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Legal Bulletin



Commercial Law

1. Law No. 223/2020 on the simplification and debureaucratisation of the transfer of shares and paying-up of the share capital by amending Companies Law No. 31/1990

Amendments to the legislation of companies

Law No. 223/2020 (“**Law No. 223/2020**”) on the simplification and debureaucratisation of the transfer of shares and paying-up of the share capital by amending Companies Law No. 31/1990 (“**Law No. 31/1990**”) was published in Official Journal of Romania No. 1018 dated 2 November 2020. Law No. 223/2020 became effective on 5 November 2020.

The formalities of transferring shares in Romanian limited liability companies have been considerably simplified.

Law No. 223/2020 brought a series of other novelties, aiming at the following aspects which shall be further detailed:

- Removal of the condition on the minimum value of the share capital of RON 200 upon establishment of a limited liability company;
- Removal of the condition of producing evidence on the paying-up of the share capital upon establishment of a limited liability company;
- Clarification of certain provisions on the need to submit, upon registration of a company or for the relocation of its registered headquarters, of the document attesting to the right to use the premises intended as registered headquarters, registered with the National Agency for Fiscal Administration;
- Change of the procedural rules applicable in the case of challenge applications filed against decisions passed by a company’s statutory bodies.

1. Simplification of the transfer of shares in limited liability companies

Until the adoption of Law No. 223/2020, the procedure for transferring a limited liability company's shares to a person who did not have the capacity as shareholder of such company entailed the performance of two stages.

The first stage envisaged the adoption by the shareholders of a decision approving the transfer of shares and submission thereof to the Trade Register, for publication in the Official Journal of Romania, Part IV.

The transfer of shares to persons outside the company was permitted only if it was approved by the shareholders holding at least 3/4 of the share capital.

Subsequent to the publication of the decision in the Official Journal of Romania, social creditors and any other persons harmed by the shareholder's decision concerning the transfer of shares had a 30-day term from publication to file a challenge application with respect to said decision. In the absence of a challenge, the transfer of the shares operated on the expiry date of the challenge term or, if a challenge was submitted, upon the communication date of the decision to reject it.

Subsequent to the expiry of the 30-day term to challenge, or, respectively, to the settlement of the challenge, the transfer of shares was being registered with the Trade Register based on a new file containing all transfer documents.

The procedure described above resulted in a major delay of the transfer of shares to persons outside the company.

Starting with 5 November 2020, the transfer of shares to third parties is performed in one stage, without the expiry of the 30-day term of challenge being necessary for the transfer to operate.

Social creditors and any other persons harmed by the decision of the shareholders concerning the transfer of shares may still file a challenge application requesting reparation for the damage caused by the decision of the shareholders, however such procedure shall not result in the delay of the transfer of shares.

Moreover, the procedure of adopting the decision approving the transfer, provided under para. 6 above, has been relaxed. Consequently, starting from 5 November 2020, the limited liability companies' articles of incorporation may provide lesser majority conditions for the adoption of a transfer decision, as well as other rules for the performance of such operation.

2. Less conditions and formalities required to establish a limited liability company

According to the previous version of Law No. 31/1990, the minimum share capital of a limited liability company could not be less than RON 200 and was divided into equal shares of at least RON 10.

Law No. 223/2020 eliminated the two thresholds mentioned above.

Moreover, evidence of the payments according to the articles of incorporation was amongst the documents submitted for the incorporation of a company.

This requirement was eliminated by Law No. 223/2020 in the case of incorporation of limited liability companies.

The condition of fully paying up the subscribed share capital in the case of limited liability companies is still provided under Article 9¹ of Law No. 31/1990. Furthermore, Law No. 31/1990 provides a punishment of one month to one year in prison or fine for the director who commences operations in the name of a limited liability company prior to the share capital being fully paid up.

Consequently, the specified amendment's sole effect is a debureaucratisation of the process of incorporating limited liability companies, and not a removal of the condition to fully pay up the subscribed share capital in the case of such sort of company.

3. Clarification of certain provisions concerning the documents required to establish the registered headquarters

According to a previous form of Law No. 31/1990, upon incorporation of a company and relocation of the registered headquarters, the Trade Register Office had to be presented with the document attesting to the right to use the premises intended as registered headquarters, registered with the relevant tax authority.

This wording of Article 17(2) of Law No. 31/1990 gave rise to a non-unitary practice at the level of Trade Register Offices, with some interpretations considering that the document attesting to the right to use the premises should be registered in advance with the National Agency for Fiscal Administration.

Consequently, Article 1(2) of Law No. 223/2020 clarified the flow of documents, expressly providing the fact that the Trade Register Office shall submit the document concerning the registered headquarters, subsequent to the registration with the Trade Register, to the relevant tax authority.

4. Change in certain procedural rules applicable in the case of challenge applications

Social creditors and any other persons harmed by the decisions adopted by the statutory bodies of a company may file a challenge application requesting the court of law to compel the company or shareholders thereof to repair the damage thus caused.

In the version of Law No. 31/1990 in effect prior to the adoption of Law No. 223/2020, the provisions regulating the procedure of filing a challenge application referred to certain rules in matters of nullity and suspension of the implementation of the challenged decision.

Considering that the ultimate purpose of filing a challenge application is not the annulment or suspension of the challenged decision's effects, but the reparation of the damage caused

by the adoption thereof, the provisions regulating the applicability of such procedures in the case of challenge applications have been eliminated.

Consequently, the performance of the activity of the company whose decision was challenged by way of a challenge shall not be delayed as a result of the filing of a challenge application.

ruxandra.frangeti@tuca.ro

andreea.ungureanu@tuca.ro

Editors

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Cornel Popa
Partner
+4 021 204 88 94
cornel.popa@tuca.ro

TUCA ZBARCEA ASOCIATII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro

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