to determine the employees to resign. This is a simple way to avoid the nullity of an illegal dismissal.

In conclusion, it is easy to find that the Romanian labour legislation is very well developed.

Environmental restrictions

Q18 In Romania the rules governing the environment and liability for clean-up are very light and relaxed.

True			False	Can't say
			X	

Comment:

Romania has strict requirements of environmental protection. The environmental legislation is a very vast area and there are many legal acts that regulate the environment protection, including the applicable European legislation.

Furthermore, the right to a healthy environment is regulated by the Romanian Constitution.

The main act regulating the environmental protection is the Government Emergency Ordinance no. 195/2005 which considers issues such as: environmental permits (obtaining these permits is mandatory in order to pursue certain activities), the authorities attributions in the environmental protection, the duties of individuals and legal entities, sanctions etc.

The liability for clean-up is regulated by the Government Emergency Ordinance no. 68/2007 on environmental liability with regard to the prevention and remedying the environmental damages. This ordinance established the polluter liability principle; in other words, the one who causes the pollution shall clean it up.

Likewise, there are a multitude of special laws on environmental protection including water pollution, household and industrial waste, atmospheric pollution, nuclear activity, the protection of forests and green spaces etc.

Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In Romania, foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True			False	Can't say
X				

Comment:

In Romanian legislation, non-resident investors shall have the same rights and obligations as Romanian investors. According to the Government Emergency Ordinance no. 92/1997 on the stimulation of direct investments, the making of an investment in Romania as well as the possession, use, or disposition over a property are guaranteed and cannot be subjected to a discriminatory measure. Likewise, these investments cannot be subjected to a discriminatory measure the administration, maintenance, turning to good account, extension, or liquidation of an investment.

Moreover, the Companies law No. 31/1990 establishes the possibility for natural and legal persons to associate and set up trading companies, with a view to carrying out trading operations. This possibility is not restricted by the condition of nationality.

Foreign investors shall benefit in Romania mainly by: the possibility to carry out investments in any domain and in any legal forms provided by the law; justice and equitable equality of treatment for Romanian or foreign investors, resident or non-resident in Romania; guarantees against nationalization, expropriation or other measures with an equivalent effect; fiscal and customs facilities; assistance with regard to running through the administrative formalities; the right to convert into the currency of the investment the sums of money in Romanian currency (RON) which are due to them from the investment, as well as the transfer of the currency to the country of origin, according to the regulations regarding the foreign currency system; the right of investors to choose the courts of justice or of arbitration competent to solve possible litigations; the possibility to carry over losses recorded in the course of a financial year on account of the taxable profit of the following financial years; the possibility to use an accelerated amortization; the possibility to deduce the advertising and publicity expenditures from the taxable profit; the possibility to hire foreign citizens, according to the legal provisions in force.

Furthermore, the National Bank of Romania in cooperation with the National Institute of Statistics carries out a direct research regarding the foreign direct investment. The main objective of the research is to determine the amount of foreign direct investment (FDI) in Romania based on the balance at the beginning of the year and the flows during the financial year, in resident enterprises set up as direct foreign investment. The information is broken down by key sectors of the national economy, development regions and countries of origin. It also provides information on the share of FDI in the form of tangible and intangible assets, the reinvested share of net profits, the contribution of loans and in-kind input to FDI (for non-financial corporations).

Exchange controls

Q20 In Romania, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True			False	Can't say
	X			

Comment:

The applicable regulations of exchange controls are National Bank of Romania ("**NBR**") Regulation no. 4/2005 and Government Emergency Ordinance ("**GEO**") no. 92/1997. According to the GEO no. 92/1997, non-resident investors have the right to transfer abroad, free of any restrictions, after paying all the taxes, their profits. There is also, according to NBR Regulation no. 4/2005, the permission for resident and non-resident investors to have foreign bank deposit accounts in foreign currency and to borrow in foreign currency. As for resident investors, there are two restrictions: (i) one resident investor can only pay, collect or transfer sums pursuant to goods sale or service agreements in Romanian national currency, except from some particular situations and (ii) resident investors can only pay, collect or transfer sums pursuant to employment legal relationships in Romanian national currency.

Alien ownership of land

Q21 In Romania, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True			False	Can't say
X				

Comment:

In terms of land owning, the Romanian Constitution states that the property right is equally guaranteed and protected by the law, irrespective of the owner. Law No. 312/2005 governs the foreign-controlled companies' possibility to own land in Romania. There are three categories of legal persons the law referes to: (i) legal persons constituted in accordance with the laws of Romania or in accordance with the laws of another EU state, residing in Romania, (ii) legal persons constituted in accordance with the laws of Romania or in accordance with the laws of another EU state, not residing in Romania, (iii) legal persons constituted in accordance with the laws of a non-EU state.

