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Limited Liability Companies

in Romania

This paper may refer to legislation in force on the date of documentation and also personal opinions of its author. The paper is targeted at the general public for informational purposes only and readers should be aware that legislative changes occur frequently in Romania.

This paper is not intended to be legal advice or a legal opinion on which you may rely for any decision which may affect you or your business. Please consult a lawyer on the basis of a written legal assistance agreement before taking any decision.

The SRL (ro ***societate cu răspundere limitată***) is a widely used type of company recognized by the laws of Romania. It is similar to the French s*ociété à responsabilité limitée* (SARL), the *private company limited by shares* (Ltd.) in the UK / Ireland and the original German *Gesellschaft mit beschränkter Haftung* (GmbH). The English translation is **limited liability company.**

SRL has legal personality *(corporate personhood)* distinct from that of its shareholders and performs commercial activities on its own name and liability. In this manner, the limited liability company enters into contracts, owns property and indebts itself as a separate legal entity. If the company runs into debt, shareholders are personally responsible for the company's obligations only *within the limit of* the value of subscribed share capital. Moreover, during the existence of the company, personal creditors of the shareholder may exercise their rights only against the benefits owed by the company to the shareholder after balance sheet approval and, after dissolution, only against the goods that the shareholder shall receive as a result of the liquidation of assets.

- **SOCIAL HEADQUARTERS**

Romanian laws are quite restrictive regarding the registration of a place of business for a company. When a new company is formed or when a company changes headquarters there are a lot of documents to be drafted and several proofs of having an effective company headquarters must be presented before the Trade Registry in order to get the company registered. The core list of documents required are: contracts and titles of the owner and the subsequent agreements with the company to use the place as previously registered with financial authorities, a certificate and a statement from local financial authorities that the place has not been leased to another for free use or against rent and if so a notary public authenticated statement that the place fulfills the legal conditions for a corporate headquarters. A place is fit for hosting a company if it allows through its structure the functioning of more companies in different rooms or different designated spaces. The number of SRL that function in such a place cannot outnumber the rooms or designated spaces obtained through partitioning of the building or the rooms in designated spaces.

- **NAME [*FIRMA*] OF THE COMPANY**

The name of the company is to be chosen by shareholders. The following limits apply to the name:

- it shall be designated first of all in Romanian language
- it may contain the name of one or more shareholders
- it shall be followed by "societate cu răspundere limitată" or "S.R.L."
- it may not contain the following words: «ştiinţific», «academie», «academic», «universitate», «universitar», «şcoală», «şcolar» or derivatives
- if it contains the words: «național», «român», «institut» or their derivatives or words pertaining or belonging to public central authorities, an approval from the General Secretariat of Government must be secured in advance and in case of public local authorities from the Prefect.
- it shall not create confusion with other company names in the Trade Registry databases; therefore, a *search and name reservation* has to be performed before filling in all required documents for registration
- it shall not contain a designation used by public sector businesses
- unless auhorized by the National Bank of Romania, designations may not include references to banks, credit or financial institutions
- it shall not contain the designation “Academia Română”

The name is a constitutive element of the company and cannot be sold separately.

- **FOUNDER(S)**

The law recognizes the *single shareholder* limited liability company by stating that a limited liability company can be formed by the will of one person. In this case, the memorandum of association represents the constitutive act. Specific rules are enacted to maintain economic discipline in case of single shareholder SRL such as:

- in-kind contribution is always subject to an independent evaluation,
- contracts between the shareholder as a private individual and the company are to be drafted in written form otherwise they are null and void

– the company cannot be formed through the will of another single shareholder SRL.

Shareholders can be private individuals or legal persons (other companies) regardless of nationality. Rules and limitations apply as to the contents of the documents needed to establish a new SRL.

In case the foreign company establishes or takes part as a shareholder in the new SRL, the Trade Registry requires the following documents:

a. Founder's and adminstrator's registration documents in original and in Romanian legalized translation with translator's signature authenticated by a Romanian notary public

b. The decision of the foreign company according to its articles of association regarding the founder's participation to the establishment of the company in original and in Romanian legalized translation with translator's signature authenticated by a Romanian notary public

c. The *power of attorney* for the designated agent that shall sign the constitutive acts in the name and on behalf of the founder (original and in Romanian legalized translation with translator's signature authenticated by a Romanian notary public) which may be included in the decision mentioned in para.b

d. A Letter of Good Standing for the founder issued by a bank or by the Chamber of Commerce at the place of social headquarters of the founder (original and in Romanian legalized translation with translator's signature authenticated by a Romanian notary public). All official acts must bear a Hague Convention Apsotille if required by rules of international private law.

Maximum number of shareholders in a Romanian SRL is limited to 50.

- **SOCIAL CAPITAL and SHARES**

The minimum social capital required for a limited liability company is 200 lei (two hundred lei).

The capital is divided into equal social shares. Each share cannot have a lesser than 10 lei value.

