

## **New regulations on the restructuring of companies with real estate property**

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About a year ago we reported on new regulations on mergers (*fuziuni*) and spin-offs (*divizari*) of companies with real estate property, where the transfer of ownership as a result of a merger or spin-off was supposed to be registered in the land register based on a 'reorganisation certificate'.

At the end of May, new regulations were introduced. Like the previous changes, the new provisions bring anything but clarity.

### **Context**

The restructuring of companies with real estate has always come in practice with complications and uncertainties. Two subjects constantly debated in practice are: which restructuring documents (the merger/ spin-off plan or the shareholders' decision to approve it) must be drawn up in authenticated form to allow the ownership transfer over the real estate to be entered in the land register; and how the notary's fee should be calculated (fixed or depending on the real estate value?).

The law on real estate publicity (Real Estate Publicity Law)<sup>1</sup> was changed in July last year, requiring notaries to issue a reorganisation certificate (*certificat de reorganizare*) at the end of the restructuring process, based on which the property transfer was entered in the land register. The certificate had to be issued by a notary based on the court judgment and shareholders' decision to approve the merger/ spin-off. However, the meaning and purpose of this certificate was unclear, especially since the court judgment already establishes the lawfulness of the merger/ spin-off procedure and the transferred real estate is sufficiently identified in the shareholders' decision through land register and cadastral numbers.

### **New legislative changes**

Art. 24 of the Real Estate Publicity Law was changed at the end of May 2019; the transfer of *in rem* rights over real estate following the merger/ spin-off must now be entered in the land register based on the following documents:

- a. Court judgment on the merger/ spin-off plan;
- b. Articles of Incorporation (*actul de infiintare*) of the newly established legal entity/ entities (in the case of spin-offs);
- c. Document on changing the articles of association (*actul de modificare a actului constitutiv*) of the restructured legal entity, or the contract between the legal entities which establishes the changes of the share capital and/ or assets;
- d. Decision of the shareholders' meeting about the restructuring of the legal entity/ entities;
- e. Registration certificate (*certificat de inmatriculare*) from the Commercial Register for the newly established legal entity/ entities.

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<sup>1</sup> Law No. 7/ 1996.

The law states that the documents named in lit. b. to d. above must be drawn up in authenticated form and the real estate mentioned therein must be identified through land register and cadastral numbers.

These legislative changes give rise to more legal issues than the previous regulations, such as:

- It is unclear if document b. above actually implies the articles of association of the new company/ companies (*act constitutiv*) or the shareholders' decision on establishing the new company/ companies. An authentication of the articles of association, together with the list of the real properties in the company's estate, would be in our opinion an excessive requirement of the legislator that would contradict the meaning and purpose of the Company Law<sup>2</sup>.
- Is the document on changing the articles of association (c. above) actually the shareholders' decision, according to Company Law? This is however expressly stated again in lit. d. of art. 24, so it is not clear what this document is supposed to include.
- It is also unclear what type of contract determining changes of share capital/ assets (c. above) is actually envisioned by the legislator, since in the case of mergers/ spin-offs it doesn't usually come to the drawing up of such contracts.

## Conclusion

It is unfortunate that the legal provisions on registering property transfers following a restructuring process has become even less clear. Instead of casting light on the dilemmas that have arisen in practice, the legislative body has increased the level of confusion and uncertainty. Clarifications are expected from the legislator through new legislative changes, or by a comprehensive amendment of the regulations on entries in the land register by the National Agency for Cadaster and Real Estate Publicity.

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<sup>2</sup> Law No. 31/1990.