As for the first and the second category, the foreign-controlled companies have the same rights as nationals or residents to own land in Romania. It is true that there were some restrictions in the past regarding the second category, but the restrictions were removed in 2012 (for ordinary land) and in 2014 (for forests, agricultural land and forestry land). Despite this, farmers were not subject to the restriction applicable to forests, agricultural land and forestry land owning. Farmers could own both ordinary land and forests, agricultural land and forestry land judging by their status of residents or non-residents.

Regarding the third category, these legal persons can own land in Romania pursuant to the international treaties with the non-EU states which Romania signed and ratified, in reciprocity conditions.

As for land lease, foreign-controlled companies, regardless of which category of legal persons from above they fit, have the same rights as nationals or residents to lease land in Romania.

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Romania, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True		False		Can't say
	X			

Comment:

As an EU Member State, an European Convention on Human Rights signing party and as a functional democratic state governed by the rule of law, Romania guarantees equality in front of law and prohibits any type of discrimination, regardless of whether the law applies to a natural person or to a legal person and also regardless of nationality or wealth. Romanian Constitution provides that the justice is rendered in the name of the law, and that the justice is also one, impartial and equal for all. Furthermore, judges are independent, they shall act impartially and obey only the law. Considering all these guarantees, there are no reasons to deem that the higher courts (or any Romanian court) do not treat big businesses as fairly as they treat individuals.

Likewise, the GEO no. 92/1997 sets forth that Romanian investors and foreign investors, whether resident or non-resident, receive equal treatment, i.e. fair, equitable and non-discriminatory treatment. In light of the above, we think it is reasonably to deem that, in Romania, the higher courts (or any Romanian court) usually do not favour local interests over foreigners.

We did not find High Court of Cassation and Justice notable cases in which a Romanian court did not apply the law with the respect of equality and impartiality. Nevertheless, ECHR and CJEU may bind Romania to pay indemnities to the legal or natural person who does not benefit of equality in front of Romanian justice.

Even if there is no simple and direct answer to this question due to the absence of distinct objective data, taking into account all the things stated above, we think it is reasonably to deem that, in Romania, the higher courts (or any Romanian court) usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Romania are not considered materially greater than in other comparable countries.

True		False		Can't say
				X

Comment:

According to a Superior Council of Magistracy statistic for 2014[1]*, the time required at the High Court of Cassation and Justice for solving the cases in contract liability matter was 309 days, on average, less than a year, on a decreasing pattern. At the courts of appeal level, the public procurement cases required on average 335 days for solving. In insolvency matters, the courts gave judgements in between 75 and 180 days. Likewise, this short was necessary for employment cases to be solved, respectively between 118 and 130 days.

All courts of appeal stated they appreciate that the duration of solving the cases is reasonable, if referred to the actual conditions of functioning of the Romanian judiciary system. They also consider that the duration of proceedings primarily depends on objective factors such as legislative changes, changes in jurisdiction regulations, lack of courtrooms etc, but it equally depends on the procedural misconduct of the parties or other participants.

The performance of the higher courts could be evaluated by the ratio of acceptance to closing of the cases of second instance: in 2014, Romanian courts of appeal accepted 290,977 cases in the second trial, and closed 221,311 of them, with the ratio being 77%. This indicates that a high proportion of all cases of the second instance in 2014 were closed.

The litigation costs paid by a party include the legal fees and stamp duty. The stamp duty for civil cases shall be rendered in proportion to the amount claimed. Generally, for the part of the amount claimed which is no more than RON 500, the higher value between 8% of the amount or RON 20 shall be paid, while at the top, for the part of more than RON 250,000, the fee shall be paid at the rate of a fixed amount of RON 6,105 and an additional rate of 1% for the exceeding part over RON 250,000.

For each party, other expenditures that may arise include travel costs, accommodation and meal expenses. For the party that loses the case there can occur expenses with the subsidies for missed work that witnesses incur by appearing in court at designated dates. The party that loses the trial may also pay experts and interpreters fees. Since it is unclear how much civil litigation in developed countries would cost, it is hard to make a comparison.

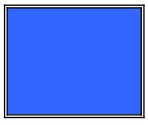
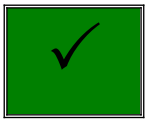
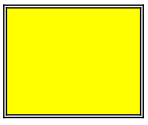
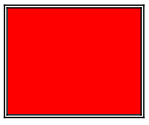
[1] http://www.csm1909.ro/csm/index.php?cmd=24

Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	Can’t say

True **False** **Can't say**


Profiles

The survey was carried out by the following students:

Alexandru Nistor-Cirstoc is a newly graduate student at the University of Bucharest, Bucharest (Romania). He will pursue the degree of Master of Public procurement, concessions and public-private partnership at University of Bucharest. He is interested in Banking and Finance Law. He can be reached at alexnistorcirstoc@gmail.com.

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Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenovery.com or Melissa Hunt, melissa.hunt@allenovery.com.

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Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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