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Industrial parks as tools to foster investment in Romania

While companies like Emerson, Bosch, Procter & Gamble or Kaufland have already decided to set up hubs on industrial parks platforms under the realm of former regulations in the field, the new regulations governing industrial parks from the second half of 2013 and new exemptions for local infrastructure under the recent EC General Block Exemption Regulation no. 800 of August 6, 2008 (the "GBER") are expected to attract further investment to Romania.

Essentially, the new Law no. 186 of July 25, 2013 on establishment and functioning of industrial parks ("**Industrial Parks Law**") is more business orientated and contains less restrictive conditions for the setting-up of industrial parks, whilst offering various incentives to investors, mainly consisting of tax exemptions and infrastructure support.

To date there are approximately 40 industrial parks registered in Romania based on the previous regulations, but the number is expected to increase.

1. What are industrial parks as per Romanian legislation?

Industrial parks are defined as confined areas where economic, R & D and industrial production activities as well as services are conducted under a regime of specific incentives, using human and material resources available in the proximity of the relevant area.

The purposes of setting - up industrial parks include:

- (i) economic and social development;
- (ii) technology transfer;
- (iii) efficient investment;
- (iv) cooperation between central and local public authorities, undertakings and / or other parties involved.

2. How are industrial parks set-up and operated?

Founders of industrial parks can be individuals and /or legal entities (public authorities and / or private companies) which initiate the setting - up of the industrial park by incorporating a company as administrator of the park (i.e., with the specific purpose of building, operating and administering the same).

The industrial park title (which triggers the right to apply for various incentives on behalf of industrial parks residents) is granted by the Ministry of Regional Development and Public Administration further to an application submitted by the founders of the relevant industrial park.

In order to obtain the title, the following conditions must be met:

- (i) the administrator of the industrial park:
 - must be duly incorporated;
 - must not undergo insolvency proceedings;
 - must not have debts towards the State's budget;
- (ii) the land within the industrial park:
 - must be owned / held under concession / administration / use by the founders / administrator / residents of the park;
 - must have access to a main road or a ring road;
 - must have a compact surface of no less than 50,000 square meters;

- must not be encumbered (except for encumbrances created by the administrator of the park for park related investments).

The industrial park title is issued to the administrator and encompasses the land, the infrastructure and duration of the industrial park.

3. How does an industrial park work?

An industrial park functions under the direct management of the administrator, which:

- (i) enters into administration and services agreements with the residents of the park;
- (ii) ensures the residents' right of use over the industrial park units forming the object of the above mentioned agreements;
- (iii) performs maintenance, repairs or modernization works;
- (iv) concludes utilities agreements;
- (v) cooperates with local / central administration.

The management of an industrial park is therefore mainly carried out through the administration and services agreements concluded with the companies forming part of the industrial park.

4. What are the advantages of industrial parks?

The industrial park title renders the companies operating therein eligible for the incentives stipulated by the Industrial Parks Law, such as:

- (i) exemption from payment of the levies charged for the change of the land category;
- (ii) exemption from payment of property tax for the industrial park real estate;
- (iii) exemption (based on the relevant public authorities' approval) from taxes for the issuance of town planning certificates and / or building and/or demolition permits.

The incentives mentioned above can be awarded by virtue of a State aid scheme enacted via Order no. 2980 of September 24, 2013 of the Ministry of Regional Development and Public Administration on aid for investments in industrial parks, which is exempted from the obligation to notify aid measures to the European Commission.

Pursuant to said order, in view of benefitting from the incentives industrial parks residents must meet certain criteria, such as:

- they conduct an economic activity within the industrial park based on a valid title;
- they did not receive State aid for the previous 3 consecutive years, or, as the case

may be, the total amount of the received State aid does not exceed EUR 200,000 (EUR 100,000 for companies in the transportation sector);

- they submit a feasibility investment plan for obtaining funds; and
- they have not been subject to a decision for restitution of State aid.

As per the Industrial Parks Law, other facilities may be granted by the local public authorities, acting in accordance with State aid rules.

It is noteworthy in this respect that aid to support the construction or modernization of local infrastructure has recently been included in the categories of aid that are exempted from notification to the European Commission, as per the GBER, provided that certain conditions are met.

For instance, the aid should:

- have a genuine incentive effect;
- apply across all sectors of activity and should not alter trading conditions in a way contrary to the general interest;
- be awarded transparently, proportionally and limitedly.

5. Any caveats?

A duly structured and fitted industrial park should serve well its purpose for a potential investor, who may thus benefit from both already established infrastructure and incentives.

However, one is not to overlook a number of potential specific difficulties that require close attention and proper structuring / time coordination of the planned investments.

For instance, when the park estate is owned by the state / local communities, ownership or lease of any part thereof by a private undertaking should, as a matter of principle, be subject to public tender proceedings. In addition, in this case the timing to get in place the relevant contractual framework for the purpose of the relevant resident may be quite lengthy due to the various administration proceedings required for the relevant public authority to obtain requisite internal approvals.

Separately, attention should be paid to the terms and conditions of the relevant lease / ownership structure so that these suit the requirements of the initial investment, any potential expansion thereof, but also a potential exit.

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