Chapter 2

Forms of Doing Business

1. General

Regulations dealing with companies were adopted in 1990 by Law No. 31/1990 on companies (the "**Company Law**") by using the experience of the draft Romanian Commercial Code prepared in 1940, whose enactment was first delayed by World War II, and then abandoned when Romania ceased to be a market economy in 1948.

The legal regime of corporate entities suffered little change after 1990, notable amendments concerning mostly the simplification of incorporation procedures, and clarifications of punctual legal provisions. Most importantly, changes where brought by Law No. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities and offices, and in the business environment, for preventing and punishing corruption ("**Law No. 161/2003**").

2. Key Regulations

Key regulations dealing with corporate entities are as follows:

- 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 the 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 the Ministry of Justice Order No. 2594/2008 ("**Norm**");
- Government Emergency Ordinance No. 116/2009 for the enforcement of measures concerning registration with the trade registry ("**GEO No. 116/2009**"), as subsequently amended and supplemented;
- Law No. 161/2003;
- Government Emergency Ordinance No. 44/2008 on the performance of economic activities by 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 registration with the trade registry of authorized persons, individual enterprises and family enterprises and legal persons, their fiscal registration, as well as the authorization for functioning of legal persons ("**Law No. 359/2004**"), as subsequently amended and supplemented.

3. Types of Business Entities

Business activities in Romania may be carried out by individuals or undertakings which either may have or not have a distinct legal personality.

Key categories of undertakings that may carry business in Romania are companies, *regies autonomes* (in Romanian: "*regii autonome*"), economic groups of interest and European economic groups of interests, authorised persons, individual enterprises and family enterprises.

Romanian law also recognises the existence of undertakings without a legal personality, such as simple companies (in Romanian: "*societati civile*"), or joint ventures that are subject to the New Civil Code. In certain cases, these may be transformed into companies with a legal personality if so decided by their shareholders. Joint ventures are generally confined to one particular operation or a series of operations.

4. Companies

4.1. Types of companies

Companies are regulated mainly by the Company Law. Companies may be classified according to multiple criteria, among which the most important are 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 their shareholders. Generally, companies incorporated abroad will be regarded as having foreign nationality.

When incorporating a company in Romania, founders may choose between five types of companies, namely:

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

The most frequent types of companies in Romania are organised as either joint stock companies, or limited liability companies. The sections that follow will therefore focus more on the incorporation and operation of these types of companies.

4.2. Incorporation and registration

4.2.1. Prerequisites

a) Shareholders

Shareholders of a company may be individuals, and/or legal entities, regardless of their citizenship, or nationality. Incorporation, however, is conditional upon the fulfilment of certain legal requirements by the shareholders.

Among such legal requirements we note: (i) full legal capacity (*i.e.* unrestricted ability to hold and exercise any type of rights and obligations), and (ii) 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 forgery, crimes against property by disregarding trust, corruption offenses, embezzlement, forgery of documents and tax evasion, or offences 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 restrictions as to the maximum number of shareholders. Limited liability companies may have one to at most fifty 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) Share capital

The share capital of a company may be subscribed and paid in by the shareholders by contributions in cash, in kind and/or in receivables (in certain cases).

Cash contributions are mandatory for all company forms. Contributions in kind are allowed for all types of companies if they can be valued and may be transferred to the company to own or use. Contributions in receivables are not allowed in limited stock partnerships, limited liability companies and joint stock companies established by public subscription. Shareholders contributing receivables to a company will be liable to the company for the specific receivables if not paid at maturity by its debtor.

Limited liability or joint stock companies may not accept its shareholders' undertaking to work for the company as a contribution to their capital.

The minimum share capital of joint stock companies is of RON 90,000. 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 at least 30% of the subscribed share capital, while the remaining 70% may be paid within a maximum of 12 months as of the company registration date for the shares issued in exchange for the cash contribution, or within maximum 24 months, for the shares issued in exchange for 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.

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 registered capital. 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.

Under Romanian law, there is also the concept of “authorised capital”. This represents a determined value up to which the subscribed capital of a joint stock company or of a limited stock partnership may be increased, in a certain period of time which may not exceed 5 years from the registration of the company or the shareholders decision approving the value of the authorized capital. The increase must be made by issuing new shares in exchange for the contributions of the shareholders. The value of the authorized capital cannot exceed by more than 50% the value of subscribed share capital, as it exists at the authorization.

c) Registered 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 body of the Romanian state or an institution of central public interest, may only be used with consent from the Government's General Secretariat.

Also, words or expressions which may imply that the company is of local public interest may be used only with the prior consent of the relevant prefect. The General Secretariat or the prefect must release their approval or refusal within 10 days from the date the application for consent is filed.

