Chapter 2

Forms of Doing Business

1. General

After the rebirth of market economy structures in 1990, the legal regulation of corporate entities generally enjoyed a stability lacking to other fields. In fact, the company regulations have been adopted in 1990, by substantially using the experience of the draft Commercial Code prepared in 1940, whose coming into force was delayed by World War II and thereafter abandoned as Romania ceased to be a market economy in 1948. The corporate entities legal framework remained so far untouched in its substance, except for simplifying of several procedural forms regarding mainly companies' establishment and the clarification of certain legal provisions, operated in 1997 and in 2001, including the amendments brought by Law No. 161/2003 regarding certain measures for ensuring transparency in the exercise of public dignities and offices and in the business environment, for preventing and punishing corruption (hereinafter "Law No. 161/2003").

2. Main Regulations

- Company Law No. 31/1990, republished, as subsequently amended and supplemented (the "Company Law");
- Law No. 15/1990 on the reorganization of public economic units as *regies autonomes* and commercial companies ("Law No. 15/1990"), as subsequently amended;
- Law No. 26/1990 on trade registry, republished, as subsequently amended and supplemented ("Law No. 26/1990");
- Decree-Law No. 122/1990 on the authorization and operation, in Romania, of representative offices of foreign entities ("Decree-Law No. 122/1990"), as subsequently amended;
- Government Emergency Ordinance No. 30/1997 on *regies autonomes* ("GEO No. 30/1997"), as subsequently amended and supplemented;
- Methodological Norm on keeping the trade registries, performance of registrations and release of information approved by Ministry of Justice Order No. 2594/2008 ("Norm");
- Government Emergency Ordinance No. 116/2009 for the enforcement of measures concerning the registration with the trade registry ("GEO No. 116/2009"), as subsequently amended and supplemented;
- Law No. 161/2003 concerning some measures for ensuring transparency in exercising public office, public functions and in the business environment, the prevention and punishment of corruption ("Law No. 161/2003");

- Government Emergency Ordinance No. 44/2008 on the performance of the economic activities by the authorized persons, individual enterprises and family enterprises ("GEO No. 44/2008"), as subsequently amended;

- Law no. 359/2004 regarding the simplification of the formalities for the registration with the trade registry of the authorized persons, individual enterprises and family enterprises and legal persons, their fiscal registration, as well as the authorization for functioning of the legal persons ("Law no.359/2004"), as subsequently amended and supplemented.

3. Types of Business Entities

Business activities in Romania may be carried out either by individuals performing acts of commerce as befits their profession, or by legal entities, which according to their statutory documents have the capacity to engage in such activities.

The main categories of business entities set forth by the regulations in force are companies with legal status ("Companies"), regies autonomes (*regii autonome*), economic interest groups and European economic interest groups, authorised persons, individual enterprises and family enterprises.

Romanian law provides for the existence of simple companies that are subject to the Civil Code and do not have a distinct legal identity. However, if the shareholders decide to transform the simple company in a company with legal status they have to expressly decide on the legal form the company will acquire.

Joint ventures are regulated under the Romanian law mainly as business entities with no legal identity or capacity of their own, which are usually confined to one particular operation or a series of operations. The participants contribute with funds and/or assets for a common purpose and share the resulting profit and losses.

4. Companies

4.1. Types of companies

The functioning of companies is regulated mainly by the Company Law and may be categorised according to several criteria, the most important being nationality and legal form.

4.1.1. Nationality

Companies incorporated and having their registered headquarters in Romania acquire Romanian nationality, irrespective of the nationality of its shareholders. Similarly, companies seated abroad will be regarded as having foreign nationality.

4.1.2. Legal form

When incorporating a company in Romania, its founders may choose between five types of companies, namely (Company Law, Art. 2):

- unlimited guarantee collective company (*societate în nume colectiv*);
- limited partnership (*societate în comandita simpla);*
- limited stock partnership (*societate în comandita pe actiuni*);
- joint stock company (*societate pe actiuni*); and
- limited liability company (*societate cu raspundere limitata*).

However, the most frequent forms of business in Romania are joint stock companies and limited liability companies. This section will therefore focus mainly on the formation and operation of these types of companies.

4.2. Formation

4.2.1. Requirements prior to registration

a) Shareholders

Shareholders of a company may be both individuals and legal entities, regardless of their citizenship respectively their nationality.

Establishment of a company is conditional upon the fulfilment of certain legal requirements by the shareholders. Thus, persons willing to become a shareholder in a Romanian company must have full legal capacity (i.e. unrestricted ability to hold and exercise any type of rights and obligations) and good standing - i.e. the person in question should not have been convicted for one or several crimes such as: fraudulent management, breach of trust, forgery, use of forgeries, crimes against property by disregarding trust, corruption offenses, embezzlement, forgery of documents and tax evasion offenses under Law no. 656/2002 on preventing and sanctioning money laundering and the establishment of measures to prevent and combat terrorism financing etc.

Joint stock companies should have at least two shareholders, with no restriction as to the maximum number of shareholders. Limited liability companies may be established by one to 50 shareholders. An individual or legal entity may be a sole shareholder of only one limited liability company, and a limited liability company may not have as sole shareholder another limited liability company with sole shareholder.

b) Registered capital

Registered capital may be subscribed and paid in by the shareholders by contributions in cash, in kind and/or in receivables. Cash contributions are mandatory for all company forms (Company Law, Art. 16(1)). Contributions in kind are allowed for all company forms; they have to be valuable and consist of the transfer of ownership or rights of use over one or more assets to the company (Company Law, Art. 16(2)).