The number of shares a shareholder has gives the same number of votes in the general assembly.

Increasing social capital may be done by issuing new shares or increase the value of existing shares in exchange of new contributions in cash or in kind. Compensating a company debt to the shareholder may also be used to increase social capital.

Decreasing social capital may be done by lowering the number of social shares or reducing the nominal value of them. If decrease is not motivated by loss, the social capital may be decreased also by

exonerating shareholders of their contribution or by company refunds of contribution quotas in proportion to the social capital which are equally calculated for each social share.

Shares may be transferred among shareholders.

The transfer of shares to persons outside the company is only allowed if it was approved by the shareholders representing at least three quarters of the registered capital. This rule is not applicable in case of acquiring a share by inheritance, unless otherwise stipulated by the constitutive act; in this case the company is obliged to pay the value of the share to heirs according to the latest balance sheet approved.

- **CAEN CODES OF BUSINESS ACTIVITIES**

The memorandum of association must contain the object of activity in the form of CAEN *(Economic Activities Classification)* codes and descriptions for the main and secondary objects of activities. A legal person – as opposed to a natural person (*private individual*) – is always limited in its legal capacity: it exists only within the boundaries established by its object of activity and can act only within these limits. Therefore, inserting the correct CAEN code and description of economic activity in the memorandum of association is important when drafting the acts of the company because all activities that fall outside the stated object are void for complete absence of legal capacity.

- **CONSTITUTIVE ACTS**

The constitutive acts of a SRL are the ***Company Agreement*** and the ***Bylaws***. The first is the contract between two or more person who decide to establish a new company. The second established the rules of conduct, appoints administrators or sets the rules to appoint them in the future, etsablishes majorities and voting procedures, acting as the Constitution of the new company.

Having a consolidated act or two separate documents does not carry by itself major legal consequences but drafting of the clauses has to be done in close cooperation with legal consultants as contents have major consequences in the life of the company.

The consitutive acts may be drafted by the shareholders and their legal advisers and may also be authenticated by a notary public or certified by a lawyer. The acts of establishment must be authenticated by a notary public if a founder subscribes to social capital a piece of land as in-kind contribution to the SRL

The Consitutive acts may be changed according to the rules and majorities established in the articles of

association. Unless otherwise provided in the articles, the general rule is the unanimity of all shareholders in the general assembly in order to modify the constitutive acts.

The decision of the shareholders must be authenticated by a notary public in the following cases:

1. social capital is increased by land contribution
2. switching the form of the company into a collective partnership or a dormant partner company
3. changing the name of the company
4. continuing the company as a single shareholder SRL

- **DURATION OF THE COMPANY**

Shareholders are free to determine the duration in time of the company from the beginning. They may opt for a SRL with indefinite duration or with definite duration, such as limited to several years. In case the shareholders decide to extend the life of the company they must do so before the end of duration in the form of a shareholders' resolution. Personal creditors of shareholders may oppose the extension if their rights are established to be directly enforceable against the shareholder before the shareholder's decision to extend the life of the company.

- **THE ADMINISTRATOR: ROLE AND RESPONSIBILITIES**

The company is administered by one or several administrators appointed through the constitutive act or by the general assembly. A shareholder can also be administrator. Shareholders representing the absolute majority of the registered capital may elect one or more administrators themselves, establish their powers, duration of their mandate and their possible remuneration, unless otherwise stipulated by the constitutive act.

The administrator is the legal representative of the company that can carry out all the operations required for the fulfillment of the company's goal, except for the restrictions mentioned by the constitutive act. They are bound to take part in all the company's meetings, in the meetings of the shareholders and of similar managing bodies.

The administrators who are entitled to represent the company, can only transfer this right if this was expressly granted to them. In case of infringement, the company can claim from the substituted person the profits resulting from the operation.The administrator who, no right being granted to him in this respect, substitutes another person for himself, is jointly liable with this person for possible damages

caused to the company.

The administrators are jointly liable towards the company for:

a) reality of shareholders' contributions;

b) actual existence of the paid dividends;

c) existence of the registers required by law and their correct updating;

d) exact fulfillment of the decisions of the general assembly;

e) strict fulfillment of the duties imposed by the law and by the constitutive act.

Claims of responsibility against the administrators belong also to the company's creditors but they could only lay claim against them in case of company's bankruptcy.

Acts of disposition of company assets may be executed within the powers granted to legal representatives of the company without an authentic power of attorney even if the form of these acts must be authentic.

The administrators may not receive an administrator mandate in other companies which are competitors or have the same object, without the authorization of the shareholders' assembly, nor may they carry out the same trading activity or another competitive one on their own account or on the account of another natural or legal person, under penalty of being dismissed and responsible for damages.

The right to represent the company belongs to each administrator, unless otherwise stipulated by the constitutive act.

In case the constitutive act prescribes that the administrators should operate together, the decision must be made unanimously; in case of disagreement among the administrators, the decision will be made by the shareholders representing the absolute majority of the registered capital.