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) Headquarters

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 permitted under Romanian law.

More companies cannot have their headquarters within the same location, 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 with headquarters in such locations may not exceed the number of rooms or clearly separated areas.

In order to ensure compliance with the above, the agreement evidencing the right of a company to use its headquarters (e.g. SPA, lease etc.) needs to be registered with the relevant fiscal authority in the jurisdiction of where the headquarters are located. The fiscal authority will then issue a certificate stating whether any other company has registered its headquarters in the same location.

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 Government Ordinance No. 39 /2015 on the Fiscal Record (Fiscal Record Ordinance), as subsequently amended and supplemented, Romanian shareholders and a company's legal representatives are required to produce fiscal record certificates for the purposes of incorporation.

Generally, formalities for the issuance of the fiscal record certificate are to be handled on behalf of the shareholders and their legal representatives by the trade registry involved in the incorporation process.

Foreign legal entities and individuals not fiscally registered in Romania have no obligation to produce a fiscal record. In this case, a fiscal statement given before the public notary (stating that they have not perpetrated deeds and have not found themselves in situations as those subject to registration in the fiscal record and they are not fiscally registered in Romania) replaces the requirement of such a certificate.

f) The business object of the company

The business object of the company is set forth in the constitutional documents of the company. Only the general meeting of shareholders may change the business object of the company.

g) Duration

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

h) Constitutional documents

Depending on the type of company, the constitutional documents may consist of:

(i) by-laws, in the 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, at the choice of the shareholders, as a single document, named the constitutive act, in the case of joint stock companies, limited stock companies and of limited liability companies with at least two shareholders;

Currently, the most frequently used constitutional document is the constitutive act.

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

(i) where real-estate is contributed in kind to the share capital at the time of the incorporation of the company;

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

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

(iv) The constitutive act has to include, inter alia, the following main elements:

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

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

(vii) the company's type, name, registered office and logo, if any;

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

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

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

(xi) the number and nominal value of shares;

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

(xiii) 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).

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

4.2.2. Registration with the Trade Registry

Joint stock companies may be set up (i) either at once, or (ii) by public subscription, the latter considered by the doctrine as publicly 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) The set up "At once"

The set up "at once" is the most frequent method used for the establishment of a joint stock company and is performed without the 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 may be, the constitutive act of 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) Set up by "public subscription"

The establishment of a company by public subscription requires the founders to draw up a prospectus and establish the subscription date. Within 15 days from the closure date the founders must convene a meeting for the establishment of the company, advertised through a public notice published in the Official Gazette and in two widely circulated newspapers. Within 15 days from 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 "at once" procedure and usually only consider the company going public at a later stage.

c) Registration procedures

Registration of companies is made with the Trade Registry in the jurisdiction of where the company will be incorporated. Upon completion of the registration procedures and the issue of the relevant registration certificate, the company is deemed to be legally existing.

Where all documentation is filed correctly, registration procedures are quite simple, and do not take more than a couple of days.

4.3. Companies operation

4.3.1. Joint stock companies

a) General meeting of shareholders

General meetings of shareholders may be ordinary or extraordinary. Ordinary general meetings are held at least once a year, not later than five months after the end of the financial year. Extraordinary general meetings are held whenever necessary, and also in specific circumstances (further detailed below).

The general meetings of shareholders are convened by the board of directors or, as the case may be, by the directorate, at their initiative, or generally at the request of a shareholder with more than 5% of the share capital.

Powers of the ordinary general meeting include:

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

(ii) the establishment of dividends;

(iii) the appointment of the members of the board of directors or, as the case may be, the members of the supervisory 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) the establishment of the income and expenses budget and the planning of activity for the next financial period;

(vi) in case of the companies whose financial statements are subject to auditing, the appointment or revocation of the financial auditor, and the establishment of the minimum period of the financial audit agreement;

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

Ordinary general meetings pass valid resolutions only if:

(i) for the first convening, (1) shareholders representing at least one quarter of the entire number of voting rights attend the meeting, and (2) resolutions are taken with the majority of votes cast, unless a higher quorum or majority is required by the constitutive act;

(ii) for the second convening, (1) there is no specific quorum required, and (2) resolutions are passed with the majority of votes cast. 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) amendment 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 bearer shares into nominative shares or vice-versa;

(iv) the approval of any operation whereby a director acquires or alienates, in their 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 only if:

(i) upon first convening, (1) shareholders representing one quarter of the entire number of voting rights attend and (2) resolutions are passed with the majority of votes cast;

(ii) upon subsequent convening, (1) shareholders representing one fifth of the entire number of voting rights attend and (2) resolutions are passed with the majority of votes cast.