Contributions in receivables are not allowed in limited stock partnerships, limited liability companies and joint stock companies established by public subscription (Company Law, Art. 16(3)). Shareholders contributing with receivables in a company will not be discharged of liability towards such company unless the latter obtains actual payment of the receivables. If payment cannot be obtained further to launching proceedings against the assigned debtor, then the contributing shareholder will be liable for the amount representing the value of the receivables and for interest calculation at the statutory rate from the time that the receivables mature.

Limited liability or joint stock companies may not accept its shareholders' undertaking to perform certain works on the company's behalf as a contribution to their capital.

The minimum share capital of joint stock companies is of RON 90,000 (Company Law, Art.10 (1)). The Romanian Government may adjust, not more frequently than once every two years, the minimum level of the share capital, according to the exchange rate, so that this amount is the equivalent of EUR 25,000. Upon incorporation, each shareholder of a joint stock company must pay up at least 30% of the subscribed share capital, while the rest 70% may be paid within maximum 12 months as of the company registration date for the shares issued in exchange of cash contribution, or within maximum 24 months, for the shares issued in exchange of an in-kind contribution. The registered capital is represented by shares issued by the company, which may be either registered or bearer shares. Registered shares may be issued in both material and dematerialized form, in the latter case being registered in the account of the shareholder and in the shareholders registry. The face value of one share may not be less than RON 0.10.

The minimum share capital for limited liability companies is RON 200. It is divided into equal shares whose value may not be less than RON 10 each (Company Law, Art. 11(1)).

The shareholders of an unlimited guarantee collective company, of a limited partnership or of a limited liability company are obliged to fully pay upon incorporation the subscribed registered capital (Company Law, Art. 9^1). Moreover, the directors of a limited liability company are prevented from commencing any business operations on behalf of the company before payment in full of the registered capital (Company Law, Art. 275(1) letter c)~~ 3)~~.

c) Name and logo

The registered name of a company may contain one or several words or letters followed by an indication of the company type or its Romanian acronym, that is *societate pe actiuni* (joint stock company) or S.A. or *societate cu raspundere limitata* (limited liability company) or S.R.L.

Certain words or expressions, such as "national", "Romanian", "institute", which may infer that the company is a State body or an institution of central public interest, may not be used unless the founders obtain the prior consent from the Government's General Secretariat. Also, words or expressions which may infer that the company is of local public interest may not be used unless the founders obtain the prior consent of the competent prefect. The General Secretariat or the prefect must release its approval or refusal within 10 days as of the date when it receives the application of the legal entity for the use of such words or expressions.

The company logo is the distinctive graphic, literal or figurative sign or name serving to distinguish a trader from another of the same type. The logo must be distinct from other logos registered in the same trade registry, for the same business, as well as from the logos of other companies acting in the market where the company carries out its activity. Logo registration is optional.

d) Registered office

Companies must establish their headquarters on premises that are appropriate for their business. Registration of companies under fictitious locations or the establishment of fictitious headquarters is not acceptable under Romanian law.

The document attesting the title to the company's headquarters use right should be registered with the relevant fiscal authority where the headquarters are located. The fiscal authority has to issue a certificate stating whether another document regarding the use right over the same premises has been recorded or not with the said authority.

No company may have its headquarters within the same location used by another registered company, unless the location structure and surface allow several companies to perform their activities therein, in different rooms or in clearly separated areas. Nevertheless, the number of companies having the headquarters in such location may not exceed the number of rooms or clearly separated areas.

Current legal provisions allow Romanian companies to establish branches or secondary units, agencies, subsidiaries, working points, etc. within Romania or abroad, as the case may be.

e) Fiscal record

Pursuant to Art. 8(1) of Government Ordinance No.75/2001 on the Organization and Operation of the Fiscal Record (Fiscal Record Ordinance), republished and subsequently amended and supplemented, for incorporation and registration purposes, the company shareholders and its legal representatives are mandatory required to produce a fiscal record certificate. The formalities for issuance of the fiscal record certificate are to be performed and intermediated on behalf of the company shareholders and its legal representatives by the relevant trade registry during the incorporation process. Foreign legal entities and individuals not fiscally registered in Romania have no obligation to produce the fiscal record. In this case, a mere fiscal statement given before the notary public stating that they are not fiscally registered in Romania and they have no fiscal debts towards the Romanian budgets replaces the requirement of such certificate (Fiscal Record Ordinance, Art. 8(2)).

f) The company's business

The object of the company's business is set forth in the constitutional documents and must comply with the law and public order. Only the general meeting of shareholders can change the object of the company's business.

g) Duration

The duration of the company can be for a determined or undetermined period of time and usually is set out in the constitutional documents. Only the general meeting of shareholders can modify the duration of the company.

h) Constitutive Act

Depending on the company form, its constitutional documents may consist of:

(i) by-laws, in case of limited liability companies with a sole shareholder;

(ii) articles of association in case of unlimited guarantee collective companies and limited partnership;

(iii) by-laws and articles of association, either as distinct documents, or, based on the shareholders' option, as a single document, named constitutive act, in case of joint stock companies, limited stock companies and of limited liability companies with at least two shareholders;

(iv) currently, the most frequently used constitutional document is the constitutive act for the newly established companies.

The constitutive act must be concluded in writing and signed by all shareholders, either personally or by proxy. The constitutive act must be authenticated in any of the following cases:

(i) upon the company setting up, real-estate is contributed in kind to the share capital;

(ii) for the incorporation of an unlimited guarantee collective partnership or a limited partnership company;

(iii) when joint stock company is constituted by public subscription (Company Law, Art. 5(6)).

