

KINSTELLAR

## Setting up operations in Romania

Today's uncertainties at the European Union's eastern border have left companies questioning the safety of their people and the continuity of their operations in that part of the world. Businesses in the IT and BPO sectors that had found talent and growth opportunities in countries such as Ukraine and Moldova are now rethinking their strategy and options to move operations across the border, either temporarily or permanently.

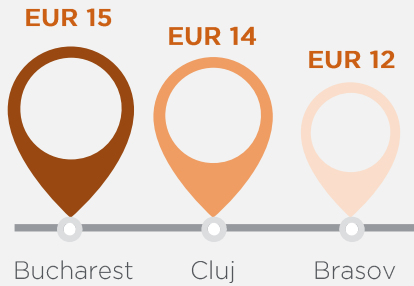
Kinstellar's office in Romania has prepared a quick overview of the most important aspects to consider if you decide to move your operations to Romania.

# Key facts about Romania



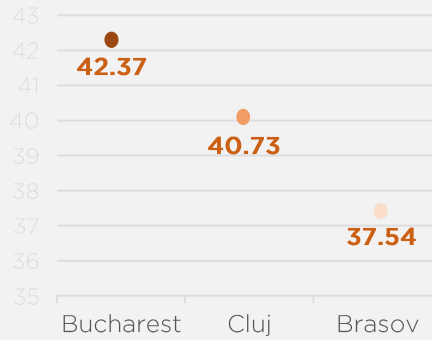
## AVERAGE OFFICE LEASE COSTS

per sq. m. per month



## COST OF LIVING INDEX<sup>1</sup>

Cost of living indices:

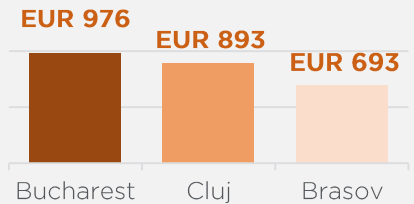


Romania is ranked 134<sup>th</sup> out of 197 countries by cost of living and the 54<sup>th</sup> best country to live in.



## SALARIES

Average monthly salary in Romania:



IT/BPO sector average salary in Romania:

- The average salary is around **EUR 1,244** per month. Salaries range from **EUR 486** (lowest average) to **EUR 2,710** (highest average, actual maximum salary is higher).



## TAX

Corporate income tax

(applies to both resident companies and those entities operating in Romania via a permanent establishment)

16%

Personal income tax

16%

VAT

19%

9%

5%

for a limited category of goods, including food, non-alcoholic drinks and orthopedic products and medical products

for school books, newspapers and magazines as well as places of accommodation and restaurants, and the delivery of buildings or apartments under certain conditions



## DATA PROTECTION REGULATIONS

If a company moves its team or establishes an entity in Romania, **GDPR** rules will apply with respect to the protection of personal data and to any international transfers of personal data.



## COVID-19 RESTRICTIONS

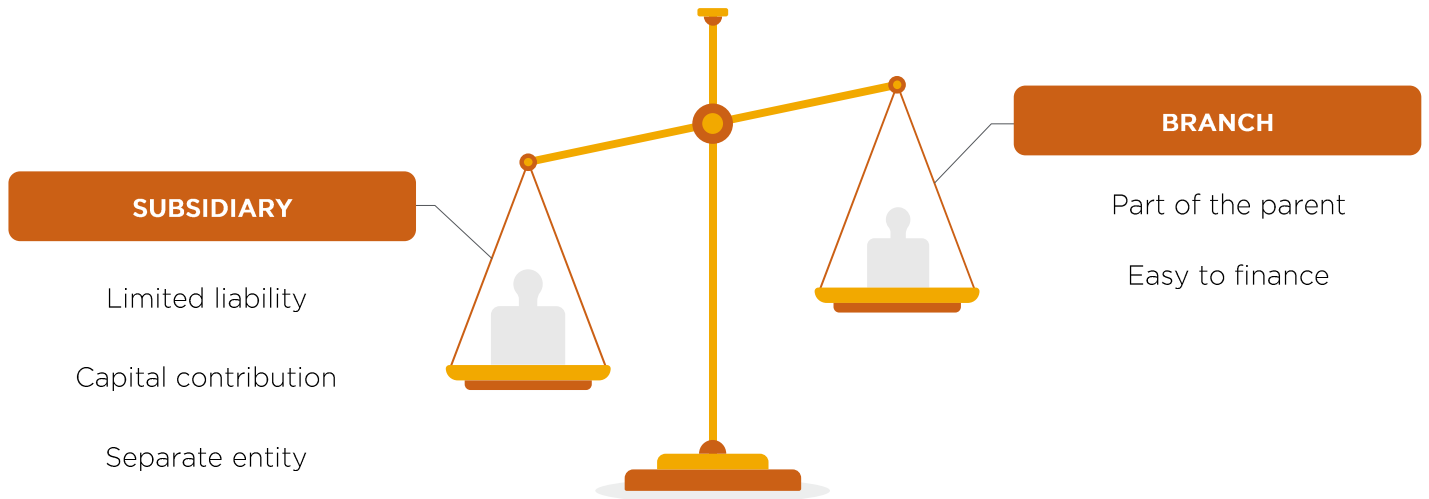
Currently, there is no national lockdown. Moreover, starting 9 March 2022, the state of alert is no longer in place. Hence, all restrictions (for example: compulsory wearing of protective masks in public places, restriction or prohibition of the organisation and holding of meetings, demonstrations, organisation of work at home, etc.) have been lifted.