Notwithstanding the above, decisions concerning changing the main business object of the company, the decrease or increase of the share capital, 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 votes cast, unless the constitutive act provides for a higher quorum and voting requirements.

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

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 an 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 supervisory council may not challenge decisions of a general meeting during 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 purchase their shares at an average value determined by an expert's report, using at least two evaluation methods recognised by the legislation in force at that time.

b) Executive management

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

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

Under the dualist system the company is managed by a directorate and a supervisory council. The directorate is formed by one or several members (always an 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 supervisory

council. Inter alia, the supervisory council exercises 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 a directorate, under the dualist system, are natural persons. A legal entity may, however, be appointed as a director or member of the supervisory council. 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 supervisory council are obliged to attend the general meetings of shareholders.

The directors, managers to whom directors have delegated management powers, 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 supervisory council are appointed and revoked exclusively by the ordinary general meeting of shareholders. The members of the directorate are appointed and revoked by the supervisory council.

However, the constitutive acts of the company may set forth that the members of the directorate may also be revoked by the ordinary general meeting of shareholders. The first directors and the first members of the supervisory council are appointed via the constitutional documents. The duration of the mandate of the members of the board of directors, the directorate and the supervisory council is established through the constitutive acts and may not exceed four years. The duration of the mandate of the first members of the board of directors and of the supe supervisory rvision council may not exceed two years. It is mandatory for the directors, or the members of the directorate and the supervisory 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 on the date of concluding the transaction, and subject to the prior approval of the extraordinary general meeting of shareholders. Furthermore, unless otherwise provided for in the constitutional documents, the directors may acquire or, as the case may be, alienate company assets whose value exceeds 10% of the net asset 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.

No person may simultaneously be a member of more than five boards of directors and/or supervisory council in joint stock companies with their headquarters located in Romania, save for when a member of the board or of the supervisory council owns at least one quarter of the total number of shares, or is a member of the board or of the supervisory council of a joint stock company which owns a quarter of the shares (Company Law, Art. 15316).

According to the law, 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 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 the expiry of the mandate, 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 supervisory 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. The chairman of the board of directors or of the supervisory council has the casting vote unless otherwise provided for in the constitutional documents. 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. Entities 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 for by the constitutive acts 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 substitution with another party.

Censors have the following prerogatives (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. 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. In state owned joint stock companies one of the censors must be a representative of the Ministry of Economy and Finance.

Where there is an obligation to audit financial statements, these are to be audited by financial auditors, legal or natural persons. Joint stock companies which have implemented the dualist system are subject to the financial audit. Companies that must prepare yearly audit reports must also organise an 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. The 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.

Shares may be subject to security interests created by way of written statement under private signature, indicating 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 become public and respectively acquire ranking of creditors as of the date of registration with the Electronic Archive of Movable Securities.

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 of the yearly financial statements, the yearly report of the board of directors, or as the case may be the report of the directorate and of the supervisory council, as well as of the proposal for dividends allotment. Also, one or several shareholders holding at least 10% of the company's share capital may request the court to 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, supervisory council and to censors or internal auditors and/ or financial auditors.

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 damages 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) a vote representing an absolute majority of shareholders, and (ii) a vote representing an 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 can occur where a shareholder, despite holding an absolute majority of the registered capital, cannot pass a decision of the general meeting when his partners oppose it. In order to avoid such situations, the founding members may agree, by the constitutive acts, 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 situation audited, in which case the company has to appoint a financial auditor. However, the constitutional documents may stipulate the appointment by general meeting of one or more censors or one financial auditor who will act under terms similar to those stipulated by law for a 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 cases, the shareholder decision approving the transfer of shares must be published in the Official Gazette of Romania through a competent trade registry. From the publication date, the company's creditors and any interested third parties claiming damages by the said transfer may oppose the transfer thereof and request the company or the shareholders to cover damages. The transfer of shares will operate, if no opposition is filed, within 30 days of the publication of the shareholders decision approving said transfer or, if opposition is filed, at the date communicated by a court decision whereby the opposition was rejected by a 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.

4.4. Amendment of the constitutional documents

Constitutional documents may be amended through a decision of the company's general meeting or, in the case of a joint stock company, through a decision of the company's board of directors, or of the directorate (where such powers have been delegated from the general meeting of shareholders), or by way of a court decision. Subsequent to each amendment of the constitutional documents, the directors/board of directors/directorate need to file with the trade registry the amendment and the updated version of the constitutive acts, with all modifications.