The constitutive act contains, *inter alia*, the following main elements:

(i) identification data of shareholders, in the case of individuals, respectively: the name, the first name the personal identification number, place and date of birth, domicile and citizenship;

(ii) the name, registered office and nationality of shareholders legal entities, their registration number with the trade registry or the sole code of registration;

(iii) the company's form, name, registered office and logo, if any;

(iv) the company's scope of business, specifying the main field of activity and the main line of business in line with the NACE Code;

(v) the amount of subscribed and paid-up share capital and, if the company has an authorized capital, its quantum;

(vi) the nature and value of any assets representing contribution in kind to the share capital, valuation method and the number of shares allotted in exchange for such contribution;

(vii) the number and nominal value of shares;

(viii) complete identification data for directors, the powers vested in them, ways of exercising such powers and their rights to represent the company;

(ix) complete identification data for the first censors or the first financial auditor (mandatory for joint stock companies/if necessary, in case of limited liability companies).

If the by-laws and articles of association are distinct documents, the latter will also contain identification data for the shareholders and clauses regulating the organisation, operation and carrying out of the company's business.

As per the Company Law the authorized capital represents a determined value up to which the subscribed capital of a joint stock company or of a limited stock partnership can be increased, in a certain period of time that cannot exceed 5 years since the registration of the company or the shareholders decision approving the value of the authorized capital. The increase shall be made by issuing new shares in exchange of the contributions of the shareholders. The value of the authorized capital cannot exceed with more than 50% the value of subscribed share capital, existing as at the authorization.

4.2.2. Registration

Joint stock companies may be set up simultaneously or by public subscription, the latter being considered by the doctrine as public owned companies. As such, the shareholders who intend to sell their shares through a public offer must observe the legal provisions applicable to capital markets.

a) Simultaneous establishment

Simultaneous establishment is the most frequent method used for the establishment of a joint stock company and is performed without use of funds held by the public. The formation procedure consists of several formalities, including the drawing up of the company's by-laws and articles of association or, as the case shall be, the constitutive act by the founders, the subscription and the payment of the company's share capital, and the registration of the new company with the relevant trade registry.

b) Creation by public subscription

The establishment of a company by public subscription requires the founders to draw up an issuance prospectus and establish the subscription closure date. Within 15 days since the closure date the founders

must convene a meeting for the establishment of the company, advertised through public notice published in the Official Gazette and in two widely spread newspapers. Within 15 days since the execution of the constitutional documents, the founders or the directors or an attorney thereof must initiate the company's registration procedure with the relevant trade registry.

Limited liability companies cannot be established through public subscription.

Establishment of companies by public subscription is extremely rare in Romania, as founders prefer to use the simpler simultaneous procedure and would only consider the company going public at a later stage.

c) Registration procedures

The procedure for registering a company involves registration and authorisation formalities with the trade registry. These formalities are carried out with the Sole Bureau, which is currently organised under and subordinated to the Ministry of Justice.

In order to simplify the registration and authorisation formalities of a company, the Sole Bureau issues the registration certificate based on the affidavits given by the shareholders or the directors, stating that:

(i) the company does not carry out the activities under the scope of business at the head/secondary offices; or

(ii) the legal person fulfils the operating conditions provided by the legislation regarding the sanitary and sanitary-veterinary field, environment and labour protection for the activities provided under the scope of business and specified in the statement forms.

In case of companies established without performing activity, the inactivity period is limited to three years.

The term for obtaining the registration certificate is of three days as from the registration application registration date, and in respect of the changes certificate of five days as from the changes application registration date, if the director of the trade registry does not resolve otherwise.

The company comes into legal existence upon registration with the relevant trade registry.

4.3. Operation of companies

4.3.1. Joint stock companies

a) General meeting of shareholders

General meetings may be ordinary or extraordinary (Company Law, Art. 110 (1)).

Ordinary general meetings are held at least once a year, not later than five months after the end of the financial year (Company Law, Art. 111 (1)), being convened by the board of directors or, as the case may be, by the directorate. Powers of the ordinary general meeting include:

(i) the discussion, approval and amendment of the annual financial statements, after reviewing the report presented by the board of directors or, as the case may be, the directorate and the supervision council, by the censors or, as the case may be, by the financial auditors;

(ii) establishment of dividends;

(iii) appointment of the members of the board of directors or, as the case may be, the members of the supervision council, the censors and their remuneration, if not provided by the constitutive act;

(iv) passing decisions regarding the liability of the members of the board of directors or, as the case may be, of the directorate;

(v) establishment of the income and expenses budget and planning of activity for the next financial exercise;

(vi) in case of the companies the financial statements of which are subject to auditing, to appoint or revoke the financial auditor and to set the minimum period of the financial audit agreement;

(vii) passing of resolutions regarding the pledging, leasing or deregistration of the company's units.

Ordinary general meetings pass valid resolutions as follows (Company Law, Art. 112):

(i) upon first convening, the shareholders representing at least one quarter of the company's share capital must attend the meeting, and decisions are passed with the majority of the expressed votes, unless a higher quorum or majority is required by the constitutive act;

(ii) upon second convening, no specific quorum is required and decisions are passed with the majority of the expressed votes, for the second convening the constitutive act may not provide a minimum quorum or a higher majority.

