

1. ROMANIAN CORPORATE VEHICLES

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The relevant **Romanian corporate laws and regulations** are:

- ✓ Company Law no. 31 of 1990 as amended
- ✓ Law no. 26 of 1990 regarding the Trade Registry
- ✓ Methodological Norms of 2008 regarding the application of Law no. 26 of 1990 regarding the Trade Registry
- ✓ Decree-Law no. 122 of 1990 regarding the Authorization and Operations of the Representative Offices of Foreign Companies
- ✓ Romanian Civil Code

The following vehicles are regulated under Romanian law:

1. joint stock company;
2. limited liability company;
3. general partnership;
4. limited liability partnership.

In addition to the above-mentioned vehicles, which have legal personality, the branches (which are mere extension of the parent company) and the Representative Offices are also regulated by law.

Also, a person carrying out personally a particular trade may register with the Trade Registry and the relevant tax authority as a Registered Physical Person.

The legal vehicles mostly used by the investors in Romania are the limited liability company (LLC), joint stock company (JSC), the branch, and the Representative Office.

The LLC is the favorite vehicle used by foreign investors.

The JSC is seldom chosen by foreign investors as an initial investment vehicle. However, in many cases foreign investors are acquiring participations in Romanian companies which were initially incorporated as joint stock companies.

The Representative Offices can be used only for advertising, marketing, and liaison purposes.

The Trade Registry is the authority of registration of the Romanian companies. Any third party may obtain upon request certified copies of the corporate records of a Romanian company which are on file at the Trade Registry.

Below you will find a comparative presentation of the above legal vehicles used by foreign investors in Romania. We will address below such issues as legal status, object of activity, approvals for registration, taxation and financial reporting, and differences between an LLC, and a JSC.

Legal status

- i. Representative Office: it is not a legal person - it is a mere extension of the parent company;
- ii. Branch: it is not a legal person - it is a mere extension of the parent company;
- iii. LLC - it is a Romanian legal person;
- iv. JSC - it is a Romanian legal person.

Object of activity

a. Representative Office

The object of activity of the Representative Office is limited to the promotion and marketing operations conducted in the name of the parent company.

A Representative Office of a foreign company can represent in Romania one or more foreign companies.

The Representative Office is allowed to derive income only in the form of fees for the services rendered received from abroad from the foreign companies it represents in Romania. Therefore, the Representative Office cannot receive fees from Romanian legal entities or natural persons.

b. Branch

The object of activity of a branch cannot go beyond the scope of activities provided for in the By-laws of the parent company.

c. LLC and JSC

The object of activity of an LLC or JSC is not restricted to that of its foreign parent company.

The object of activity must be described in the Constitutive Act of the company filed with the Trade Registry.

Approvals for registration

a. Representative Office

A permit for the establishment of a Representative Office must be obtained from the Ministry of Small and Medium Enterprises. The annual authorization fee is of USD 1,200. The permit is renewable annually.

The Representative Office must also register with the Chamber of Trade and Industry and with the tax authority.

The completion of the registration procedure would take about 30 days from the date of the filing the application.

b. Branch

The branch must be registered with the Trade Registry and with the fiscal authority.

c. LLC and JSC

An LLC or a JSC must be registered with the Trade Registry and with the tax authority.

According to the law, the registration procedure would take approximately 3 – 5 days from date of the filing of the application.

There are no restrictions on the number or nature of directors of a JSC or an LLC.

There are no mandatory employee rights of representation in the management structures of a JSC or LLC.

Differences between an LLC and a JSC

The liability of the shareholders of an LLC or a JSC is limited to their investments in the company, i.e. to their shares.

However, as noted below, there are some significant differences between a joint stock company and a limited liability company.

a. LLC

An LLC can have as few as one shareholder, but the number of the shareholders cannot exceed fifty.

It cannot be set up by public subscription.

The share capital of an LLC cannot be lower than 200 Lei, and must be divided into equal shares which must have a value of no less than 10 Lei. The shares of an LLC are not negotiable instruments.

Each share gives the right to one vote in the general meeting of the shareholders.

The shares can be transferred between the shareholders. The transfer to outsiders is allowed only if approved by shareholders representing at least three fourths (3/4) of the registered share capital.

An LLC cannot issue bonds.

The general meetings of the shareholders must convene at least once a year or whenever it is necessary.

The law does not distinguish between an ordinary and an extraordinary general meeting. The general meeting decides by a vote representing the absolute majority of the shareholders and shares, if the Constitutive Act does not provide otherwise.

The vote of all shareholders is required for the amendment of the Constitutive Act, if the Constitutive Act does not provide otherwise.

The LLC is managed by one or more Administrators, who may be or not shareholders. Initially, the Administrators must be appointed by the Constitutive Act.

The appointment of statutory auditors is not required if the number of shareholders is less than 15.

b. JSC

A JSC must have at least two (2) shareholders.

It may be established by private subscription or by public subscription.

The minimum share capital is 90,000 Lei.

Shares can be issued in the bearer form or in nominative form. The nominative shares can be converted into bearer shares. The nominative shares may be issued in a material form (on paper support) or in a dematerialized form (by electronic account recording). In the case of the nominative shares issued in a material form, individual or cumulative share certificates can be issued.

The nominal (par) value of a share cannot be less than 0.1 Lei.