The vaccination rate is 41.85%.

<sup>1</sup> Measuring the relative cost of living by calculating the average cost of a number of specific goods and services required for people to live an average life..

# Choice of business entity

## Limited liability or branch?



CRITERIA	LIMITED LIABILITY COMPANY (LLC)	BRANCH
<b>Minimum registered capital</b>	RON 1 (approx. EUR 0.20); fully subscribed and paid before registration	N/A
<b>Minimum number of shareholders / members</b>	One shareholder (an individual or legal entity) or more	N/A
<b>Shareholders Registration</b>	Publicly registered with the Commercial Register	The principal is publicly registered with the Commercial Register
<b>Liability of the shareholders / members</b>	Up to the amount of their contributions to the company's subscribed capital	Not limited to the branch; all rights and obligations arise directly for the parent company
<b>Way of transfer of the shares</b>	<ul style="list-style-type: none"> <li>Shares are transferred by way of a share purchase agreement executed by the signatures of the signatories. Each transfer is subject to a mandatory registration with the Commercial Register in order to put third parties on constructive notice.</li> <li>The existing shareholders have to approve by way of a shareholders' resolution the transfer of shares and have to amend the LLC's Articles of Association in order to reflect the new shareholding structure.</li> <li>Any share operation, including the transfer of shares, has to be registered within the LLC's shareholders registry.</li> <li>If shares are transferred to another shareholder, no threshold restrictions apply.</li> <li>If shares are transferred to a third party, a resolution of the general meeting should be adopted by a majority of <math>\frac{3}{4}</math> of the capital.</li> </ul>	N/A

<p><b>Governing body structure</b></p>	<ul style="list-style-type: none"> <li>▪ <b>General meeting of shareholders</b>, which consists of all shareholders / sole owner of capital. It resolves on all important issues regarding the company (amendment and supplementation of the articles of association; increase and decrease of the capital; transformation and winding-up of the company; appointment or release of directors; etc.).</li> <li>▪ In case of a solely owned limited liability company, these decisions are taken by the sole owner of the capital.</li> <li>▪ <b>Director</b>, one or more individuals, appointed by the general meeting. He/she performs the day-to-day management and legal representation of the company before third parties.</li> </ul>	<p><b>Representative of the branch</b>, one or more individuals appointed by the parent company to perform legal representation of the parent company through the branch.</p>
<p><b>Distribution of profit</b></p>	<p>Mandatory specific preconditions: (i) audit of the annual financial statements (only in certain cases), and (ii) approval of the annual/quarterly statements by the general meeting.</p>	<p>If profit is to be transferred from a branch, no dividends would need to be distributed.</p>
<p><b>Capital maintenance</b></p>	<p>If the value of the net assets is less than the value of half of the registered share capital, the directors are required to immediately call the general meeting of shareholders to decide if the company shall be dissolved.</p>	<p>N/A</p>
<p><b>Corporate income tax</b></p>	<p>Taxable profits will be subject to corporate income tax.</p>	<p>Triggers a permanent establishment of the foreign company in Romania, and the taxable profits of the foreign company attributable to such permanent establishment will be subject to corporate income tax.</p>
<p><b>Financing</b></p>	<p>The LLC may be financed by its parent company by equity or by means of a shareholder loan with market-based interest.</p>	<p>The branch could be financed through the provision of funds from the head office, but such provision of funds may not be regarded as a loan because the branch and the head office are part of the same legal entity. This could result in different tax consequences in terms of withholding taxes on interest income and interest expense tax deductibility.</p>
<p><b>Repatriation of profits</b></p>	<p>An LLC can expatriate profit to the parent company through the distribution of dividends.</p>	<p>A branch can freely remit its profits to the head office, as it is not a separate legal entity. This could result in different tax treatment when the distribution of dividends is not tax exempt.</p>
<p><b>Wage taxes</b></p>	<p>An LLC should report, withhold and remit to the tax authorities personal income tax and social security contributions.</p>	<p>A branch should report, withhold and remit to the tax authorities personal income tax and social security contributions.</p>

# Setting up your office

An office can be easily set up with a minimal initial investment through appropriate lease arrangements that can generally be very flexible.

## Rent

Rent is usually calculated on a per-square-meter basis and is subject to annual indexation.

## Guarantee

In most cases, the tenant shall deliver to the landlord a collateral guarantee for the performance of the payment obligations due under a lease agreement especially for rent and service charge (for example letter of bank guarantee/ deposit / corporate guarantee etc.).

