

RES DEPLOYMENT LEGAL INSIGHTS: ROMANIA INTRODUCES NEW FDI SCREENING GUIDELINES

The Romanian Competition Council has put forward a new set of guidelines detailing how foreign direct investments (“**FDIs**”) are assessed, in accordance with Government Emergency Ordinance No. 46/2022 and Regulation (EU) 2019/452.

These guidelines clarify essential aspects of the FDI screening process, including:

- (i) how investment value is calculated,
- (ii) the criteria for determining control, and
- (iii) the procedural steps for notification.

The proposed guidelines do not introduce fundamental changes but rather refine existing practice, offering investors and businesses clearer compliance instructions.

A. DEFINITION OF INVESTMENT VALUE

The value of an investment is assessed based on the total financial resources allocated by the investor, covering:

- (i) Cash payments and monetary contributions.
- (ii) Asset transfers (tangible or intangible).
- (iii) Equity contributions, including shares and property exchanges.
- (iv) Compensation, services, or other in-kind contributions made as part of the investment.

For transactions involving loans or financing agreements, the investment value is determined by adding:

- (i) The full loan amount,
- (ii) Any accrued interest,
- (iii) Other financing arrangements provided to support the investment.

In multi-stage investments, the total value is calculated as the sum of all investment phases. Additionally, in cases where capital is contributed without an actual share transfer, the investment value includes both the nominal value of subscribed shares and any issuance premium.

B. TIMING OF THE NOTIFICATION

The request for FDI screening authorization must be submitted before the investment is implemented but after the transaction’s key elements are finalized, including:

- (i) Transaction price,
- (ii) Financing structure,

- (iii) Parties involved,
- (iv) Nature and scope of the investment.

This ensures that regulatory approval is obtained before the investment takes effect, preventing potential legal or compliance issues.

The Competition Council will oversee the enforcement of these new guidelines once the order is officially published in the Official Gazette of Romania.

For further insights on how these changes might impact your investments, feel free to contact our team.

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