

# Tuca Zbarcea & Asociatii

*Setting up in Romania – joint stock companies: general frame and special provisions for the capital market*



Above: **Cristina METEA, Senior Associate at Tuca Zbarcea & Asociatii.**

Business activities may be carried out in Romania by legal entities or by authorised individuals. There are several legal structures available for investors wishing to set up companies in Romania, but the most frequent types of companies of choice for investors are joint stock companies and limited liability companies, which both offer to shareholders a limitation on their liability, they being solely responsible for paying up the value of the shares they have contributed. The principle of limitation of liability can only be defeated in case of liquidation of the company, in case the relevant shareholder had defrauded the creditors, by abusing the limitation of its liability and the distinct personality of the company, or in case of insolvency proceedings.

Although the general rule is that the legal form of the company may be freely chosen by its founders, certain business activities may be conducted only by companies having a certain legal form (eg insurance activities or banking activities may be carried out only by joint stock companies).

Moreover, from the corporate perspective, only companies set up in the form of a joint stock company may access the capital market. The main corporate aspects of the joint stock companies are highlighted below.

## SHARES AND SHARE CAPITAL

The joint stock company must have at least two shareholders and a share capital equal to at least RON90,000. The minimal

share capital may be updated by the government in order to ensure that its RON equivalent is no less than €25,000.

The company's share capital may be formed by contributions made in kind, in cash or consisting of accounts receivable. The company may be set up by the founders subscribing all the share capital or by offering part of the shares to the public through the publication of a prospectus. The latter option, even though allowed by the law, has been however only very rarely used, if ever at all.

The share capital may be increased by using cash, contribution in kind, company's reserves (save for the legal reserves), undistributed dividends and share premiums or by setting off outstanding receivables against the company with newly issued shares. Positive balance registered pursuant to the revaluation of the company's assets may not be used for the purpose of increasing the share capital of a joint stock company.

The existing shareholders have a pre-emption right for subscribing to the newly issued shares, as well as for the bonds convertible into shares.

Shares may be ordinary (ie one share gives right to one vote in the shareholders' meeting and to the dividends proportionally to the quota of the share capital) or preferential (ie giving priority to dividends but not entitling to voting rights). Preferential shares may account for only up to  $\frac{1}{4}$  of the share capital nominal value.

Unless otherwise provided in the company's articles of association, the shareholders may freely transfer their shares to any person. In case the company is listed on the capital market, the transfer has to observe the rules governing the relevant regulated market.

## SHARES TRADED ON THE CAPITAL MARKET

Companies having operated for at least three years may go public and list the shares on the capital market, subject to fulfilling certain basic conditions: (i) preliminary level of capitalisation of at least €1 million; (ii) shares sufficiently spread to the public (in principle, 25% of the subscribed share capital, but special exemptions may be granted). Each market operator may set its additional own rules on the requirements to be met by issuers when applying for listing securities on their tiers.

Admission of securities to trading on a regulated market is made on the basis of a prospectus that requires the approval by the National Securities Commission before publication. In cases strictly provided by law, a simplified prospectus is accepted.



Once the shares are listed on a regulated market in Romania, any transfer of shares has to be made through the trading system of the respective regulated market, intermediated by an authorised.

Transactions outside the market are allowed only in few cases, which are expressly and limitedly provided for by law, the so-called “direct transfer of shares”, including transfers following inheritance, partition of assets jointly held, assignment by the issuer company of its shares to its employees, merger, spin-off or liquidation, privatisation. Even enforcement of pledge over traded securities involves sale on the market, at the market price.

## COMPANY'S MANAGEMENT AND AUDIT

The main management body of a joint stock company is the General Meeting of Shareholders (GMS). Depending on the matters to be submitted to shareholders' approval, the GMS may be ordinary (eg appointing and dismissing the directors and auditors, approving the yearly financial statements and the management report) or extraordinary (whose powers relate essentially to amending the constitutive documents of the company).

Important differences between ordinary and extraordinary GMS are provided as regards the quorum and vote rules, which have been materially changed from 1 December 2006. Most of the decisions may be duly passed in the presence of the shareholders holding at least 1/4 of the total number of voting rights and with the vote of the shareholders representing at least 1/2 of the voting rights of the present or represented shareholders. However, a special majority of 2/3 of the voting rights of the present shareholders is required for decisions on

major issues, such as increase or decrease in the share capital, merger or dissolution.

The shareholders holding at least 5% of the share capital may require that a GMS be called or the agenda of an already-convened GMS be completed with other headings. As well, they may request the auditors to review any act or operation of the company or start a claim, on the company's account, against the founders, directors or managers of the company for damages brought to the company by breaching their duties.

Two management systems are available to joint stock companies under the law: (i) the traditional management system (based on the old French system), where the directorship of the company may be entrusted either to a sole director or to a Board of Directors, with the possibility to delegate management attributions to one or several Executive Managers, who may be from among the directors; (ii) the so-called dualist system based on a two-tier management, where the actual administration of the company is entrusted to an Executive Board or the managing body, which carries out its activity under the control of a Supervisory Board.

In case of listed companies the directors may be appointed, upon the request of a shareholder holding at least 10% equity participation, by way of cumulative voting, which implies appointment of the board members by the shareholders on individual basis, proportionally with their voting rights.

Romanian companies meeting at least two of the following criteria: aggregate assets amounting to at least €3,650,000, net turnover amounting to at least €7,300,000 or more than 50 employees are compelled to draw up financial statements in accordance with the EC IVth Directive and have them audited, while the rest have to draw up and provide simplified financial statements. The companies traded on the capital market are always required to follow these standards and audit their statements.