

Romania: changes to the Companies Law

Back to Corporate and M&A Law Committee publications

(/LPD/Corporate_Law_Section/Corporate_MA_Law_Committee/Default.aspx)

Alina Popescu

MPR Partners Maravela, Popescu & Asociatii, Bucharest

alina.popescu@mprpartners.com (mailto:alina.popescu@mprpartners.com)

Daniel Alexie

MPR Partners Maravela, Popescu & Asociatii, Bucharest

daniel.alexie@mprpartners.com (mailto:daniel.alexie@mprpartners.com)

Background

On 5 July 2020, the Romanian Companies Law No 31/1990 (the 'Companies Law') was amended to enable individuals and legal entities to be sole shareholders in more than one Romanian limited liability company. This was previously not the case, as express restrictions were in place. These restrictions prevented one from being the sole shareholder in more than one Romanian limited liability company, and also prevented a limited liability company with the sole shareholder from being the sole shareholder in a Romanian limited liability company.

The previous restrictions caused delays in the incorporation of Romanian limited liability companies, in conducting simple share transfers and even in closing complex M&A transactions.

Such delays were frequently the result of the fact that the aforementioned restrictions were also applied indirectly to prevent a limited liability company with the sole shareholder from setting up or becoming the sole shareholder in a Romanian limited liability company without additional shareholders. Such a restriction applied even when the sole shareholder setting up or becoming the sole shareholder of the Romanian limited liability company was a legal entity from abroad.

Such restrictions were inherently difficult to comprehend for foreign entrepreneurs and corporations setting up businesses in Romania.

Company incorporation advantages

The first and most obvious advantage of the aforementioned restrictions being repealed is related to the incorporation process of a limited liability company.

Before, each and every entrepreneur or business that was already the sole shareholder in a Romanian limited liability company needed to identify and partner with one or more additional shareholders in order to set up new companies. The IBA use cookies to provide you with a better Website experience. By continuing to use our site, you are agreeing to our use of cookies. Click to find out how to **manage cookies** (https://www.ibanet.org/About_this_site/Cookies.aspx).

Close and Accept

Now, entrepreneurs and businesses will be able to set up as many limited liability companies as they want on their own, for example, in order to differentiate and separate their business expertise in various fields.

Moreover, one will no longer be required to submit a notarised affidavit ascertaining that the position of sole shareholder is held in a single limited liability company.

Such an affidavit was usually not accepted by the Trade Registry if circumstantiated (eg, if it was referring to not holding the position of sole shareholder strictly in Romanian limited liability companies).

While the formal registration of a Romanian limited liability company has not been vastly simplified, the unnecessary complications of identifying suitable business partners or group companies to enter as additional shareholders, and to draw up corporate documents and processes for two or more shareholders rather than just one, have been removed.

Impact on M&A

The previous restrictions sometimes made share transfers and M&A difficult to implement.

This was the case particularly in cross-border transactions implying the acquisition of a whole group of companies by a different group.

In certain cases, such transactions are structured so that a single holding-type company that is part of the acquiring group purchases all the shares in all subsidiaries of the target group. The restrictions previously imposed by the Romanian Companies Law made such transaction structures impossible to achieve without identifying a second shareholder. Even if a different company from the group could have theoretically held the position of the second shareholder, usually such an entity was also held by the holding-type company, thus indirectly leading to non-compliance with the relevant restrictions. Thus, more often than not, an individual needed to be involved in the transaction as the second shareholder.

Such issues will no longer occur given the recent changes to the Romanian Companies Law, thus streamlining share transfers and M&A transactions involving Romanian limited liability companies.

Paving the way for holding companies

The repealing of the relevant restrictions regarding sole shareholders of Romanian limited liability companies will make it easier for holding-type companies to operate in the Romanian market.

Such entities will now be able to benefit from the corporate advantages specific to holdings when setting up limited liability companies in Romania (eg, a streamlined decision-making process, similar corporate structure in all countries of business and no deviations caused by the previous restrictions that were in place), while also benefiting from advantages specific to the Romanian market, such as:

- fast incorporation process (three working days from submitting documents at the Trade Registry);
- low minimum share capital – RON200 (approximately €41);
- fairly low profit tax (16 per cent) for medium and large enterprises, and low (one per cent to three per cent) revenue tax for microenterprises;
- no dividend taxes are applied for shareholder entities fiscally registered in other European Union Member States, subject to the payment of corporate tax in the same Member States;

The IBA uses cookies to provide you with a better Website experience. By continuing to use our site, you are agreeing to our use of cookies. Click to find out how to **manage cookies** (https://www.ibanet.org/About_this_site/Cookies.aspx).

➤ Romanian legal entities subject to profit tax do not need to pay taxes for revenue obtained following the sale of shares held in Romanian or foreign companies if the same Romanian legal entities held at least ten per cent of the shares in the relevant companies for at least one uninterrupted year. In order for such a benefit to be applicable for revenue obtained following the sale of shares held in foreign companies, the country of residence of such foreign

Close and Accept

companies needs to be part of a double taxation treaty with Romania; and

- an attractive market for consumer-driven businesses.

However, for a fully appealing framework for holding companies, Romania should enact legislation addressing the specific structural needs of holding companies; this legislation is still missing.

Back to Corporate and M&A Law Committee publications

(/LPD/Corporate_Law_Section/Corporate_MA_Law_Committee/Default.aspx)

The IBA use cookies to provide you with a better Website experience. By continuing to use our site, you are agreeing to our use of cookies. Click to find out how to **manage cookies** (https://www.ibanet.org/About_this_site/Cookies.aspx).

Close and Accept