

7. ROMANIAN PROJECT FINANCE

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The relevant **Romanian project finance law and regulation** are:

- ✓ Civil Code of 2011 as amended
- ✓ Government Decision no. 802 of 1999 approving the Regulation for the Organization and Operation of the Electronic Archive of Security Interests in Movables
- ✓ Government Emergency Ordinance no. 79 of 2011 for the Regulation of Certain Measures Necessary for entering into effect of the Law no. 287 of 2009 regarding the Civil Code, as approved and amended by the Law no. 60 of 2012

Types of transactions

Project finance transactions involve a Loan Agreement/Credit Facility Agreement, and related Security Agreements, such like Agreement for Mortgage of Shares (*contract de ipoteca mobiliara asupra actiunilor*), Mortgage Agreement, Security Agreement on the Universality of Movable Property of the pledgor, Security Agreement over Equipment and Machinery, Security Agreement over Receivables, Security Agreement over Accounts, Security Agreement over Intellectual Property Rights, and Guarantee Agreement.

According to recent practice, the pledge of insurances can be achieved via Security Agreement on the Universality of Movable Property of the pledgor.

The Security Agreement on the Universality of Movable Property of the pledgor operates similar to a floating charge under English law, i.e. covers both the movables owned by the pledgor on the effective date, as well as future movable assets acquired by the pledgor. A Security Agreement on Universality of Movable Property can concern only an universality of movable property affected to the activity of an undertaking.

Other agreements such like Escrow Agreement, or Mandate Agreement in the case of bank syndicates, are also signed by the parties.

The parties may choose that the Loan Agreement/Credit Facility Agreement is governed by English law, and English courts have exclusive jurisdiction. However, it may be further provided that the Finance Party, or Secured Party are allowed to take concurrent proceedings in any other courts, and any number of jurisdictions.

Under Civil Code, the Security Agreements involving shares, and real estate must be governed by Romanian law. Further, all disputes regarding real estate must be heard by the court which has jurisdiction at the location of the real estate in question.

Legal advice

The local counsel is usually required to review the draft Loan Agreement/Credit Facility Agreement, the Escrow Agreement, if that is the case, and the Mandate Agreement drafted by the lead counsel of the bank, or of the bank syndicate. The scope of the review is compliance

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with Romanian law, and the appropriate relation between the Credit Facility Agreement and the security agreements regarding the Borrower's assets based in Romania.

Further, by case the local counsel may be required to carry out a due diligence review regarding the status of the Romanian assets. Usually, in case of movables, i.e. pledges of shares, equipment and machinery, accounts, insurances, intellectual property rights, and mortgages, the due diligence research consists in a review of the database of the Electronic Archive of Security Interests in Movables ("**Electronic Archive**").

In the case of real estate, the due diligence research consists of a review of the property certificate issued by the Property Registry. In order to obtain such property certificate, the mortgagor must provide the survey number of the property.

Further, the local counsel is required to draft or review the security agreements related to the transaction, the corporate approvals for pledging or mortgaging the Romanian assets as security, to register the security agreements with the Electronic Archive, and to issue a Legal Opinion for the benefit of the Lender.

Pledge of shares of a limited liability company

The shares of the Romanian joint stock companies are freely tradable. The preemption rights regarding the transfer of the shares in a joint stock company do not represent an obstacle in case of enforcement of a Share Pledge Agreement.

However, in many instances the Romanian subsidiaries of the multinational companies are registered in Romania as limited liability companies with one or two shareholders. The Romanian Company Law provides that the transfer of the shares of a limited liability company must be approved by the vote of 3/4 of the shareholders. From a procedural point of view that means that in case of enforcement of a pledge of shares in a limited liability company, a decision of the General Meeting of the Shareholders of the limited liability company approving the transfer of the pledged shares to the pledgee is required.

In order to avoid the risk of refusal by the shareholders of the limited liability company to approve the transfer of the pledged shares to the pledgee it is recommended to request the pledgor to submit at the time of the signing of the Share Pledge Agreement, a decision of the sole shareholder or of the General Meeting of the Shareholders which specifically approves the transfer of the pledged shares to the pledgee in case of default.

Electronic Archive

The Electronic Archive is an electronic database organized and functioning under the authority and supervision of the Ministry of Justice. The Electronic Archive is the authority of registration of the security interests in movable property, i.e. pledges/movable mortgages. By registration with the Electronic Archive the security interests are placed on public record.

The registration of the movable mortgages/pledges with the Electronic Archive is processed by authorized operators. The interested parties file their applications in respect of the registration, amendment, or de-registration of the movable mortgages/pledges with such authorized operators.

The priority ranking of the movable mortgages/pledges is established function of the date of registration. The security interest registered earlier in time has a superior ranking over a subsequently registered security interest.

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Legal Opinion

The Legal Opinion must list the documents reviewed and drafted by the local counsel, and must opine on the capacity of the signatories, compliance with Romanian law, validity of the corporate approvals, fulfillment of the execution formalities, and on any other specific issues as required by the client.

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