Extraordinary general meetings are convened whenever deemed necessary in order to pass decisions concerning, *inter alia*:

(i) the amending of the constitutional documents;

(ii) any decision requiring the approval of the extraordinary general meeting, according to the law or to the constitutional documents (Company Law, Art.113);

(iii) the conversion of the bearer shares into nominative shares or vice-versa;

(iv) the approving any operation whereby a director acquires or alienates, in its own name, assets from or to the company, in exchange of an amount of money or of other consideration whose value represents at least 10 per cent of the subscribed share capital (Company Law, Art.150).

Extraordinary general meetings pass valid resolutions as follows (Company Law, Art.115):

(i) upon first convening, the meeting is duly held if shareholders representing one quarter of the entire number of voting rights attend and decisions are passed by the majority of votes of the shareholders attending or in attendance by representative;

(ii) upon subsequent convening, the meeting is duly held if the shareholders representing one fifth of the entire number of voting rights attend and decisions are passed with the vote of shareholders representing the majority of the voting rights of the shareholders attending or in attendance by representative.

The decisions concerning the changing of the main object of activity, the decrease or increase of the share capital, the change of the legal form of the company, merger, split off or company's dissolution shall be passed with a majority of at least 2/3 out of the voting rights of the shareholders attending or in attendance by representative, unless the constitutive act does not provide for higher quorum and voting requirements.

Shareholders have the option to amend the conditions of quorum and majority of both types of meetings through the constitutional documents, except for the conditions of quorum and majority for the second convening of the ordinary general meeting which may not be changed.

If the agenda of the meeting contains proposals for the amendment of the constitutive act, the convening notice has to specify the full text of such proposals. In case the agenda of the meeting is supplemented with new items proposed by the shareholders subsequent to the convening, such agenda has to be published in fulfilment of all requirements provided by the law and/or the constitutive act for the convening of the general meeting, at least 10 days prior to the date of such meeting.

The right to challenge the decisions of the general meeting of shareholders, with an action based on grounds of absolute nullity, is not limited in time, and standing is given to any person who justifies a legitimate interest.

Members of the board of directors, or members of the supervision council may not challenge decisions of the general meeting based on which they have been removed from their position.

Shareholders disagreeing with the decisions of the general meeting regarding the change of the company's main object of activity, the relocation of the registered office abroad, change of company type or the merger or split-off of the company have the right to withdraw from the company and to request the company to purchase their shares at an average value determined on an expert's report, using at least two evaluation methods recognised by the legislation in force at the time when the evaluation was conducted (Company Law, Art. 134 (1)-(4)).

b) Executive management

Law no. 441/2006 provides for the possibility for companies to choose between two management systems: the classic one (unitary system) and the dualist management system.

In case the unitary system of management is chosen, joint stock companies are managed by one or several directors, always on uneven number, organized as a board of directors. The entities that are legally obliged to have their financial statements audited must have at least three directors.

Under the dualist system the company shall be managed by a directorate and a supervision council. The directorate is formed by one or several members (always in uneven number) and exclusively exercises the management of the company, performing useful and necessary deeds for the accomplishment of the object of activity, except those under the competence of the general shareholders meeting and the supervision council. *Inter alia,* the supervision council exercises the continuous control over the directorate's management of the company.

Directors may be either Romanian or foreign citizens. Managers of a joint stock company, under the unitary system, and members of the directorate, under the dualist system, are natural persons. A legal entity may be appointed as director or member of the supervision council (Company Law, Art. 153^{13}(2)). If a board of directors runs a company, one of them must be appointed as chairman of the board. The managers and members of the board of directors or, as the case may be, the members of the directorate and of the supervision council are obliged to attend the general meetings of shareholders.

The directors and the members of the directorate cannot be concomitantly company's employees. If an employee is appointed director or member of the directorate his labour contract is suspended.

Directors and members of the supervision council are appointed and revoked exclusively by the general meeting of shareholders. The members of the directorate are appointed and revoked by the supervision council. However, the constitutive act of the company may set forth that the members of the directorate may also be revoked by the general meeting of shareholders. The first directors and the first members of the supervision council are appointed through the constitutional documents. The duration of the mandate of the members of the board of directors, the directorate and of the supervision council is established through the constitutive act and may not exceed four years. The duration of the mandate of the first members of the board of directors and of the supervision council may not exceed two years. It is mandatory for the directors or, as the case may be, for the members of the directorate and of the supervision council to have insurance for professional liability.

Directors may perform all operations required for the fulfilment of the company's object of activity, except for those restrictions set forth by the constitutional documents or by law. For example, they may conclude transactions on the acquisition, transfer, lease, exchange or creation of security interests over the company's assets worth more than 50% of the assets' book value at the date of concluding the transaction, and subject to the prior approval of the extraordinary general meeting of shareholders (Company Law, Art. 153^{22}). Furthermore, unless otherwise provided in the constitutional documents, the directors may acquire or, as the case may be, alienate company assets whose value exceeds 10% of the net assets value of the company, including also the conclusion of lease or leasing contracts, subject only to the approval of the extraordinary general meeting of shareholders. The same restrictions apply where one party to the transaction is the spouse of the director or relative or kin up to the fourth degree or a civil or commercial company in which one of the

above-mentioned persons is director or manager or holds interests of at least 20%of the share capital, save where one of the relevant companies is a subsidiary of the other (Company Law, Art.150).

No person may simultaneously be a member of more than five boards of directors and/or supervision council in joint stock companies having their headquarters located in Romania, save for when a member of the board or of the supervision council owns at least one quarter of the total number of shares or is a member of the board or of the supervision council of a joint stock company that owns a quarter of the shares (Company Law, Art. 153^{16}).

