

Simplified rules for LLCs as well as for Commercial Register Procedures

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The month of November brought two long-awaited amendments to the Law No. 31/1990 on companies, which are intended to further stimulate investments in the context of the difficult economic situation caused by the SARS-Cov-2 pandemic. The Law No. 223/2020¹ (hereinafter "the **Law**") introduced certain simplifications with regard to the incorporation of companies and the transfer of shares in LLCs (SRL). The Emergency Ordinance No. 195/2020² (hereinafter "**EO 195**") also extended the possibility of using informal (i.e. privately written) documents upon registering amendments to the commercial register.

Simplified procedures for SRL

- **Incorporation**

An SRL can be founded even more easily in the future. The already low minimum share capital (up to now 200,- RON) was abolished. LLCs also don't have to perform the formality of proving the paid-in share capital. Consequently, the abovementioned document no longer has to be filed to the Commercial Register upon submitting an incorporation request regarding an SRL. At a first glance, this clears an unnecessary bureaucratic hurdle in the context of the incorporation procedures of SRLs. However, if the remaining incorporation rules are strictly considered, the legal change has failed to achieve its purpose: the share capital must, according to legal norms still in force, be nevertheless indicated in the articles of incorporation and paid in. This will in anyway not constitute an obstacle for a serious company.

Another simplification regards the proof of the registered headquarters of a company, which had been introduced almost four months earlier. Starting from 05.07.2020, the lease agreement for the registered office should first be submitted to the competent tax office and then submitted to the Commercial Register. Starting with 05.11., this formality with the tax office is abolished. Thus, the communication between the two public authorities (tax office and commercial register) is strengthened.

- **Assignment of shares (share deals)**

If an investor decides not to found a new company, but to take over shares in an existing one, this can now be taken into approach in a simplified manner. The highly-criticised, old and difficult two-stage procedure for transferring shares to third parties (i.e. persons who are not shareholders) implied publishing the intention to assign shares and an opposition period for third parties and thus was lengthy. It was therefore replaced by a shorter and practice-oriented procedure. Shareholders are now no longer bound by the old procedure, but can freely establish such regulations in their own articles of incorporation.

¹ Published in the Romanian Official Journal No. 1018/ 2.11.2020, in force from 5.11.2020.

² Rom. Official Journal No. 1078/ 13.11.2020, in force from 13.11.2020.

Simplified and informal cooperation with the Commercial Register

EO No. 70/2020 initially regulated the use of private written documents in relation with the Commercial Register for 6 months after the end of the state of emergency (i.e. until 15.11.2020). Through the new EO 195, this period shall be extended by a further 9 months. This means that affidavits (for eg. statements to be made by the shareholders or the managing directors) which are to be annexed to a registration request/ other applications are currently not to be notarized, nor need such documents bear an apostille (if applicable). It is thus sufficient for such documents to be signed in private form or to be provided with a recognised electronic signature. The same applies to signature specimens, which no longer need to be notarially certified.

The abovementioned documents can still be submitted to the locally competent Commercial Register by electronic means, as well as by postal/courier service, without any other formalities. Thus, the activity of the Commercial Register offices continues to be carried out mainly by electronic means.

Extension of the deadline for the submission of the declaration on the ultimate beneficial owners

In this context, the deadline for the much-discussed declaration on ultimate beneficial owners has also been extended. Romanian companies now have time until spring to prepare this declaration, also in private form. The deadline ends 90 days after the end of the state of alert ; which has currently been established until 13.12.2020 (an extension is foreseeable).

Conclusion

The novelties presented above are to be welcomed in the present context. The trend towards adapting to the current crisis and for simplifying the necessary formalities for companies is clear. We hope that these measures for abolishing bureaucracy will remain as a positive impact of the pandemic over the cooperation with the authorities.

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