

"Postponed does not mean canceled" Pitfalls associated with share capital

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Since November 2022, there is no longer an obligation to pay in the share capital in full when founding a Romanian limited liability company (S.R.L.). However, the law stipulates that this must be done no later than one year after its inception.

This simplifies the incorporation process because the often difficult discussion with banks about opening an account is now unnecessary. Nevertheless, there are still pitfalls in connection with opening a business account and paying in the share capital, which can cause problems in practice after the company has been founded.

What was applicable until November 2022?

Until November 2022, shareholders of a Romanian company had to open a special account, the so-called share capital account (*cont de capital social*), at a Romanian bank and pay the share capital into it. This special account had no other purpose than to hold the share capital (interest-free) and could not be used as a business account.

Some banks were obliging and made hardly any demands when opening such formal accounts. Others, however, took their obligation to carry out the KYC (know-your-customer) procedure very seriously.

This prolonged the incorporation procedure - unnecessarily, as was rightly claimed, especially as the bank had to be visited again after the incorporation anyway in order to open a definitive business account.

What has changed?

According to the amended Art.1 of Law 31/1990, shareholders in Romania do not have to deal with the issue of share capital until after the company has been established. Experience has shown that it can take between two weeks and several months to open a business account, depending on the complexity of the investment group. Countless forms have to be filled out and signed in front of a bank representative (alternatively a notary abroad, possibly with an apostille).

If there is no agreement regarding the UBO (*beneficial owner, rum. beneficiar real*) of an internationally represented group or if the proof of this is not submitted in the required form, lengthy discussions with bank employees can quickly ensue.

The term UBO ("ultimate beneficial owner") was introduced in the EU by the 4th EU Money Laundering Directive. In short, UBOs are natural persons who directly or indirectly control companies, even if they do not hold an official position as a shareholder or managing director. They appear in certain registers (such as the German Transparency Register or the Austrian Register of Beneficial Owners) so that financial institutions, authorities, etc. can quickly check the financial circumstances and react to suspicious circumstances. However, banks require additional declarations from independent third parties (lawyers, notaries, auditors) for multi-level shareholding structures, which identify and thus confirm the UBOs on the basis of official documents (HR extracts, shareholder lists)¹.

Contacting the bank at short notice to open a business account should not be delayed unnecessarily under these circumstances, as the deadlines for complications are short and the penalties are severe.

¹ For the practical difficulties in banking transactions, see
https://stalfort.ro/wp-content/uploads/2024/04/20231102_ADZ_RO_Bank_transactions_more_difficult.pdf

Which deadlines apply?

The law provides for two payment deadlines after incorporation:

- (i) three months for 30% of the share capital, and
- (ii) another nine months for the remaining 70%.

The deadline is longer for contributions in kind; these must be paid in full no later than two years after inception.

In practice, it is often forgotten that an additional important condition applies: **no activities may be carried out before the share capital has been paid in.**

The background to this condition is that the shareholders of a limited liability company are only liable up to the amount of the share capital. If this is not paid up and there are no other assets, creditors may be disadvantaged.

What sanctions are there?

Managing directors are liable for the timely payment of the share capital. If they commence their activities before the share capital has been paid in full, they are not only liable to a fine, but also a prison sentence.

Conclusion

The share capital no longer has to be paid in full when the company is founded. However, shareholders should not take too long to make the payment, especially as this requires a business account to be opened. Due to the lengthy KYC procedures of the banks, this can easily take several months for more complex shareholding structures, which means that the deadline may expire.

For managing directors, starting work before completing these administrative steps constitutes a criminal offense, which must be taken seriously.

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