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Clients&FriendsAlert

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HARSHER JOINT LIABILITY RULES ON COLLECTION OF TAX OWED BY COMPANIES UNDERGOING FINANCIAL DIFFICULTIES

Dear Clients and Friends:

The Romanian government just issued new legislation[1] enforcing harsher tax collection rules with regard to companies undergoing financial difficulties (Rom: *insolvabile*). The law (in fact, a government's emergency ordinance having the same legal weight) amends the existing Code of Fiscal Procedures[2] to allow a number of situations where the 'corporate veil' may be pierced beyond what is now permitted and deemed necessary under the current insolvency law[3].

With the recent changes, individuals and companies, either shareholders or directors of companies under financial difficulties, run a much greater risk of being held jointly liable to pay the tax amounts owed by their controlled/managed subsidiaries.

Particularly, the directors (Rom: *administratori*) of companies under financial difficulties should be aware of the risks arising from their failure to submit proper tax return statements or simply not paying owed taxes, as such conduct may trigger their joint liability for taxes owed to the Romanian state. Directors should pay even closer attention to the company's financial situation, and if the company would not be able to meet its tax payment obligations, to immediately prepare and file for voluntary bankruptcy, otherwise they would risk joint liability.

Parent companies could also be on the radar screen over unpaid taxes owed by their financially troubled subsidiaries, if they attempted to transfer business assets or funds from a subsidiary undergoing financial difficulties to another group company in a better financial situation. The value of the assets transferred from such company undergoing financial

[1] Government's Emergency Ordinance no. 54/2010 on certain measures against tax evasion (Romania's Official Gazette no. 421 of 23 June 2010)
[2] Government's Ordinance no. 92/2003 on the code of fiscal procedures (Romania's Official Gazette no. 513 of 31 July 2007)
[3] Parliament's Law no. 85/2006 on the insolvency procedures (Romania's Official Gazette no. 359 of 21 april 2006)

difficulties, the number of employees being transferred, the number of business clients taken over, are each indicative of considerations that may trigger joint liability.

To ensure that these new rules cannot be circumvented by a simple share transfer, the new legislation also amended the Company Law (Law 31/1990, as republished) so as to have any contemplated share transfer to a non-shareholder notified to the tax authorities. Once notified, a transfer may be challenged for a limited time and as the case may be will not be completed until court proceedings would be finalized. However, only limited liability companies (SRLs) are affected by this particular restraint on the transfer of shares.

For any questions regarding this informational material or related issues, please do not hesitate to contact one of the following attorneys:

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