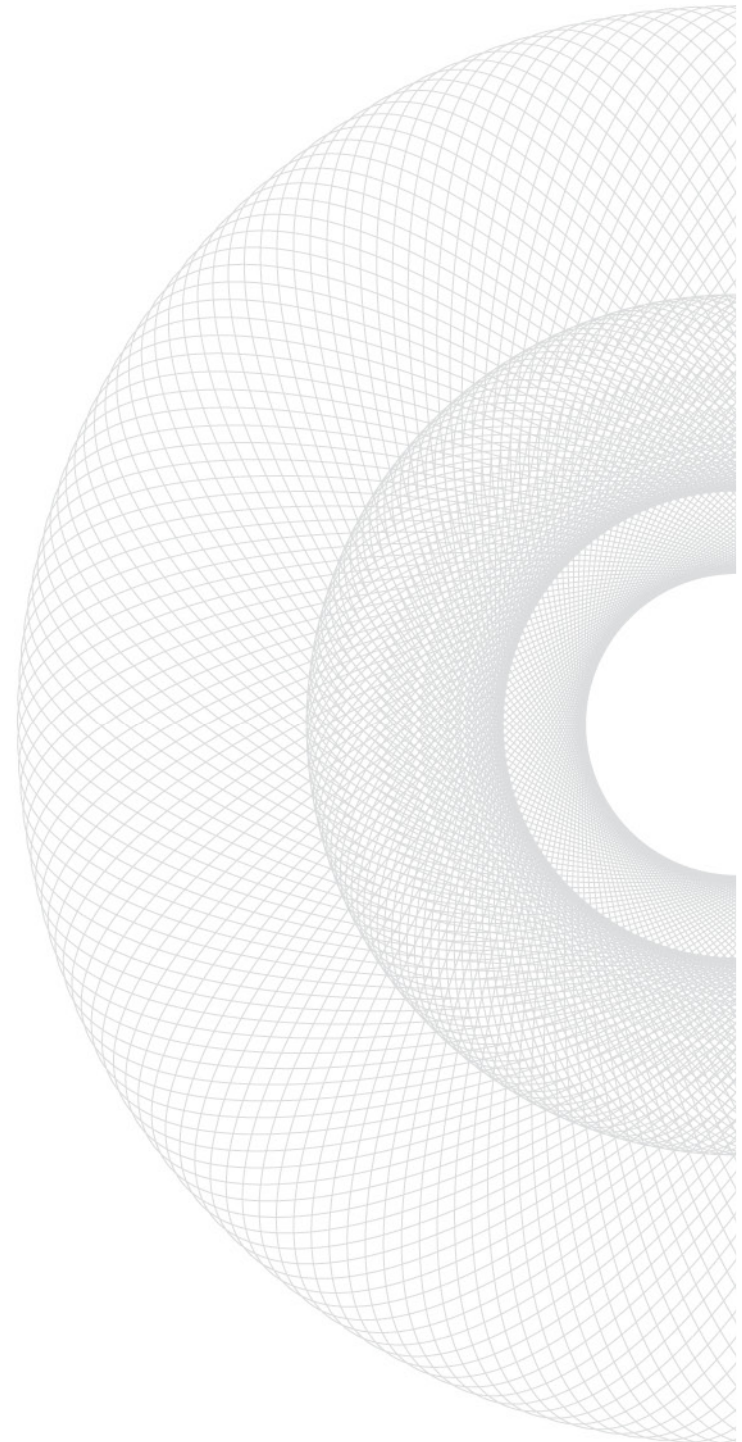


What are the Strategies to Attract and Preserve the Investments of Foreign Companies in Romania?