According to the law (Company Law, Art. 73(1)), the directors are jointly liable for:

(i) the reality and validity of the payment contributions made by the shareholders;

(ii) the reality of the paid dividends;

(iii) ensuring that accounting records required by law exist and are being properly kept;

(iv) the exact fulfilment of any decision passed by the shareholders general meeting;

(v) the exact fulfilment of any obligations stipulated either by law or the constitutional documents.

Directors' powers end upon mandate expiry, or before that date, in any of the following situations: revocation, incapacity or incompatibility, resignation, death or physical impossibility.

Unless the constitutional documents provide for a higher threshold, the meetings of the board of directors, of the directorate or of the supervision council are quorate if at least half of the members of each of the aforementioned bodies attend the meeting. Decisions are validly passed by the majority of votes of members attending the meeting (Company Law, Art. 153^{20} (2)). The chairman of the board of directors or of the supervision council has the casting vote unless otherwise provided in the constitutional documents (Company Law, Art. 153^{20} (6)). The president of the board of directors who is in the same time executive manager of the company may not have the casting vote.

The board of directors may delegate its powers to one or more executive managers, appointing one of them as general manager. The executive managers may be appointed from among the directors or from outside the board of directors (Company Law, Art. 143). The entities that are under the obligation of having their financial statements audited are obliged to delegate the management of the company as aforementioned. The chairman of the board of directors may be the general manager if such possibility is provided by the constitutive act of the company or by a decision of the general meeting of shareholders. Performance of the company's operations may be entrusted to one or several executives, company's employees. However, if an employee is appointed executive manager his labour contract is suspended.

c) Control of company operations

The censors elected by the general meeting ensure the control of joint stock companies. The mandate given to the censors is considered *intuitu personae*, they cannot fulfil their powers and duties by substitutes (Company Law, Art. 159(3)).

Censors have the following attributes (Company Law, Art.163(1)):

(i) supervising the administration of the company;

(ii) verifying the proper keeping of the accounting books;

(iii) verifying the manner in which the valuation of assets has been carried out.

A joint stock company will have at least three censors and one substitute, if the constitutive act does not otherwise provide. The number of censors must always be uneven (Company Law, Art. 159(1)). Their mandate spans over a 3-year period, with the possibility of being renewed.

Censors may be shareholders, save for the censors chartered accountants, who may be third parties, practicing their profession individually or in association (Company Law, Art. 161(1)). In state owned joint stock companies one of the censors must be a representative of the Ministry of Economy and Finance (Company Law, Art. 159(4).

The financial statements of the companies falling under the obligation of having their financial statements audited, shall be audited by financial auditors, legal or natural persons, according to law. Joint stock companies which have implemented the dualist system are subject to the financial audit. The companies that are bound to annual audit reports shall also organise the internal audit according to the norms set by the Chamber of Chartered Accountants in Romania.

d) Shares and share transfer

Shares may be registered or bearer shares. Their type is determined by the constitutional documents, and if there are no such provisions, the shares are considered to be registered shares. Registered shares may be issued in both material and dematerialised form, in the latter case being registered in the shareholder's account and in the shareholders registry (Company Law, Art. 91). Companies acting in the banking or the financial sectors are compulsorily required to issue registered shares only.

The company may issue preferred shares bearing special advantages over the distribution of dividends. Such preferred shares have no voting rights attached to them (Company Law, Art. 95).

The minimum nominal value of one share is RON 0.1. No share may be issued for an amount less than the nominal value.

Ownership rights of registered shares are transferred by means of a statement in the shareholder register of the issuer company and by the endorsement on the share, signed by the assignor and the assignee or by their

respective representatives, or, in the case of bearer shares, by physically handing them over. The constitutional documents may stipulate other ways of transferring ownership. Transfer of ownership rights of dematerialised shares, which are traded on organised capital markets, takes place in accordance with the special provisions regulating the capital market (Company Law, Art. 98(2)).

Shares may be subject to security interests that may be created by way of written statement under private signature, which indicate the amount of the debt, the value and the category of the encumbered shares. The same applies for bearer and registered shares, issued in material form, by mentioning the pledge in the title, signed by the creditor and the debtor shareholder or by proxy. Security interests must be registered with the shareholders register and becomes opposable to third parties and respectively acquires a position in the preference ranking of creditors as of the date of registration with the Electronic Archive of Movable Securities (Company Law, Art. 99^1).

e) Protection of minority shareholders

As mentioned above, the company directors may, on behalf of the company, acquire, alienate, lease or create security interests over assets exceeding half of the book value of the company's assets at the time of the transaction, only subject to the approval of the extraordinary general shareholders meeting.

Minority shareholders are entitled to be informed with respect to the annual financial statements, the annual report of the board of directors, respectively with respect to the report of the directorate and of the supervision council, as well as with respect to the proposal for dividends allotment (Company Law, Art. 117^2). Also, one or several shareholders holding at least 10% of the company's share capital may request that the court appoint experts to review certain operations of the company's administration, and draw up a report for the benefit of the applicant(s) and the company's board of directors, directorate, supervision council and to censors or internal auditors, as the case shall be, and financial auditors (Company Law, Art. 136 (1)).

Should any directors conclude legal documents that damage the company, and should the company fail to act in view of seeking reparation, any minority shareholder, holding individually, or jointly with other minority shareholder(s), at least 5% of the share capital, may seek to recover such damage in the name of the company before the courts.

