

ROMANIAN 2020-2021 TECH M&A CONSIDERATIONS

We believe that the acceleration of the digital economy will prompt companies to change their strategies and fuel M&A opportunities in the technology sector. Our team in Romania has assisted technology clients on numerous transactions. We summarise below some considerations for technology transactions based on our recent experience.



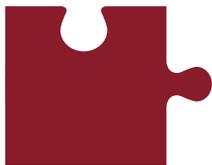
Transaction structuring

- Share deal vs asset deal
- Going concern transfers
- Transfer of employees
- Non-compete and non-solicitation covenants



IP Rights

- Insufficient title to developed software
- Problems with employment contracts
- Open source licensing



Data

- Insufficient rights to use personal data
- Illegal sources of data
- Vendor lock-in issues

WHO HAVE WE RECENTLY ASSISTED?



Turn/River Capital, a leading technology-focused growth and private equity fund, on its strategic investment in Romania-based CoSoSys, a leading provider of IT solutions for security and compliance (data loss prevention products that work across computer operating systems)



J2 Global Inc., a cloud-based communications and storage messaging services provider, on the acquisition of the “ibVPN” in Romania (focusing on increasing online anonymity of users)



FDS Inc., a pharmacy software solutions provider, on the acquisition of Ampicare and on the related due diligence process



Wipro Limited, the leading Indian multinational corporation that provides information technology, consulting and business process services on the acquisition of METRO Systems Romania



Miniclip, a leading developer and publisher of mobile games, on its strategic investment in independent games developer Green Horse Games

KEY RISKS

01 | What actually is IP?

In CEE, we often face situations where tech firms have an incorrect understanding of how intellectual property protection works. In particular, we often hear from the founders that their software “was developed by an external firm and therefore can be used”, or that “the software is based on open source and can be freely used”. Both of these assumptions are wrong. Lack of a proper IP rights and related documentation for externally developed software can leave the target dependent on third parties. Illegal use of software implemented in the final product can expose the target’s key product to litigation.

02 | Is data being used without breaching the law?

Data laws in the EU don’t just protect personal data. Non-personal data can fall under business secret protections, or copyright or database laws. Often, databases used by the targets have been collected in breach of such laws, which can also open the targets to claims.

03 | Open source software problems

We have frequently heard this year that “using this kind of data is in line with GDPR”. Nevertheless, we often find that the entire business model has been set up in breach of the GDPR. Monitoring traffic data details or combining information about customers from various sources are classic examples of this. Data protection should be reviewed from an EU perspective, not just at the national level.

04 | Employment agreement issues

Employment agreements very often fail to contain appropriate protections for the employer. In particular, they contain misleading IP clauses or do not correctly describe the scope of the position. Such failures can lead to the employer not being transferred sufficient IP rights for an employee’s creation.

★ TOP RANKED IN TMT, *LEGAL 500, 2021*



Kinstellar’s impressive stable of clients is some clue to firm’s reputation for TMT. The firm was recently involved in several major corporate takeovers, but the team’s advice goes beyond transactional aspects, with strong support on day-to-day issues, IP, and sector-specific regulatory matters. Partner Răzvan Popa has been a key contact for this line of work.

KEY CONTACT



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