Stefan Botezatu, Partner Kinstellar

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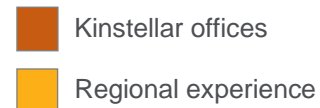
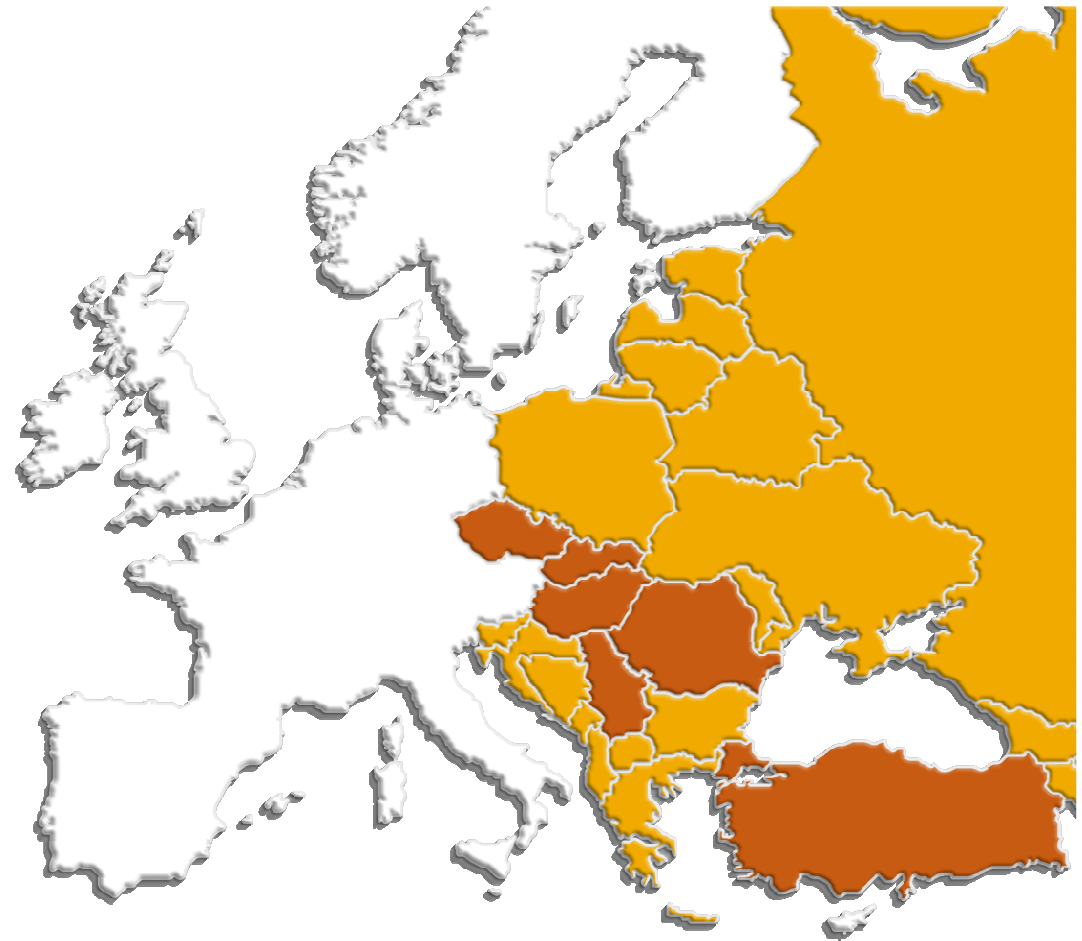
Introducing Kinstellar

Kinstellar is a leading independent law firm operating in Emerging Europe, with offices in **Belgrade** (Serbia), **Bratislava** (Slovakia), **Bucharest** (Romania), **Budapest** (Hungary), **Istanbul** (Turkey) and **Prague** (Czech Republic).

Our top-tier practices provide focused commercial legal advice on:

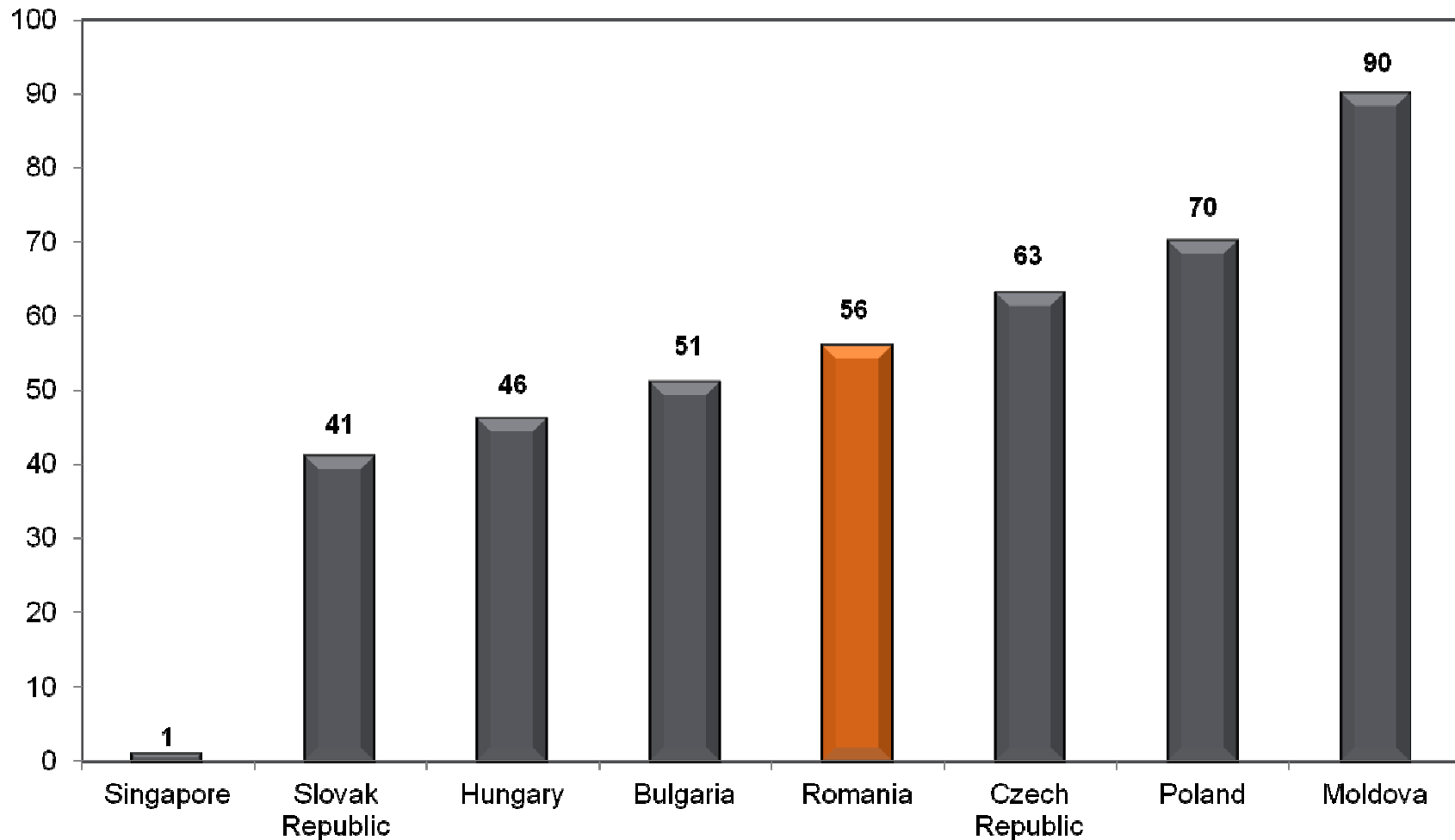
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Ease of Doing Business – Global Rank

Romania – Compared to global good practice economy as well as selected economies¹:



Romania's Ranking in IFC's Doing Business Report 2011



Rank	IFC Doing Business 2011
Starting a Business	44
Dealing with Construction Permits	84
Protecting Investors	44

Summary of Indicators Romania



Starting Business (44)	Procedures (number)	6
	Time (days)	10
	Cost (% of income per capita)	2.6
Dealing with Construction Permits (84)	Procedures (number)	17
	Time (days)	228
	Cost (% of income per capita)	73.9
Protecting Investors (44)	Extent of disclosure index (0-10)	9
	Extent of director liability index (0-10)	5
	Ease of shareholder suits index (0-10)	4
	Strength of investor protection index (0-10)	6

Preserving Investment: What Needs To Be Done?



- **Protect investors legitimate expectations**

Investment made by a foreign investor in Romania should meet a predictable and stable legal environment (assessed in a rather broad sense, i.e. including, apart from the legal framework, also the political, social and economic environment), creating and shaping the expectations on which the investor is entitled to rely when establishing and developing its investment in Romania.

The good faith principle established by international law requires to provide to international investments, treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment.

Preserving Investment: What Needs To Be Done?



- Refrain from acting in an inconsistent manner

The foreign investor expects Romania to act in a consistent manner, free from ambiguity and totally transparently in its relation with the foreign investor, **so that it may know beforehand any and all rules that will govern its investments as well as the goals of the relevant policies and administrative practices or directives to be able to plan its investment.**

Act with Due Consideration to “Legitimate Expectations” of the Investors

- Acting against investors’ “legitimate expectations” may take various forms such as: passivity in issuing administrative acts, continuing legislative changes, political or social pressure exercised by the State through its authorities, inconsistencies etc.
- Contractual obligation of the State to maintain stability of the legal framework is not a must. Shape of legal framework in place upon investment decision is sufficient to create legitimate expectations.
- Practical view: (a) contractual: Enel/OMV Petrom Privatization Agreements, (b) non-contractual:
 - Amendments of Law 220/2008 on renewable energy affecting certain investors (number of green certificates granted)
 - Amendments of Law no. 50/1991 on construction permits as to the construction permits for off-shore equipments regarding gas and oil explorations in the Black Sea?

Refrain from Acting in an Inconsistent and/or Arbitrary Manner

- “Arbitrariness” is not so much something opposed to a rule of law, as something opposed to the rule of law. It is a willful disregard of due process of law, an act which shocks, or at least surprises, a sense of judicial propriety” (ELSI)
- Practical view: two infringements procedures opened against Romania:
 - Failure to transpose new electricity and gas directives
 - Maintaining regulated supply prices for consumers which are not “vulnerable”.



Thank you!