For urgent acts, whose unfulfillment would cause great damage to the company, a single administrator may decide in the absence of the others who are in the impossibility, even momentarily, to take part in the management of the company.

- **GENERAL ASSEMBLY OF SHAREHOLDERS**

The General Assembly of Shareholders is the supreme organism of decision in the SRL.

Each share gives the right to one vote in the General Assembly.

The General Assembly has the following main duties:

a) to approve the balance sheet and to establish the distribution of the net profit;

b) to appoint the managers and the auditors, to dismiss them and to release them of their activity and to contract financial audit when it is mandatory according to the law

c) to decide upon claiming damages caused to the company by administrators or auditors and nominate the person in charge of taking action against them;

d) to modify the constitutive act.

Except as otherwise provided in the constitutive acts, the law establishes a double-majority rule for decision-making in the general assembly: 1. the majority of shareholders and 2. the majority of shares.

If the legally constituted meeting of the assembly cannot make a valid decision due to the lack of the required majority, the assembly convened again is entitled to decide upon its agenda whatever the number of shareholders and the capital share represented by the shareholders taking part in the meeting are. The assembly has to be summoned by the administrator and may be summoned by a shareholder or group of shareholders that represent at least 1 / 4 of social capital.

- **SHAREHOLDERS: RESPONSIBILITIES AND LIABILITIES**

The shareholder who, in a certain operation, has, on his own or on another one's behalf, interests contrary to those of the company, cannot take part in any proceedings or decision-making regarding this operation.The shareholder breaking this rule is liable for the damages caused to the company if, without his vote, the required majority would not have been met.

One shareholder may not exercise his right to vote in the proceedings of the shareholders' assembly, regarding his contribution in kind or the legal documents concluded between him and the company.

A shareholder may be excluded by court order from the SRL in case:

a) subject to prior notification, does not make the contribution he has committed himself to make;

b) being also an administrator, defrauds the company or uses the registered signature or the registered capital for his own benefit or for the others' benefit.

A shareholder may withdraw from the company:

a) in the instances stipulated by the constitutive act;

b) with the agreement of all the other shareholders;

c) for justified reasons, based on a court decision.

- **DISSOLUTION**

The company enters dissolution by:
a) expiration of the period established for the life of the company;
b) impossibility to carry out the object of activity of the company or its very fulfillment;
c) court finding that the company is null and void;
d) the decision of the general assembly;
e) court decision, initiated by any one of the shareholders, for justified reasons, such as serious dispute between the shareholders that hinder the company's operation;

f) bankruptcy;

g) other reasons as prescribed by the law or by the constitutive act of the company;

Dissolution of the company begins the liquidation procedure. Dissolution may take place without liquidation in case of merging or of total division of the company and in other cases stipulated by law.

As from the moment of dissolution, the managers cannot start new operations; otherwise they are personally and jointly liable for the operations they started. The restriction applies from the day the time established for the company's life expires or as from the date of its dissolution as decided by the general assembly or as declared by a court decision. The company maintains its legal personality during the liquidation operations until the liquidation is finished.

Per Trade Registry dissolution occurs when the Trade Registry or an interested person requests the Tribunal to pronounce dissolution when certain requirements that have to be maintained in company life are not respected by the administrators or shareholders of the company. The Tribunal may pronounce dissolution in these cases and the decision given in first instance is subject to an appeal

(recurs). The company may rectify the situation before the decision in first instance or pending appeal and the Tribunals and Appelate Courts usually save the companies upon the principle of *company life safeguarding*. The reasons for such a request to be made before the Tribunal are:

a) the SRL lacks the bodies required by the constitutive act or these bodies cannot meet any more

b) the SRL ended its activity, does not have known headquarters or does not fulfill the conditions related to the social headquarters or the shareholders have dissapeared or they have no domicile or known residence

c) the company did not complete its social capital according to the law

Failure to fill in financial situations with the Trade Registry has recently been excluded from the causes of *per Trade Registry dissolution* and was transformed in an accountancy misdemeanor, albeit with serious fines attached to it.

The decision of the Tribunal remains irrevocable if appeals are not declared or they are rejected. Liquidation in this case may only start if the decision of the Tribunal becomes irrevocable.

- **LIQUIDATION OF ASSETS**

The liquidators' appointment in the limited liability company shall be made by all the shareholders, unless otherwise stipulated by the company contract. If the unanimity of votes cannot be met, the appointment of the liquidators shall be made by the court, upon the request of any shareholder or administrator, after hearing all the shareholders and administrators.

In case the company under liquidation is found to be in insolvency, the liquidator is obliged to request the insolvency of the company, the same right belonging to the creditors of the company.

After having completed the liquidation of the limited liability company, the liquidators will draw up the liquidation balance sheet and propose the distribution of assets between the shareholders.

The Trade registry shall erase the company from its database.

After all creditors are paid, the goods that remained in the assets of the erased company shall belong to the shareholders.

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