## Space

There is a distinction between net leasable area (which is the area of the leased premises) and gross leasable area (which is the area of the leased premises plus parts of the common areas serving only the leased premises). Space measurement is often agreed. Usually, the measurement of the leased premises is performed prior the handover date of the space.

## Insurance

The landlord shall conclude and maintain in force throughout the lease term insurance policies for all the risks of the office building. In many cases, the tenant shall also obtain and maintain in force an insurance policy against damage of the leased premises.

## Operating expenses

The tenant pays most (or all) operating expenses directly related to the leased premises over the entire term of the lease.

## Service charge

The maintenance of an office building and its common areas is the responsibility of the landlord, but landlords typically pass through these expenses as well as the operating expenses for the common areas to tenants by means of a service charge. Capital expenses related to the building are typically not included in the service charge and are covered by landlords.

## Control of costs

In general, costs of space can be controlled by introducing indexation, caps and other contractual mechanisms. There could be audits to verify the actual amount of the service charge.

## Fit-out

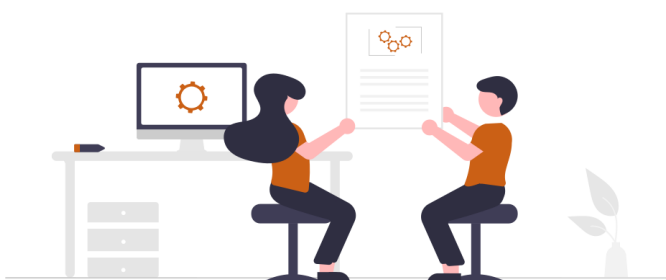
Fit-out works are usually done at the expense of the tenant, but sometimes landlords accept to contribute to the fit-out costs with an agreed amount. The tenant can deduct the costs for the fit-out works through tax depreciation charges.

## Lease term

Lease-term provisions could be flexible and parties can negotiate automatic prolongation mechanisms of the lease. There are contractual mechanisms to ensure that the lease agreement will be binding for any new owner of the office building if the building is sold before the lease term expires.

## Termination

Typically, unilateral termination rights of the tenant are difficult to negotiate, especially for the first years of the lease term, but there are cases when unilateral termination is accepted subject to payment of a negotiated penalty usually expressed in months of rent. However, there could be extensive termination rights in case of default of the landlord.



# Moving your team to your new office

## 01 | Immigration rules



### New EU-wide rules,

implemented in Romania on 18 March 2022, grant Ukrainian citizens temporary protection within the EU Member States.



### Period for temporary protection

1 YEAR

And can be automatically extended for periods of six months, up to a maximum of one year.



### Applies to

Ukrainian nationals, but also to other persons such as non-Ukrainians and stateless people legally residing in Ukraine who cannot return to their country or region of origin, and certain family members of the above two categories.



## What does this mean for Ukrainian people?



### Immediate protection and rights

Ukrainian nationals will **automatically enjoy certain rights** without having to apply for international protection.



### Rights of protected persons

- **Right to remain in Romania** - during the time for which the protection is granted;
- **Right to work** - can be employed or self-employed in Romania, subject to the rules applicable for the respective profession;
- **Right to receive the necessary financial assistance for their subsistence if they do not have the necessary material means;**
- **Right to medical assistance.**

## 02 | Remote working rules

**Employers may have to follow certain obligations in relation to remote work such as:**



Provide the necessary technical and communication equipment, unless otherwise agreed.



Install, inspect and maintain the necessary work equipment, unless otherwise agreed with the employee.



Ensure that working time is being properly tracked. Implement proper reporting or a working-time tracking system to oversee working time or track overtime.



Ensure that employees comply with all GDPR and confidentiality requirements. Employers should update their cybersecurity policy to reflect work from home, to control access to data and ensure safe connections.



Ensure the transport to and from the place of teleworking of the materials that the teleworker uses in his work.



Put in place a proper work-from-home / teleworking policy. This policy could give specific details such as distribution and coordination of work tasks and authority, reporting lines, and performance measurements.



Keep up to date with the occupational health and safety of remote workers.



### Individual employment contracts

- In written form only – mandatory requirements for its content under the Labour Code;
- Entering into, change and termination of employment contracts shall be registered at the General Record of Employees;
- Both contracts for an unlimited period of time and fixed-term contracts are possible; the latter can be used as an exception in limited cases listed in the law;
- Minimum monthly wage requirements – as of January 2021 it is RON 2,550 (approx. EUR 510) and the minimum hourly rate is RON 15.239 (approx. EUR 3.0479);



### Working hours and rest breaks

- Strict rules for daily breaks, breaks between consecutive working days and weekend breaks apply;
- The statutory minimum annual paid leave is 20 working days, but may be more for some categories of employees;
- Approximately 15 days per year of public holidays, not included in the annual leave.



### Termination of employment contracts

- Possible on limited grounds and following the procedures set out by law. Termination by the parties' mutual agreement is allowed;
- Compensation for unused annual leave is mandatory;
- Unfair dismissal claims are common, as employees do not pay court fees.

For more information, please contact  
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