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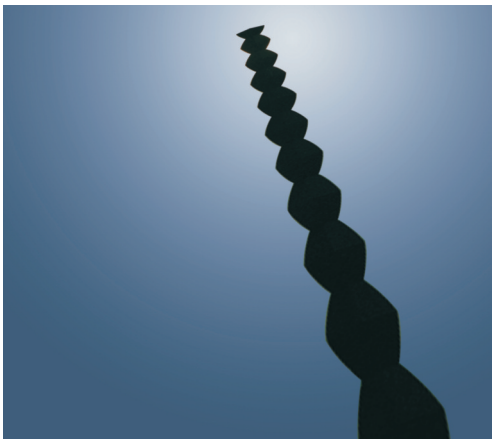
Business Guide

INVESTING IN ROMANIA



CONTENT

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LEGAL BACKGROUND

The establishment, organization and functioning of a company in Romania is mainly governed by the provisions of the Companies Law no. 31/1990 republished and subsequently amended (Companies Law).
As a principle, Romanian and foreign individuals or legal entities can choose any of the five forms of companies regulated by the law; however, certain trading activities, such as those in the fields of insurance or banking, can only be carried out by means of joint stock companies, the legal framework of which is much more strict, as presented below.

FORMS

Companies may operate in Romania in one of the following structures:
- joint stock company (SA);
- limited liability company (SRL);
- partnership (SCS);
- limited partnership (SNC);
- partnership limited by shares (SCA).

Joint stock companies and limited liability companies represent the highest percentage of the total number of companies currently operating in Romania, due to the limitation of liability of the shareholders, respectively their contribution to the subscribed share capital.

LIMITED LIABILITY COMPANIES (SRL)

SRLs are preferred for the flexibility of the legal framework regarding their organization and functioning, the law establishing a minimum set of rules in this respect, which parties may supplement, and from which in some cases they may derogate, in accordance with the specificities of the respective business.

Shareholders

SRLs may be established by one to maximum 50 shareholders, being in the same time the only type of company which may be formed by only one shareholder.
In a SRL with a sole shareholder, the law prevents such shareholder from establishing another company with a sole shareholder. Moreover, a limited liability company may not have as sole shareholder another SRL (Romanian or foreign), having in its turn a sole shareholder.

Share capital. Shares

The minimum mandatory share capital is RON 200 (approximately USD 66 at an exchange rate of USD 1/RON 3, or approximately EUR 50 at an exchange rate of EUR 1/RON 4) and is divided into equal shares, the nominal value of which may not be lower than RON 10. The share capital must be fully paid in as of the subscription date.
The shares of a limited liability company do not represent negotiable titles and therefore may not be transacted on organized markets. The transfer of the shares to persons outside the company may be made solely with the approval of the shareholders representing at least three quarters (3/4) of the share capital. The transfer of the shares shall be registered with the Trade Registry and with the Shareholders Register of the company.

Directors

The SRL is administered by one or more directors, shareholders or non-shareholders, appointed through the incorporation act or by the shareholders' general assembly. The law does not provide for minimum or maximum limits in respect with the duration of the directors' term in the case of limited liability companies, however such duration must be definite.

Censors

The shareholders' general assembly may appoint one or more censors or a financial auditor. For the companies where the number of the shareholders is over 15, the appointment of censors is compulsory.
In the event no censors or, as the case may be, no financial auditors exist, each shareholder who is not a director of the company shall exercise the controlling right which the shareholders have in the partnership companies.

Financial audit

The SRLs which are subject of the auditing legal obligation shall be audited by financial auditors, individuals or legal entities, under the conditions provided by law.

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JOINT STOCK COMPANIES (SA)

Such type of companies is more strictly regulated by the law, being compulsory in case of companies operating in certain sectors of activity. It is the chosen form of organization for companies that require significant share capital contributions from a large number of shareholders, due on one hand to the extensive and compulsory provisions of the law regarding the functioninig and management of the company, and on the other hand to the freedom of transactioning of the shares.

Shareholders

The minimum number of shareholders in a SA is two, while no limits exist regarding the maximum number of shareholders.

