

## NAVIGATING CORPORATE DISPUTES: PROTECTING MINORITY SHAREHOLDERS IN ROMANIAN LIMITED LIABILITY COMPANIES

### CONTEXT OF THE SHAREHOLDERS' CORPORATE DISPUTE

In Romania, limited liability companies (in Romanian, Societate cu Răspundere Limitată – “SRL”) are the most commonly used type of special-purpose vehicle by investors for various investment objectives – such as project companies, SPVs for acquiring real estate assets, or holding companies owning shares in other major businesses.

According to Companies' Law no. 31/1991 (the “Companies' Law”), the **general rule for decision-making in SRLs** is that shareholders' resolutions require a double majority: both a majority of the shareholders and a majority of the shares (*i.e.*, the favourable votes of at least 50%+1 of the shares and 50%+1 of the shareholders). In companies with two shareholders, this effectively means that decisions can only be adopted unanimously, regardless of the shareholding structure.

In practice – including in court case-law – there has been a longstanding debate as to whether the double majority rule **(i)** applies to all shareholders' meetings, both at the first and second convening; or **(ii)** applies only at the first convening, and if a decision cannot be adopted due to lack of a double majority, a reconvened shareholders' meeting with the same agenda may adopt the decision based solely on the vote of shareholder(s) holding the majority of shares, irrespective of whether the minority shareholder(s) is/are present at the second convening and vote(s) against such decision.

In addition to clarifying the rights and protections available to minority shareholders, it is equally important to define the decision-making process within SRLs. Deadlocks in this process can cause operational disruptions and significant distress in the day-to-day management of projects and companies owned or controlled by such entities.

In this context, our client – a minority shareholder in an SRL – challenged and sought the annulment of a shareholders' decision adopted based on the favourable vote of the majority shareholder during a second convening of the shareholders' meeting. Despite voting against the items on the agenda both during the first and the second convening of the meeting (with the same agenda), the majority shareholder proceeded to register the decision as adopted, relying solely on the favourable vote of the majority of shares, disregarding the double majority rule applicable in SRLs.

#### Key issues

- **Double majority rule ambiguity:** There is ongoing legal debate in Romania regarding whether the double majority requirement for shareholder decisions in SRLs applies to all meetings with the same agenda or only to the first meeting.
- **Minority rights at risk:** In practice, majority shareholders may attempt to bypass the double majority rule in reconvened meetings, potentially undermining the rights of minority shareholders who remain actively involved.
- **Operational impact of decision-making deadlocks:** Unresolved ambiguities in the decision-making process can lead to governance deadlocks, disrupting the operations of SRLs used as investment vehicles or project companies.

## PRACTICE UNIFYING COURT PRECEDENTS ON THE DECISION POWERS OF MINORITY SHAREHOLDERS IN SRLs

Following our client's challenge against the shareholders' decision adopted by the majority shareholder in disregard of the double majority rule, the Bucharest Court of Appeal upheld our arguments and admitted our client's claim. The court annulled the decision on the grounds that it had been adopted in breach of the double majority rule applicable to SRLs.

The key arguments that led to this favorable precedent included:

- Under the Companies' Law, the double majority rule is expressly mandatory for the shareholders' meeting at first convening. A valid resolution requires the favourable votes of at least 50%+1 of both the total number of shares and the total number of shareholders. If this threshold is not met, the meeting may be re-convened.
- At the re-convened meeting with the same agenda, the double majority rule still applies. However, the majority required for taking a decision is calculated based on the shareholders and shares present at the reconvened meeting.
- Maintaining the double majority rule at the second meeting is justified by (i) the hybrid nature of limited liability companies, which combines elements of both personal (*in personam*) and capital-based corporate legal structures; and (ii) the need to protect the rights of all shareholders who actively participate in the company's decision-making process by attending and voting at each meeting.
- The court also noted that shareholders may derogate from the legal double majority rule for the second convened meeting through provisions in the company's articles of association, allowing decisions to be adopted by a simple majority of shares. In the case at hand, no such derogation had been included in the company's articles of association.

This decision by the Bucharest Court of Appeal marks a significant step toward clarifying and unifying judicial interpretation of the decision-making framework in Romanian limited liability companies. It aligns with previous rulings that have questioned how the double majority rule set out in the Companies' Law is applied in practice.

The court decision comes thus as a reinforcement of the rights and protection of the minority shareholders who play an active role in the governance of limited liability companies. As long as shareholders are present and exercise their voting rights in shareholders' meetings, there are other means under Companies' Law available for shareholders in SRLs to settle their lack of alignment in what concerns decisions regarding the company.

## ADDRESSING DEADLOCKS IN THE DECISION-MAKING PROCESS IN SRLs

As the stakes and complexity of investments continue to grow, and corporate life becomes increasingly sophisticated, shareholder disputes are becoming more frequent. Ensuring the protection of shareholders' rights – and the effective implementation of the instruments designed to uphold them – requires greater attention and a more proactive, preventive approach.

### Key takeaways:

- **Court reaffirms rights and protection for the minority shareholders:** The Bucharest Court of Appeal confirmed that the double majority rule applies even at reconvened shareholders' meetings (in what concerns the shareholders present at such meeting) ensuring that active minority shareholders cannot be sidelined by majority votes alone.
- **No bypassing the law without statutory backing:** Unless explicitly waived in the company's articles of association, the double majority requirement remains mandatory—even in second meetings with the same agenda.
- **A clear signal for governance clarity:** This decision sets a valuable precedent where uneven court practice could generate confusion. More clarity encourages companies to clarify decision-making rules in their statutes and shareholder agreements to avoid deadlocks and disputes. If disputes cannot be avoided, shareholders could seek court protection through various appropriate types of claims.

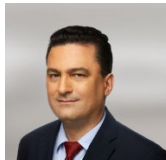
Deadlocks between shareholders can disrupt operations and create delays and significant distress for the projects involved.

With proper legal guidance, shareholders can consider proactive measures to mitigate and improve their position in case of deadlocks, including by: **(i)** having rules in the articles of incorporation to clearly define the decision-making process and majority rules or reserved matters; **(ii)** entering into shareholders' agreements that include tailored rights and instruments for implementing these, as well as escalating procedures specifically designed to prevent or address deadlocks, while providing for alternatives that would keep the parties out of court even in case of misunderstandings.

At all times, judicial remedies are available for shareholders to safeguard or enforce their rights. These may include filing claims for the annulment of shareholder decisions, initiating actions for abuse of majority or minority rights, or even seeking the dissolution of the company in cases where disputes are irreconcilable.

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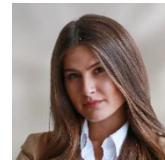
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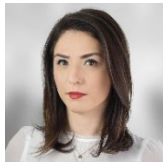
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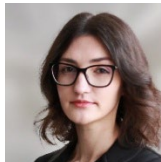
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