

COMPANIES LAW AMENDMENTS UNDER ROMANIA'S SECOND FISCAL PACKAGE

The Law establishing measures for the recovery and optimization of public resources, and for amending and supplementing certain normative acts (the **"Second Fiscal Package Law"**) was recently approved by the Romanian Parliament and shall enter into force within three days from publication in the Official Gazette. With a view to strengthen corporate transparency and financial stability, the Second Fiscal Package Law introduces important changes to the corporate framework, with a particular focus on the limited liability companies (in Romanian, societati cu raspundere limitata) (**"SRLs"**).

NOTIFICATION TO THE FISCAL AUTHORITY OF TRANSFERS OF CONTROLLING HOLDINGS IN LIMITED LIABILITY COMPANIES

Upon a transfer of shares in a SRL resulting in a change of control over the company, there is an obligation to notify the tax authority (ANAF) within 15 days of such transfer. The notification may be submitted by SRL, the transferee or the transferor, and will be accompanied by the transfer deed and the updated articles of association of the SRL. The obligation to notify the fiscal authority upon a change of control in a SRL appears to apply regardless of whether the new controlling shareholder is an existing shareholder or a third party.

In case the SRL subject to the share transfer has any outstanding debts to the state budget, the transferee or the SRL must provide adequate guarantees to the fiscal authority in the amount of the outstanding debts, with the observance of the Fiscal Procedure Code provisions (i.e., either by deposit with the State Treasury, bank letter guarantee or insurance policy). The fiscal authority shall issue an approval after the setting up of the relevant guarantee, such approval being a condition precedent to registration of the shares transfer with the Trade Registry.

If the obligation to notify the fiscal authority is not observed, the share transfer will not be admitted for registration by the Trade Registry and thus not opposable towards (i) the fiscal authority and (ii) third parties.

The fiscal authority will enforce the guarantees provided by the new shareholder/ the company if the outstanding debts are not settled (e.g. by payment, debt-to-asset transfer, compensation etc.) within 60 days from registration of the share transfer with the Trade Registry.

Within 30 days after the Second Fiscal Package Law takes effect, secondary legislation should be approved to set out the procedure for notification of the fiscal authority.

Key issues

- Transfer by a controlling shareholder of shares in held a SRL must be notified to the fiscal authorities.
- If the company whose shares are transferred in line with the above has outstanding fiscal debts, guarantees up to the amount of the outstanding debts must be set up in favour of the fiscal authority.
- Registration with the Trade Registry of controlling holdings in SRLs will not be registered without proof of notification of the fiscal authorities and, as applicable, the setting up of appropriate guarantees.
- Fines of up to EUR 40,000 become applicable if the legal threshold of net assets is not restored by the end of the following financial year.
- Debt-to-equity swap becomes mandatory in case of failure to restore the legally required threshold for net assets within 2 years after the end of the financial year in which the negative equity was identified.

RESTRICTIONS ON LOANS TO/ FROM SHAREHOLDERS

Companies (SRLs, joint stock companies etc.) that distribute quarterly dividends are prohibited from granting loans to shareholders or affiliates until the differences resulted from the quarterly dividends of the respective year are fully adjusted.

Also, if the net assets of a company fall below half of subscribed share capital, the company is prohibited from repayment of the shareholder loans or loans from other affiliates.

Failure to comply with these restrictions may result in **finances ranging from RON 10,000 (approx. EUR 2,000) to RON 200,000 (approx. EUR 40,000)**, and **joint liability** of the company and its shareholders for any unpaid debts to the state budget (up to the amount of the loan granted/ repaid).

INSUFFICIENT NET ASSETS AND RELATED SANCTIONS

In case the companies' net assets fall below the legal threshold (*i.e.*, half of the subscribed share capital) and remedial measures are not implemented by the end of the following financial year, the company may be sanctioned by fine ranging from **RON 10,000 (approx. EUR 2,000) to RON 200,000 (approx. EUR 40,000)**, besides the already applicable sanction (*i.e.*, dissolution of the company by court decision, at the request of any interested party).

Where the companies with net assets below the legal threshold (i) have debts towards their shareholders and (ii) fail to restore the threshold of net assets within 2 years after the end of the financial year in which the insufficient net assets were identified, the shareholders have an obligation to **increase the share capital by converting such shareholder loans into equity**. Failure to perform the debt-to-equity swap may be sanctioned by fines ranging from **RON 40,000 (approx. EUR 8,000) to RON 300,000 (approx. EUR 60,000)**.

INCREASE OF MINIMUM SHARE CAPITAL FOR LIMITED LIABILITY COMPANIES

Under the Second Fiscal Package Law, existing SRLs with an annual turnover exceeding RON 400,000 (approx. EUR 80,000) will have an obligation to increase their share capital to at least RON 5,000 (approx. EUR 1,000) within two years from the entry into force of these new regulations. If the threshold is exceeded at the close of the financial year, the deadline for the share capital increase is the end of the following financial year.

As of the entry into force of the Second Fiscal Package Law, the minimum share capital for incorporation of an SRL is increased to RON 500 (approx. EUR 100).

Failure to comply with the requirements of the minimum share capital may result in dissolution of the company by court decision, at the request of any interested party or the Trade Registry. However, SRLs will not be dissolved if the share capital is increased before the court decision becomes final.

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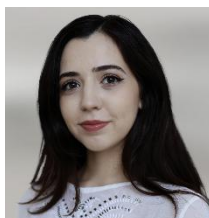
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