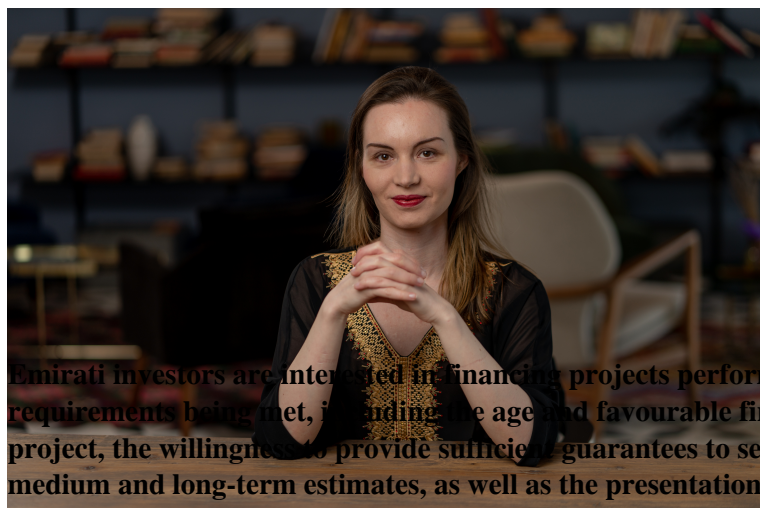


The evolution of private Emirati capital in the local business environment | Casiana Duşa, lawyer practicing in Dubai and specializing in Islamic Law: The legal compliance activity in the Romanian-Arab transactions becomes decisive in the context of the organic growth of Emirati investments in Romania in key areas such as real estate, agriculture, energy and logistics



Emirati investors are interested in financing projects performed in Romania, subject to certain qualifying requirements being met, including the age and favourable financial track record of the entity owning the project, the willingness to provide sufficient guarantees to secure funds, high profitability according to medium and long-term estimates, as well as the presentation of a business plan that is legally and commercially compatible with the Emirati business environment. "At this point the intervention of specialists from the two jurisdictions becomes crucial to properly prepare the pitching documentation at the appropriate standards and to carry out the compliance work by bringing the two legal systems to a common denominator. In the absence of the above criteria, the financing process becomes impossible", explained in an interview with Bizlawyer, Casiana Duşa - a lawyer practicing in Dubai and specializing in "Islamic Law", who [set up Romanian Arab Investments House](#) to support the Muslim business community with interests in Romania and Romanian entrepreneurs wishing to expand in the Middle East.

As a rule, the three scenarios used in financing projects are: traditional loan, convertible loan and equity participation (possibly with the possibility of exit after a certain period of time). "Given that the application of interest is forbidden by Islamic principles and considered religiously "haram" (sin), it is unlikely that an Emirati investor would accept deviations from the holy rules which are given great importance even in business. However, we cannot entirely exclude the interest based options, since in the UAE they are familiar with the conventional banking system operated for expatriates and usually used by non-Muslims" highlighted **Casiana Duşa** in the article published today in the [Islamic Law](#) section of ^{Biz}Lawyer.

Casiana Duşa [joined this year the select club of European elites under 40](#). She is among the top 40 entrepreneurs in Europe, rewarded for their journey, success, ambition, regional connections and inspiration to the younger generation.



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According to public information collected from the records of the National Trade Registry Office in Romania, there are currently 207 companies with Emirati participation, of which 49 operate in the real estate sector, showing a total increase of 7% compared to 2022. The top 5 counties in Romania according to the number of companies with Emirati capital are Bucharest, Cluj, Constanta, Timis and Prahova, with none of them exceeding 10% of the national total.

Also, according to a report generated by the termene.ro platform for the year 2022, the most profitable areas for Emiratis were agriculture (companies such as Agricost SA), logistics (Constanta South Container Terminal SRL and DP World Logistics Romania SRL), energy (Evergreen Solar Orizont SRL) and real estate (Belvedere Residences UTR3 SRL). The top spot was held by agriculture even in previous years, which is explainable given the arid climate and lack of arable land in the Middle East, with the UAE relying over 90% on imports for basic and food products.