4.3.2. Limited liability companies

a) General meeting of shareholders

In the case of limited liability companies there is no legal distinction between ordinary and extraordinary meetings. In order to pass decisions, the law requires a double majority: (i) the vote representing the absolute majority of shareholders, and (ii) the vote representing the absolute majority of the shares, unless the constitutional documents state otherwise. This double majority requirement is an aspect often ignored when setting up limited liability companies. However, the situation may occur where a shareholder, although holding absolute majority of the registered capital, cannot pass a decision of the general meeting when his partners oppose. In order to avoid such situation, the founding members may agree, by the constitutive act, to eliminate the rule of the double majority.

b) Control of company operations

Shareholders who are not company directors usually control the limited liability company's operations.

For companies set up by one to 15 shareholders, the appointment of censors is not mandatory, save for the cases in which the company has a legal obligation to have its financial situations audited, on which case the company has to appoint a financial auditor. However, the constitutional documents may stipulate the appointment by the general meeting of one or more censors or one financial auditor who will act under terms similar to those stipulated by law for joint stock company.

c) Shares transfer

Shares may be freely transferred among shareholders. Transfers to persons outside the company are only possible if approved by a number of shareholders representing at least three quarters of the share capital. In such case, the shareholders decision approving the transfer of shares will have to be published in the Official Gazette of Romania through the competent trade registry. Since the publication date, the company's creditors and any interested third parties claiming damages by the said transfer may oppose to the transfer thereof and request the company or the shareholders to cover damages. The transfer of shares will operate, if no opposition be filled, within 30 days since publication of the shareholders decision approving said transfer or, if opposition be filled, at the date the opposition was rejected by the competent court.

Transfer of shares to persons outside the company, upon testamentary or intestate succession does not require approval, unless the constitutional documents so provide. The transfer of shares must be registered with the relevant trade registry and with the company's shareholders register, and becomes opposable to third parties from the moment it is recorded with the trade registry (Company Law, Art. 203).

Limited liability companies cannot issue bonds (Company Law, Art. 200).

4.4. Amendment of the constitutional documents

Constitutional documents may be amended by way of a decision of the company's general meeting or, in case of joint stock company, by a decision of the company's board of directors, respectively of the directorate, decision adopted based on Art. 114(1) (delegation by the general meeting of shareholders or by Constitutive act of competences regarding the change of headquarters, the amending of the secondary scope of business or the increase of share capital) from the Company Law, or by way of a court decision (Company Law, Art. 204). Subsequent to each amendment of the constitutional documents, the directors/board of directors/directorate shall file with the trade registry the modifying document and the complete version of the constitutive act, updated with all modifications.

In the case of limited liability companies, the amendment of the constitutive act may only be achieved with the votes of all shareholders, except in cases where the law or constitutional documents stipulate otherwise (Company Law, Art. 192(2)). The authentic form of the amending act is mandatory when the amendment contemplates any of the following:

(i) share capital increase by subscribing real-estate as in-kind contribution;

(ii) changes of the legal form of the company into a company with unlimited liability for its shareholders;

(iii) share capital increase by public subscription (Company Law, Art. 204(2)).

Share capital may be increased by way of issuing new shares or by increasing the nominal value of the existing ones in exchange for new contributions in cash and/or in kind. In addition, the new shares are paid for by incorporating the reserves (except for legal reserves), the profits or issuance premiums, or by setting off the company's due and payable debts with shares of such company. The positive differences resulting from assets revaluation may be included into the reserves, without being used to increase the share capital (Company Law, Art. 210).

The registered capital can be reduced by decreasing the number of shares or their nominal value or by acquiring the company's own shares, followed by their cancellation. The share capital can also be reduced by (i) full or partial exemption of shareholders from making due payments, (ii) the returning to shareholders of part of their contribution, proportionate to the decrease of the share capital and equally calculated for every share, (iii) any other means allowed by law (Company Law, Art. 207).

4.5. Merger and split-off

Commercial companies may merge by transferring the assets of one or several Companies, which cease to exist, to a newly formed or existing company, in exchange for shares issued by such newly formed/existing company and, possibly, for a payment in cash in value not to exceed 10% of the face value of the above mentioned shares (Company Law, Art. 238(1)).

Companies' split-off may be accomplished by transferring the assets of a company, which ceases to exist, to two or more companies already existing or that are newly formed, in exchange for shares issued by such existing/newly formed companies and, possibly, for a payment in cash in value of maximum 10% of the face value of the above mentioned shares (Company Law, Art. 238(2)). The spinning off may also take place by the simultaneous transfer of the spun-off company's patrimony to one or several existing companies and one or several newly formed companies.

Each company participating in the merger or de-merger process must approve the undertaking, under the terms and conditions set for the amendment of the company's constitutional documents (Company Law, Art. 239(1)).

The merger and de-merger decisions and the plans drafted in view of these transactions shall be registered with the trade registry and published in the Official Gazette. Any creditor of the Company or companies involved in the merger or the de-merger, having claims prior to the publication date of the merger or de-merger plan, may oppose thereto.

4.6. Dissolution and liquidation

According to the law, the following situations constitute generally applicable cases for Companies' dissolution (Company Law, Art. 227 and Art. 228):

(i) expiry of the period for which the Company was established;

(ii) impossibility of achieving the Company's activity object;

(iii) Company voidance;

(iv) decision of the general meeting of shareholders;

(v) severe conflict between shareholders that prevent the Company's successful operation;

(vi) bankruptcy;

(vii) loss of one half of the share capital;

(viii) decrease of the share capital to below the legal threshold;

(ix) decrease of the number of shareholders to below the legal threshold.

