

Clients & Friends Alert

April 2012



Summary

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CORPORATE LAW IN ROMANIA: SIMPLIFIED RULES FOR MERGERS & SPIN-OFFS

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In order to *inter alia* avoid the undesired prospects of an EU infringement procedure, Romania recently implemented¹ Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 concerning reporting and documentation requirements in the case of mergers and spin-offs. The implementation deadline was 30 June 2011.

The changes to Romanian corporate law mirror the amendments of the Directive to the Second, Third and Sixth Company Law Directives (78/91/EEC, 77/855/EEC, and 82/891/EEC), as well as Directive 2005/56/EC on cross-border mergers.

Simplified rules were introduced in order to streamline the process of mergers and spin-offs, mainly by diminishing the administrative burden on companies:

Removal of evaluation requirement

- The expert valuation report required under art. 38 of the Romanian Companies Law with respect to joint-stock companies (S.A.) regarding in-kind contributions is no longer required for those companies which are incorporated as a result of a merger or a spin-off process, if the respective merger / spin-off plan was formally reviewed by an independent expert. This also applies to a share capital increase arising from a merger / spin-off.

Publication requirements

- A draft merger or spin-off plan may be published on the respective company's website, provided that such plan is made available free-of-charge for a minimum continuous period of one month prior to the shareholders' general meeting which is to vote on the proposed plan.
- In case of a cross-border merger, the draft merger plan may be published on the Romanian company's website, if made available free-of-charge for a minimum continuous period of one month prior to the shareholders' general meeting.

Elimination of certain reporting and/or approval requirements

- Administrators will no longer be required to inform the shareholders' general meeting with respect to changes to the assets and liabilities to be transferred that have occurred between the time the plan was initially prepared and the date of the shareholders' general meeting which is to vote on the plan, if the shareholders (and other holders of voting rights) have so previously agreed.
- Companies owning at least 90% of the shares of the company being acquired pursuant to an absorption no longer need a separate shareholders' general meeting approval for the finalization of the absorption provided that each company subject to the merger has published the merger plan and all shareholders were afforded the possibility to review the documents related to the merger.
- In case of a spin-off whereby the beneficiary companies initially held together all shares of the spun-off company, a separate shareholders' general meeting approval of the spun-off company is no longer necessary for

¹ Government Emergency Ordinance no. 2 of 28 February 2012 amending Law no. 31/1990 regarding commercial companies (published in Official Gazette no. 143 of 2 March 2012)



the finalization of the spin-off procedure, provided that the publishing requirements of the spin-off plan were fulfilled and the shareholders were able to review the documents related to the spin-off.

- For spin-offs where the shares of each newly formed company are allocated to each shareholder of the spun-off company on a proportional basis, certain reporting requirements provided by the Companies Law are no longer necessary (i.e., the administrator's report on the merger/spin-off, shares' exchange rate, conditions/requirements for the allotment of the shares, etc.).

Financial Statements

- No need for financial statements if the respective company publishes a half yearly report and makes it available to its shareholders, or if all shareholders have previously agreed that such statements are not necessary.

Documents related to the merger/spin-off

- Copies of documents may be provided by electronic mail with shareholders' consent.

- Companies are no longer required to make available documents at their registered office if such documents are available on the company's website.

Shareholders' withdrawal right

- The Companies Law now gives shareholders the right to withdraw from a company within 30 days from the date on which the merger/spin-off plan is published, in case they would oppose the following: (i) merger by absorption where the absorbing company would hold all shares in the absorbed companies, and (ii) spin-offs whereby the beneficiary companies initially held together all shares of the spun-off company. Previously the right to withdraw was exercisable within 30 days from the date of the resolution of the shareholders' general meeting approving the merger/spin-off plan.

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