***Biz* Lawyer: What is the general legal framework governing Romanian-Arab investment locally?**

Casiana Duşa: At diplomatic level, the Agreement between the Government of Romania and the Government of the United Arab Emirates on the acquisition, on the basis of reciprocity, of land ownership for the proper functioning of diplomatic missions and consular offices signed in Abu Dhabi on 17.10.2018, ratified by Law no. 137/2019, published in the Official Gazette no. 587 of 17.07.2019 set forth that "land for the proper functioning of diplomatic missions and consular offices" means land used for the headquarters of the diplomatic mission or consular office and the residence of the head of the diplomatic mission or consular office. Acquisition of ownership by a Contracting Party shall be through its diplomatic mission or consular post under the conditions laid down by the law in force in the receiving State and only for the purpose indicated above.

At the investment level, Article 6 of the Emergency Ordinance No 92/1997 on the stimulation of direct investment provides that a commercial company, whether a resident or non-resident legal person, may acquire any real rights in immovable property, to the extent necessary for the conduct of its business, in accordance with its corporate purpose, subject to the legal provisions on the acquisition of private ownership of land by foreign nationals and stateless persons, as well as by foreign legal persons. Further, Law No 312/2005 on the acquisition of private ownership of land by foreign nationals and stateless persons and foreign legal persons clarifies the conditions of acquisition.

Thus, according to Article 3 of Law No 312/2005, a citizen of a Member State, a stateless person residing in a Member State or in Romania, as well as a legal person established in accordance with the legislation of a Member State may acquire ownership of land under the same conditions as those laid down by law for Romanian citizens and Romanian legal persons. This category also includes legal entities with Emirati capital established in Romania.

However, with regards to direct acquisitions by an Emirati natural person or an entity established in the UAE, Article 6 of Law No 312/2005 will apply, according to which foreign citizens, stateless persons and legal entities belonging to third countries may acquire ownership of land, under the conditions regulated by international

treaties, on the basis of reciprocity. Therefore, in the absence of such a reciprocal international agreement, investors acquire the right of ownership only over buildings and only the special right of use regarding the land. The right of use arises in the context of the ownership of a person, called the superficiary, of buildings, plantations or other works on land owned by another person, over which the superficiary has a right of use, ancillary to the ownership of the buildings.

As already mentioned above, the most common mechanisms used by Emirati investors are based on Article 3 of Law 312/2005, especially as the process of setting up a company with Arab capital in Romania is quick and easy. A specialised law firm can take care of drafting the necessary set of documents, requiring from the foreign Emirati (shareholder) the identity document / registration certificate of the company (translated into Romanian), the resolution of the general assembly of associates of the company that will enter as a shareholder in the Romanian entity, as well as information on the beneficial owner/beneficiaries of the Emirati entity, if it holds more than 25% stake in the Romanian entity.

Read also

[→ INTERVIEW | Casiana Duşa, Attorney with experience in Dubai and specialization in „Islamic Law”, founded Romanian Arab Investments House to boost the Muslim business community with interests in Romania and the Romanian entrepreneurs wishing to expand to the Middle East. „The interaction between the business environment, society and Islamic principles set up the premises for a sustainable investment in any jurisdiction”, says the Law graduate that studied Sharia principles and the Islamic Finance principles in the United Arab Emirates](#)

Many Romanian entrepreneurs want to enter into partnerships with Emirati investors, through which they can grow their business to the next level and strengthen their international exposure. What are the criteria you should consider for a successful pitching?

Emirati investors are interested in financing projects in Romania, provided that certain qualifying requirements are met, including: the age and favourable financial history of the entity owning the project, the willingness to provide sufficient guarantees to secure funds, high profitability according to medium and long-term estimates, and the presentation of a business plan that is legally and commercially compatible with the Emirati business environment. At this point it becomes crucial the intervention of specialists from the two jurisdictions to properly prepare the pitching documentation to the appropriate standards and to carry out the compliance work by bringing the two legal systems to a common ground. Without the above criteria, the funding process becomes impossible to achieve.

Prior to negotiating the transaction, the investors will conduct a thorough due diligence analysis of the project under negotiation, covering the history of the property, existing permits/permissions, mode of acquisition, cadastral coordinates, possible legal and tax burdens, potential litigation or third party claims that may affect the asset, etc. The analysis will always include possible existing or potential legal conflicts.