Upon the request of the national trade registry or of any other interested person, the court may pronounce the company dissolution in the following cases (Company Law, Art. 237(1)):

(i) the company no longer has statutory bodies or the existing statutory bodies can no longer convene;

(ii) the company ceased its activity, its headquarters are unknown, its shareholders disappeared or their domicile/residence is unknown;

(iii) the company was subject to temporary inactivity for more than 3 years, notified to the fiscal authorities and registered with the trade registry; or

(iv) the company failed to replenish its share capital, according to the law.

As result of dissolution, the company enters the liquidation procedure. The company maintains its legal status for the purpose of performing the operations required for its liquidation, until their completion.

In case of limited liability companies, unlimited guarantee collective companies and limited partnerships, the liquidation procedure may be avoided as the shareholders may decide the dissolution of the company, as well as the way to liquidate it, provided that they agree upon: (i) the distribution and liquidation of the company's patrimony, and (ii) payment of all debts or their regulation, by agreement with the creditors is made (Company Law, Art. 235(1)). Shareholders of such type of companies may also decide on the way to divide the assets remained after paying off the creditors, by unanimous vote. If such unanimous vote is not obtained, the liquidation procedure provided by the law shall be pursued accordingly.

Until the liquidators take over their mandates, the company directors must continue to perform their duties. During liquidation, the liquidators, appointed by the general meeting of shareholders or by the court, perform the management of the company. The liquidators fulfil their mandate under the censors' supervision. In case of joint stock companies that have implemented the dualist system the liquidators fulfil their mandate under the control of the supervision council (Company Law, Art. 253(5)). The liquidation will not release the shareholders or prevent the initiation of the company bankruptcy procedure. The assets liquidation implies the conversion of the company's assets into cash and the collecting of receivables the company has against third parties. Payment of the company's debts towards its creditors takes place from the amounts obtained from liquidating the company's assets. For the purpose of settling the company's debts, the liquidators may issue bills of exchange, enter into loan agreements or may pay debts out of their own sources. Except if otherwise provided in the company's constitutive act or in the appointment deed, liquidators may not constitute mortgages over the company's assets without being authorized by the court.

4.7. Distribution of profits

Dividends shall be paid to shareholders in proportion to the paid up capital, unless otherwise stated in the constitutional documents. Dividends shall be distributed only out of real profits; dividends paid out of unreal profits shall be returned. Action for dividends return is subject to a statutory limitation of three years starting with their distribution. Dividends payable after a share assignment belong to the assignor, unless the parties have agreed otherwise (Company Law, Art. 67).

4.8. Civil and criminal sanctions

The law contains several civil and criminal sanctions (including imprisonment) against those who infringe its provisions regulating the companies. Most of the sanctions are provided for persons who exercise the management and the directorship of the company.

5. Foreign Companies Carrying Out Activities in Romania

5.1. General

Foreign companies may carry out activities in Romania by entering into business relationships with Romanian partners (e.g. distribution or agency agreements with legal entities or individuals), by setting up subsidiaries or by opening secondary offices such as branches, agencies or representative offices.

5.2. Subsidiaries

Foreign companies may set up Romanian subsidiaries in one of the forms provided by the law. One of the most frequently used corporate forms is the limited liability company, which has the advantage that its shares may be fully owned by a sole shareholder.

The Romanian subsidiaries of foreign companies are deemed to be Romanian legal persons and will, in principle, enjoy the same rights as companies set up by Romanian nationals. This includes the right to own land.

5.3. Branches

Branches are corporate entities with no legal status, set up by Romanian or foreign companies subject to registration with the competent trade registry (Company Law, Art. 43).

The legal status of the branch applies to any other secondary office (agency, working points, etc.) established by the foreign parent company.

5.4. Representative offices

Representative offices are established and operate in accordance with the provisions of the Law-Decree 122/1990 on the Authorisation and Functioning in Romania of Foreign Companies' Representative Offices and of Foreign Economic Entities (Representative Offices Law), as amended and supplemented. For most purposes, foreign company's representative offices are generally not recognised under Romanian law as a separate legal entity.

Foreign companies and economic entities may open representative offices in Romania, subject to authorisation by the Ministry of Economy, Trade and Tourism. Upon registration, an operation authorisation is issued, stipulating, *inter alia*, the following:

(i) scope of business,

(ii) the terms and conditions for carrying out the business,

(iii) the duration and headquarters of the representative office.

The representative office may only undertake on behalf of the parent company transactions that are consistent with its object of activity and which are set forth in the authorisation (Representative Offices Law, Art. 8). Representative offices are not authorised to perform business operations on their own account.

Any amendments in the legal status of foreign parent companies or economic entities, especially those concerning the object of activity, share capital or headquarters, must be communicated to the Ministry of Economy, Trade and Tourism within a maximum of 30 days since the occurrence of the change (Representative Offices Law, Art. 10).

6. European companies

European companies headquartered in Romania are governed by the provisions of the Council Regulation (EC) no. 2157/2001 on the Statute for a European Company (SE). The provisions of the Company Law concerning the European Companies and the joint stock companies shall apply accordingly if such provisions are not in contradiction with the provisions of the above mentioned regulation.

European companies can register in any member state of the European Union and transfer their headquarters to other member states.

A European Company headquartered in Romania acquires legal status as of the date of registration with trade registry, provided that an agreement on employees' involvement into the company's activity is concluded.

Any European company registered in Romania may transfer its headquarters into another member state, provided that a transfer project is drafted and published in the Official Gazette of Romania at least 30 days before the extraordinary general meeting decides on the transfer.

Since the publication date, creditors having receivables against the European Company which are not due before the publication date of the project may oppose in court the transfer of the headquarters.