Share capital. Shares

The share capital of a SA and of a partnership limited by shares may not be less than RON 90,000 (approximately EUR 25,000 at the exchange rate RON/EUR valid at the beginning of 2007). The Companies Law provides that such amount shall be periodically updated, once every two years at most, by Government decision, so that it always represents the RON equivalent of EUR 25,000. The nominal value of the shares cannot be less than RON 0.1. The share capital paid in on incorporation by each shareholder may not be less than 30% of the subscribed share capital. The remaining 70% of the share capital must be paid in within 12 months following the incorporation in case of money contribution, and within 24 months in case of in-kind contribution. Until the full payment of the shares, the company may not increase its share capital and it may not issue new shares.

The shares may be nominative shares or bearer shares and they may be issued in material form, on paper, or in dematerialized form.

The shares in the joint stock companies may be freely transferred and they may be traded on organized markets.

Companies Law stipulates a right of preference in favor of the shares owners upon subscription of the shares newly issued during the capital increase operation.

Bonds

SA may issue bearer or nominative bonds the nominal value of which may not be less than RON 2.5. The bonds issued at the same time must be of equal value if they give equal rights to their holders. Bond holders may meet in a general meeting to debate over their interests. The resolutions adopted at the meeting of the bond holders are also mandatory for the bond holders that have not attended the meeting or voted against them.

Directors

As a general principle, the directors may be either individuals or legal entities. Where the company appoints a legal entity as managing director, the rights and obligations of the parties shall be determined by a management agreement. The agreement must set forth, inter alia, that the legal entity shall have to appoint an individual as permanent representative. The latter shall be subject to the same terms and obligations and shall bear the same civil and criminal responsibility as an individual director acting on behalf of the company, which does not mean that the legal entity represented by such individual is exempted from liability or that its joint liability is decreased.

For the joint-stock companies, the law provides for two different management systems: the unitary system and the dualist one.

According to the unitary system, the joint stock company shall be managed by one or several directors, whose number must always be an odd one. In case of plurality of directors they

shall form a board. The joint-stock companies whose annual financial statements are audited in accordance with the legal requirements shall be managed by at least 3 directors. The board may delegate its powers to one or several managers, in which case the majority of the board shall be comprised of non-executive directors.

The dualist system entrusts the management of a joint-stock company to a board of directors and a supervisory council. The corporate management belongs exclusively to the board of directors, which will carry out the necessary and useful actions for achieving the company's object of activity. The board of directors shall be made up of one or an odd number of members designated by the supervisory council and they must not be at the same time members of the latter or employees of the company. The management activity shall be performed under the control of the supervisory council, which is also empowered to revoke at any time the company's directors.

The members of the supervisory council shall be appointed by the general meeting of the shareholders. The number of its members shall not be lower than 3 or greater than 11. No management powers can be transferred to the supervisory council.

The person granted with the management mandate must expressly accept such an appointment. In addition, he/she shall be obliged to conclude an insurance policy for professional liability. An individual may be director and/or member of the supervisory council in maximum 5 (five) Romanian joint-stock companies at the same time.

According to the regulations in force, a director

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and/or manager of a company shall enter into a management agreement with the company they run and thus, the labor agreements concluded with such companies, if any, shall be suspended during the mandate.

Censors

Unless the articles of incorporation provide for a higher number, the joint stock company must have three censors and one deputy. In all situations, the number of the censors shall be odd. Censors are elected by the shareholders' general assembly. Their term of office is of 3 years and then they can be re-elected. Censors can be shareholders as well, except for the censors who are accounting experts or certified accountants, who can be a third party exercising their profession individually or in associations.

Financial audit

The financial situations of the companies which are subject to the auditing legal obligation shall be audited by financial auditors, who may be either individuals or legal entities, subject to legal provisions.
The joint-stock companies which choose the dualist administration system have to be financially audited.
Moreover, companies the annual financial records of which are subject to financial audit pursuant to the law or to the shareholders' resolution shall organize an internal audit department, according to the norms drafted by the Romanian Chamber of Financial Auditors for this specific purpose.