As a rule, the three scenarios used in financing projects are: traditional loan, convertible loan and equity participation (possibly with the possibility of exit after a certain period of time). Given that the application of interest is forbidden by Islamic principles and considered religiously "haram" (sin), it is unlikely that an Emirati investor would accept deviations from the holy rules which are given great importance even in business. However, we cannot entirely exclude the interest based options, since in the UAE they are familiar with the conventional banking system operated for expatriates and usually used by non-Muslims.

The best way for funding proposals to be considered and eventually accepted is to develop mechanisms compatible

with the laws of both countries. Therefore, there are two Islamic-inspired solutions that can be successfully implemented by specialists at project level in Romania such as to attract the interest from the Arab side, namely: Mudarabah and Musharakah.

Mudarabah

Mudarabah involves a win-win mechanism in which one party agrees to provide the capital and the other to do the work, with the profit to be shared in the agreed proportion. The financial loss is borne only by the investor, while the entrepreneur (who provided the work) will not receive any remuneration for the work, the loss being his time. Investment based on this mechanism lends itself to situations where an entrepreneur is running a secure project based on sound know-how and manpower, requiring financial resources but not investor involvement or management intervention. Basically, the capital provider benefits from the expertise and skills of the entrepreneur and the entrepreneur benefits from the capital invested. Mudarabah can be a successful model for promoting Romanian projects with potential, built on solid know-how, with significant management resources and manpower, but which need financial backing in return for which they will give up part of their profits.

Musharakah

This type of contract is similar to the joint venture mechanism, reflecting the idea of a partnership based on labour and capital pooled by the parties, while profits and losses are shared on a contribution basis. Unlike Mudarabah, all parties contribute financially and can participate in management. In Islam, the principle that you cannot lose what you don't have (or rather, what you haven't contributed) is much more pronounced than in other cultures and jurisdictions, hence the proportionality between loss and capital contribution. Thus, although we will find in the conventional Middle Eastern business world the famous Partner Agreements which provide for other profit and loss sharing ratios, other than capital participation, it is important to note that these provisions are not compatible in principle with Shariah.

One of the variations of the Musharakah-type contract is the Diminishing Musharakah, under which equity participation and pro-rata profit sharing are allowed, but a scheme is also facilitated whereby the financier's participation is reduced proportionately over time until the total transfer to the entrepreneur. For example, Diminishing Musharakah works very well in real estate in transactions such as real estate purchases of houses and land, building renovations and construction, where ownership gradually reverts to the party receiving the financing. The mechanism is also found in other areas, the essence being that the financier's involvement in the project is directly proportional to the level of debt/amount placed and inversely proportional to the return on investment (the higher the return, the faster the investment is recovered and the control decreases). At the level of Romanian law, such a mechanism can have a variety of applications depending on the field and the project. For example, in the real estate sector, ownership by shares can be a solution, with each share being subject to a promise of sale to be concluded on certain dates under the suspensive condition of recovering a certain percentage of the investment. In the case of an equity investment in a company, an exit plan can be drawn up depending on the achievement of certain profit thresholds and returns on the investment thus made.

Citește și

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proiect local pentru a fi ‘Shariah compliant’. Despre ‘Mudarabah’ și ‘Musharakah’, ca mecanisme de investiții și proiecte concrete în care a fost implicata, într-o discuție cu Casiana Dușa, avocat senior specializat în consultanța de business în România și Orientul Mijlociu

→ Cum poți achiziționa o proprietate în Dubai și ce trebuie să știi despre piața, randamente, riscuri și aspecte juridice specifice regiunii. Recomandarile Casianei Dușa, avocat senior certificat în drept islamic, specializat în consultanța de business în România și Orientul Mijlociu, referitoare la capitalizarea investiției, tranzacții, taxe și siguranța proiectelor

What are the best business opportunities that you recommend to Emirati investors in Romania and which regions should they focus on in order to have the highest return on investment?

Lately, the goal defined together with my partners is aimed at expanding UAE real estate developers and attracting other Emirati investors to key urban and rural areas in Romania, both for the development of residential, commercial and industrial projects. We are focusing on the capital area, as well as the Argeș county area, together with their neighbourhoods, due to their strategic position in relation to the main national points of interest, as well as their high level of tourism, industrial, logistics and commercial potential. However, we do not exclude other key areas of the national territory that offer high investment returns. Each opportunity will be subject to a thorough legal, real estate and financial appraisal in the first phase under the coordination of Appraisal & Valuation SA.