Shareholders that have voted against the change of headquarters in the meeting that approved the relocation of the European Company in another member state have the right to withdraw from the company. Such right may be exercised within 30 days since approval by the extraordinary general meeting of the relocation, case in which the European Company will have to purchase the shares from the respective shareholder at a price to be established by a chartered independent expert.

7. Regies Autonomes

Regies autonomes (public utility companies) are governed by Law No. 15/1990. They are organised and designed to operate in strategic sectors of the national economy, such as the defence industry, energy, mining, natural gas exploitation, post and railway transportation, as well as in certain areas belonging to other sectors established by the Government (Law No. 15/1990, Art. 2). Regies autonomes may operate and manage public property assets within the scope of their statutory activities.

Most regies autonomes have already been, or are about to be, reorganised as companies. Reorganisation is carried out based on restructuring plans drafted by the relevant ministries or by central or local public authorities, under whose subordination the regies autonomes are organised and operate. After the drafting of the said restructuring plans, regies autonomes are reorganised as companies, according to the legal provisions in force on their reorganisation date. Joint stock companies established by restructuring of regies autonomes, which carry out activities of national public interest, may be called national companies, and are subject to privatisation.

8. Economic Interest Groups

An Economic Interest Group is an association with legal status and a business purpose, between two or more entities or individuals, incorporated for a determined duration, with the aim of promoting and developing the economic activity of its members (Law No. 161/2003, Art. 118). The rules of registration and functioning thereof are, to a certain extent, similar to those applicable to companies.

The Economic Interest Group is set up by agreement signed by its members, the number of which cannot exceed twenty (Law No. 161/2003, Art. 118 (3)). Such agreement has to be concluded in authenticated form.

The group's activity must relate and be ancillary to the economic activity of its members. The Economic Interest Group acquires legal status as of the registration date with the trade registry (Law No. 161/2003, Art.

127(1)). The decision making body is the general meeting of its members and the management body is made up of one or more directors.

The Economic Interest Group must not seek to obtain profit for itself. If, according to the annual financial statements, profit is generated by the group's activity, such profit must be fully apportioned between the members of the group, as dividends, in the quotas provided by the constitutional documents. In the absence of such a clause, the profit shall be equally distributed. Should the expenses exceed the income of the group, the balance will be covered by its members in the quotas provided by the constitutional documents or, in the absence of such a clause, in equal quotas (Law No. 161/2003, Art. 165).

9. European Economic Interest Groups

European Economic Interest Groups are recognised in Romania provided that they comply with the conditions provided under Romanian Law no. 161/2003 whose provisions are mostly inspired by the European Council Regulation 2137/85 of July 25, 1985 on the European Economic Interest Groups.

The European Economic Interest Group comprises at least:

(i) two companies, firms or other entities, having the central management of their statutory activity located in different Member States;

(ii) two individuals, which carry out their activity in different EU Member States; or

(iii) a company, firm or other entity, whose central management of its statutory activity is located in a EU Member State, and an individual who carries out its principal activity in another EU Member State.

European Economic Interest Groups are not subject to authorisation under the Law-Decree 122/1990 on the Authorisation and Functioning in Romania of Foreign Companies' Representative Offices and of Foreign Economic Entities (Representative Offices Law), as amended and supplemented.

The European economic interest group is constituted pursuant to an association contract called constitutive act, concluded in notarized form. Within 15 days since notarization, the relevant founders/directors/a representative are bound to request the registration of the Group with the relevant trade registry.

European Economic Interest Groups may establish branches in Romania, as well as subsidiaries, representative offices with no legal status. The annual income of a European Economic Interest Group branch is subject to taxation under the income tax provisions provided for representative offices opened in Romania by foreign companies and economic entities.

10. Authorized Persons, Individual Enterprises and Family Enterprises

Authorized persons, individual enterprises and family enterprises carry out their economic activities based on GEO no. 44/2008 on economic activities performed by authorized persons, individual enterprises and family enterprises (GEO no. 44/2008).

Romanian citizens, nationals of EU Member States or of the other states pertaining to the European economic area may perform business activities on Romanian territory, in an independent manner as authorized persons, or may set up individual enterprises or family enterprises under the terms and conditions of Romanian law (GEO no. 44/2008, Art. 3(1)).

The authorized persons, individual enterprises and family enterprises may be authorised to perform economic activities in any sector, profession or occupation, except for those activities that are subject to special legislation or are prohibited by law.

The authorized persons, individual enterprises and family enterprises are obliged to register with the trade registry and with the local fiscal authorities.

Neither the authorized person, nor the individual enterprises or the family enterprises registered with the trade registry receive legal personality subsequent to such registration.

Third parties cannot be employed under individual employment agreements by family enterprises (Art. 28(4), GEO no. 44/2008). By exception, authorised persons and individual enterprises are allowed to employ third persons (Art. 17(1) and Art. 24, GEO no. 44/2008).

The authorized person and the individual enterprise cease their respective activities and are deregistered from the trade registry in the following cases:

(i) by death;

(ii) at will;

(iii) in case the documents based on which their registration was made have been invalidated by irrevocable judicial decisions and a natural or legal person prejudiced as effect of such registration request the deregistration from the trade registry.

The family enterprise ceases its activity and is deregistered from the trade registry in the following cases:

(i) more than half of its members have died;

(ii) more than half of its members withdraw or request its cessation;

(iii) when the documents based on which the registration was made have been invalidated by irrevocable judicial decisions and a natural or legal person prejudiced as effect of the family enterprise registration request the deregistration from the trade registry.