In the case of limited liability companies, the amendment of the constitutive acts may only be achieved with the votes of all shareholders, except in cases where the law or constitutional documents stipulate otherwise. The amendment must be notarised where it contemplates any of the following:

(i) share capital increase by subscribing real-estate as an 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 a company. The positive differences resulting from asset revaluation may be included into the reserves, without being used to increase the share capital.

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 return 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.

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 with a 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 with a 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 through 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 must 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.

The following cases generally trigger a company's dissolution:

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

(ii) impossibility of achieving the company business object or its achievement;

(iii) nullity of the company;

(iv) a decision in this respect by the general meeting of shareholders;

(v) a court decision in cases such as severe conflict between shareholders that prevent the company's successful operation;

(vi) bankruptcy;

(vii) in case of losses ascertained by the yearly financial statements, when the net assets of the company, computed as a difference between the total assets and total liabilities of the company, drop below half of the subscribed share capital value and are not reinstated to a value at least equal to half of the share capital value before the end of the financial year following the one when the net asset value decreased below the legal threshold;

(viii) decrease of the share capital to below the legal threshold if not reinstated before a final court decision rules the dissolution;

(ix) decrease of the number of shareholders to below the legal threshold if not reinstated before a final court decision rules the dissolution.

Upon the request of the national trade registry or of any other interested person, the court may rule in favour of the dissolution of a company if:

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

(ii) such company ceased its activity or the activity was not resumed after a period of temporary inactivity, a period which cannot exceed three years and must be registered with the fiscal authorities and the trade registry;

(iii) the requirements regarding the headquarters are no longer fulfilled, including inter alia the cases when the duration of the document attesting the right to use the headquarters expires;

(iv) the company's shareholders disappearing or their domicile/residence being unknown;

(v) the company failing to replenish its share capital, according to the law;

(vi) the company failing to submit its yearly financial statements/the consolidated yearly financial statements, and its accounting reports to the territorial divisions of the Ministry of Public Finance within the legal term, if the delay period exceeds 60 business days;

(vii) the company failing to submit to the territorial divisions of the Ministry of Public Finance, within the legal term, the affidavit attesting that the company has not carried out any activity as of its incorporation, if the delay period exceeds 60 business days.

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 the case of limited liability companies, unlimited guarantee collective companies and limited partnerships, the liquidation procedure may be avoided as the shareholders may decide upon the dissolution of the company, as well as the method of liquidation, 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. Shareholders of such companies may also decide on the way to divide assets remaining after paying off the creditors, by unanimous vote. If such a unanimous vote is not obtained, the liquidation procedure provided for by the law shall be enacted 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 the case of joint stock companies that have implemented the dualist system the liquidators fulfil their mandate under the control of the supervisory council (Company Law, Art. 253(5)). Liquidation will not release the shareholders or prevent the initiation of the company bankruptcy procedure. Assets liquidation implies the conversion of the company's assets into cash and the collection 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 for in the company's constitutive acts or in the appointment deeds, liquidators may not constitute mortgages over the company's assets without being authorized by the court.

4.6. Distribution of profits

Dividends shall be paid to shareholders in proportion to the paid up capital, unless otherwise stated in the constitutional documents. Dividends are distributed only out of real profits; dividends paid out of unreal profits must 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).

4.7. Civil and criminal sanctions

The law contains several civil and criminal sanctions (including imprisonment) against those who infringe its provisions regulating 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 for 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.

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, a 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 Business Environment Relationship. Upon registration, an operational 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 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 from 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 European Companies and joint stock companies applies 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 to 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.

From the publication date, creditors with 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 which approved the relocation of the European Company in another member state, have the right to withdraw from the company. Such a right may be exercised within 30 days from the of by the extraordinary general meeting of the relocation, in which case the European Company must 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 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 a 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 an agreement signed by its members, the number of which cannot exceed twenty (Law No. 161/2003, Art. 118 (3)). Such an agreement must 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 yearly financial statements, a profit is generated by the group's activity, such a profit must be fully apportioned between the members of the group, as dividends, in the quotas provided for by the constitutive act. In the absence of such a clause, the profit is equally distributed. Should the expenses exceed the income of the group, the balance will be covered by its members in the quotas provided for by the constitutive act 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 for under Romanian Law No. 161/2003 whose provisions are mostly inspired by the European Council Regulation 2137/85 of July 25, 1985 on 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 activities 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 their 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 a constitutive act, concluded in authenticated form. Within 15 days from authentication, the relevant founders/directors/a representative are obligated 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, or representative offices with no legal status. The yearly 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 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.

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 a 2legal 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 die;

(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.