Preferred shares may be issued. Such shares confer the following rights:

- i. the right to a priority dividend; and
- ii. the rights recognized to the owners of common shares, except for the right to vote at the general meeting of the shareholders.

The preferred shares cannot be in excess of one fourth of the share capital and must have the same nominal value as the common shares. The preferred shares and the common shares can be converted from one class to another if approved by a decision of the general meeting of the shareholders.

The law does not impose any restrictions regarding the transfer of shares in a JSC. Nevertheless, certain restrictions, e.g. right of first refusal, can be provided by the shareholders in the documents of incorporation of the company.

A JSC may buy back up to 10% of its own shares. The voting rights and the rights to dividends are suspended during the period in which the shares are held by the company.

A JSC may raise capital by issuing bonds.

The contributions to the share capital can be in cash and in-kind. The contributions in cash are mandatory but the law does not indicate a minimum amount. At least 30% of the share capital subscribed by each shareholder must be paid upon the formation of the company, and the remaining 70% within a period of twelve months in the case of cash contributions, and two years in the case of in-kind contributions.

The share capital can be increased either by the issuance of new shares or by the increase of the nominal value of the existing shares against the payment of new contributions in cash or in-kind.

In the case of an increase in the share capital the existing shareholders have a preemption right to subscribe the newly issued shares *pro rata* to their shareholding in the company.

The general meetings of the shareholders can be ordinary and extraordinary.

An ordinary general meeting of the shareholders of the company must be called at least once a year, within a maximum of five months from the end of the fiscal year.

In order to have valid proceedings for an ordinary meeting the presence of the shareholders representing at least a quarter of the voting rights is required. Resolutions are valid if taken by the votes of the shareholders holding the majority of the voting rights present at the meeting. The

Constitutive Act of the company may provide higher quorum and voting majorities for the ordinary meeting.

The call notice may provide the date and the time for a second meeting, in case that the quorum for the first meeting is not met.

In order to have valid proceedings for an extraordinary meeting, the presence of the shareholders representing at least a quarter of the voting rights is required. If this quorum is not met, at the following meetings the quorum required is of one fifth of the voting rights. Resolutions are valid if taken by the votes of the shareholders holding the majority of the voting rights present at the meeting. The Constitutive Act of the company may provide higher quorum and voting majorities for the extraordinary meetings.

The law provides for two types of management structures that can be used in a JSC: the Administrator - based system, and the dual system.

a. The Administrator - based system

The JSC is managed by a Council of Administration although it is possible to have only one Administrator. The Council of Administration is elected by the General Meeting of the Shareholders. The President of the Council of Administration can also be the General Manager of the company. The Council of Administrators meets whenever it is necessary but at least once a month.

The performance of the operations of the company can be delegated to one or several executive managers, who are employees of the company and cannot be members of the Council of Administrators.

b. The dual system

The JSC is managed by a Board of Directors, which is appointed by a Supervisory Board.

The shareholders appoint the Supervisory Board. At the time of the registration of the company the members of the Supervisory Board must be appointed by the Constitutive Act.

The Supervisory Board should have a minimum of 3 and a maximum of 11 members. They may be revoked by a majority vote of 2/3 of the shareholders attending the General Meeting of the Shareholders.

The members of the Supervisory Board cannot be at the same time employees of the company.

The members of the Supervisory Board can be either natural or legal persons.

The Supervisory Board has the following attributions:

- (i) it exercises the permanent control of the management of the company by the Board of Directors;
- (ii) it appoints and revokes the members of the Board of Directors;
- (iii) it verifies the conformity of the management of the company with the law, the Constitutive Act, and with the decisions of the General Meeting;
- (iv) it submits an activity report at least once a year to the General Meeting of the Shareholders.

The establishment of an audit committee within the Supervisory Board is mandatory in the case of the joint stock companies, which have the legal obligation to have their annual balance sheet audited.

The Board of Directors exercises its duties under the supervision of the Supervisory Board.

The management of the company shall be ensured exclusively by the Board of Directors which must take all necessary actions for the achievement of the scope of activity, except for those reserved to the General Meeting of the Shareholders, and to the Supervisory Board.

The Constitutive Act may provide for certain actions to be taken by the Board of Directors only with the approval of the Supervisory Board. In case the Supervisory Board does not give its consent in respect thereof, the Board of Directors may request the approval of the General Meeting of the Shareholders, approval which must be granted by the vote of 3/4 of the attending shareholders.

A person cannot be member of the Supervisory Board, and of the Board of Directors at the same time.

The Board of Directors must submit to the Supervisory Board, at least once every three months, a report regarding the management of the company and possible developments. The Board of Directors also must report to the Supervisory Board any information regarding the events, which may have a significant impact on the company's operations.

A JSC must have three statutory auditors and one substitute auditor.

If certain conditions are met a JSC may use the European Accounting Standards. In such case, the JSC must have one internal auditor and one outside auditor.

Liability of Administrators/Directors

The Administrators of a JSC or LLC are jointly liable towards the company for failing to take actions required by law in order to obtain payments from the shareholders which have not paid in full the subscription price for their shares, for the legality of paid dividends, for the maintenance and safekeeping of books and records of the company required by law, for the execution of the decisions of the general meeting of the shareholders and for the strict compliance with the obligations imposed by law and the Constitutive Act of the company.

Also, the Administrators and/or Directors acting in breach of their duties are liable for the respective damages caused to the company.