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CORPORATE

Amendments to the Company Law

With a view to accelerating the implementation of the *acquis communautaire*, the Law no. 302/2005 (published in the Official Gazette of Romania no. 953 of October 27, 2005) further amended the Company Law no. 31/1990 concerning the share capital level of joint-stock and limited partnership companies. Other amendments refer to the rules on the companies' dissolution, merger and spin-off.

Obligation to increase the share capital

In contrast with the previous provisions of the Company Law (according to which the minimum ceiling of the share capital was ROL 25,000,000 for the joint stock and limited partnership companies), by the Law no. 302/2005 the minimum share capital of such companies is increased to the amount of EURO 25,000, in RON equivalent, at the exchange rate communicated by the National Bank of Romania valid for the subscription date.

The joint-stock and limited partnership companies may fulfil their new obligations, within one-year as of the law's entering into force. The sanction for non-fulfilling the obligation within the legal term is the company's dissolution by way of the court decision rendered by the court referred to by the National Trade Register Office.

Companies' dissolution

The initial art. 237 par. 6 (that provided the company's de-registration from the Trade Register, at the date of the definitive and irrevocable judgement by which dissolution is approved, following a claim lodged with the tribunal), has been amended so as in its current form it provides that the company shall enter the liquidation procedure at the date of the definitive and irrevocable judgement approving the dissolution.

Four new paragraphs have been inserted (no. 7-10) after par. 6 of art. 237, referring to the circumstances and conditions under which the liquidator is appointed by the judge, the judge's competence to order the automatic de-registration of the company from the Trade Register, as well as to the publicity formalities that have to be fulfilled in order to render the de-registration judgement enforceable.

Further, the Law no. 302/2005 provides that the assets remaining from the de-registered company's patrimony shall revert to the shareholders, whose right is subject to a 6 months limitation period as from the de-registration judgement notice.

Companies' merger and spin-off

Mention should be made in this context that art. 293 of the Law no. 31/1990 (which provided that each company resolves upon its merger and spin-off, under the conditions set by the constitutive act for amendments) was abrogated.

TAXATION

Amendments to the Fiscal Procedure Code

Further amendments to the Fiscal Procedure Code were promoted by the GEO no. 129/2005, as published in the Official Gazette no. 887/2005. The amendments regard mainly (i) cessation of the state aid and (ii) recovery of the illegal or forbidden state aid.

Cessation of the state aid

According to GEO no. 129/2005, the cessation of the state aid shall be ordered based on a decision issued by the Competition Council or by the state-aid provider who establishes, during the exercise of the supervision activity, the state-aids incompatibility with the relevant legislation. The respective decision must specify, the characteristic elements of the action concerned, including the economic entity's name and its identification data, the method of granting state-aid and the cessation date.

Recovery of the illegal or forbidden state-aid

According to the new enactment, the actual recovery of the illegal or forbidden state-aid may be done pursuant to the resolutions issued to this purpose by the Competition Council or by state-aid providers, such resolutions being directly enforceable.

The state-aids shall be mainly recovered by the territorial units of the Ministry of Public Finance by enforcing the provisions of the Fiscal Procedure Code.

For the amounts representing state-aids to be recovered it shall be due an interest computed for the period starting with the date when the state-aid was granted to the beneficiary until its recovery; the interest rate shall be annually approved by the means of a Government decision.

EMPLOYMENT

Amendments to the Law on work permits

In consideration of Romania's undertakings by the negotiation chapter 24 „Internal Justice and affaires” regarding the report on the number of foreign citizens in the Romanian labour market, the Government Ordinance no. 130/2005 imposed several restrictions on foreigners' secondment in Romania, thus amending the Law no. 203/1999 on work permits.

Issuance of work permits

The works permit may be issued, based on an application, to the foreigners who fulfil the conditions provided by the Romanian employment legislation and provided that they are granted a long stay visa for employment. The visa shall be granted upon the favourable approval of the Labour Force Migration Office and of the Authority for Foreigners.

The issuance of the work permit basically remains under the competence of the Labour Force Migration Office, subordinated to the Ministry of Labour, Social Solidarity and Family. However, the GEO no. 130/2005 provides a special procedure of issuing the work permits for citizens of the EU member states and of the

states signatory of the Agreement on the European Economic Area, until Romania's accession to the EU.

According to this special provision, the work permit is issued by the Ministry of Labour, Social Solidarity and Family, based on the prior approval of the Ministry of Administration and Internal Affairs, only to the persons whose activity carried out in Romania shall have major impact on the national economic development. The work permit issued pursuant to this procedure involves the additional payment by the employer of a 2.000 Euro fee. The applicant must also prove that it has been qualified in the related field under the form of a university diploma and that it has no criminal record.

Moreover, the provisions of the GEO no. 130/2005 detail the work permits types that may be granted to foreigners and the attached rights granted to the holder.

The regime of the foreigners' secondment in Romania

The new regulations emphasize the priority right for the Romanian employees to be employed in Romania, over the foreign citizens seconded, several limitations being imposed on the foreigners who carry out profitable activities in Romani.

In contrast with the former regulations providing that the foreigners may be seconded in Romania without a work permit, according to the Law no. 203/1999 as subsequently amended, as a rule, for such a secondment a work permit is necessary.

By way of exception, foreigners may although work on the Romanian territory without a work permit, if they are appointed as a head of subsidiary or representative office established in Romania by a company headquartered abroad.

The activity of the seconded foreigners may be carried out (i) based on an agreement concluded between a Romanian company and the foreigner employer of the seconded employee; (ii) in a representative office, subsidiary or branch of the foreigner employer on the Romanian territory, or (iii) in a company, Romanian legal entity, whose shareholder is the foreigner company, with the same scope of activity.

Mention should be made that the basic conditions for secondment become more restrictive. Therefore, the foreigner seconded in Romania may carry out activities on the Romanian territory for a period of maximum one year, once in 5 years.

Nevertheless, the persons whose secondment period ends may be employed in Romania as permanent employees, based on a work permit and the stay right granted for other purposes.

The restrictions on the foreign citizens' secondment in Romania, employed by legal entities established in the EU member states or in one state signatory of the Agreement on the European Economic Area shall cease upon Romania's accession to the EU.

REAL ESTATE

Amendments to the Law on the lease of agricultural land

Law no. 16/1994 on the lease of agricultural land has been recently amended as concerns the persons who may be lessees, pursuant to the enactment of the Law no. 276/2005 (the Official Gazette of Romania no. 903/2005).

If under the previous regime, only the Romanian citizens (domiciled or not in Romania) and Romanian legal entities were entitled to be lessees, by the Law no. 276/2005, the scope of the persons entitled was extended, by the inclusion of foreign citizens and foreign legal entities.

Both Romanian and foreign citizens have to be graduated in the agricultural field or to hold a certificate attesting agricultural knowledge or agricultural practice and to

submit the guarantees requested by the lessor. For the Romanian citizens the certificate shall be issued by the competent bodies of the Ministry of Agriculture, Forests, and Rural Development, as for the foreigner natural persons, the certificate shall be issued by the competent authority in the state of origin or of provenience.

The lessees who are legal entities, both the Romanian and foreign legal entities shall have as scope of activity the use of agricultural assets and shall submit the guarantees requested by the lessor.

The Law no. 276/2005 shall enter into force upon Romania's accession to the European Union.