EUROPEAN PUBLIC LIMITED LIABILITY COMPANIES (SOCIETAS EUROPEA OR SE) AND CROSS-BORDER MERGERS

In the case of the companies the annual financial records of which are not subject to financial audit, pursuant to the law, the genera meeting may decide to contract the financial audit or to appoint censors, as the case may be.
The direct application of Council Regulation no. 2157/2001 regarding the statute of the European Company (SE) (Regulation 2157/2001) was facilitated by the enacting of the Emergency Government Ordinance no. 52 ("EGO 52/2008") which amended and supplemented the Companies Law.

Thus, under these regulations, companies from Romania may participate in the formation of European Companies, and also European Companies may be registered in Romania. The Companies Law, as amended by EGO 52/2008, provides that a SE having its registered office in Romania shall be governed by the provisions of Regulation 2157/2001 and by the provisions of the Companies Law applicable to the joint-stock companies, provided that such internal legal provisions do not contravene the provisions of the Regulation no. 2157/2001. A SE may be registered in Romania only after the execution of an agreement regarding the employee involvement in the company's activity (with the observance of the provisions of Government Decision no. 187/2007).

EGO no. 52/2008 transposed into national law the Directive no. 2005/56/EC of the European Parliament and Council of October 26, 2005 on cross-border mergers of equity companies. Thus, the joint-stock companies, the limited partnership by shares, the limited liability companies – Romanian legal entities – and European Companies having registered office in Romania may merge, in accordance with the provisions of the Companies Law, with companies having their registered office or, as the case may be, the central administration or headquarters in other Member States or in countries within the European Economic Area. The competence of verifying the legality of the merger with respect to the procedure followed by the companies participating to the merger – Romanian legal entities or European Companies with registered office in Romania – and, if applicable, the newly-founded Company – Romanian legal entity or European Company with registered office in Romania – is in charge of the judge delegated to the trade registry office where the legal entities participating to the merger are registered, i.e. the Romanian legal entities or European Companies having registered office in Romania, including the acquiring company or, if applicable, the newly-founded Company.

SUBSIDIARIES

Subsidiaries are companies with legal personality and are established in one of the company structures set forth above and under the conditions provided for each respective structure. Thus, subsidiaries are independent entities with a separate legal personality, different from that of the company which established them.

BRANCHES

Branches are entities without legal personality, established by Romanian or foreign companies and incorporated with the trade registry located in the county/municipality where they are to carry out their activity. The legal regime of the branches is similar to that of any secondary headquarters established by a company (work-point, agency, etc.)

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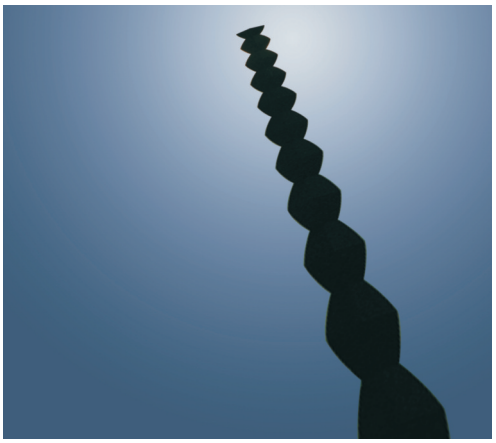

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REPRESENTATIVE OFFICES

Representative offices are entities without legal personality, established by foreign companies under the conditions set forth by Law-Decree no. 122/1990 regarding the authorization in Romania of foreign companies' representative offices and economic organizations, with its subsequent amendments. Representative offices are established on the basis of an authorization issued by the Ministry of Economy and Commerce. After the authorization is issued, the representative office is registered with the trade registry and the Fiscal Administration. Representative offices can perform market research and marketing activities on behalf of the foreign company, in compliance with the functioning authorization issued by the Ministry of Economy and Commerce, yet they are not allowed to engage in direct commercial activity in Romania in their own name.

JOINT VENTURES

Joint ventures are regulated by the provisions of the Romanian Commercial Code in the legal form of partnerships and may be concluded between foreign individuals/legal entities and/or Romanian individuals/legal entities. The establishment of such a joint venture does not result in a distinct entity with legal personality and it is not subject to prior authorization. The rights and obligations of the parties in a joint venture, as well as the manner of functioning thereof, are regulated by the joint venture agreement.

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