

The limited liability company in Romania *versus* the limited liability company in the Republic of Moldova

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Abstract

The article presents parallel legislation in Romania and Republic of Moldova, in the matter of Limited Liability Company (LLC) Ltd, aiming to extract similarities and differences to draw reliable conclusions regarding the advantages of setting up this type of company in the two countries.

Keywords: *Limited Liability Company, incorporation/registration, share capital, liquidation.*

JEL Classification: K22

I. The notion of Limited Liability Company

Defined as an intermediary form between individuals companies and equity companies, the Limited Liability Company can be explained as an individual company with elements specific to equity companies and, paradoxically, also true as an equity company with elements specific to individuals companies. That is why it has similarities with both individuals companies and equity companies.

The Limited Liability Company is company regulated and present in very many countries and, maybe, it is most common form of incorporating a company. However, each country has its own rules and its own specific steps that need to be taken in order to incorporate a Limited Liability Company.

In Romania, this type of economic entity has been present since 1990, being regulated under the acronym SRL (LLC). According to the regulations in force, the share capital needs to meet a quantitative condition, a threshold of a minimum value of RON 200. This condition is explained by the fact that the amount of all contributions by the shareholders is the general pledge of the unsecured creditors.

The legislation of the Republic of Moldova refers to the Limited Liability Company under the acronym of "S.R.L.", having a permitted number of members ranging from 1 to 50, of which at least one must be a founding member. There is no restriction in respect of the number of the founding members as there can be from at least one, mandatory, to 50 founding members, at the most.

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II. Description and legislative framework

II.1 S.R.L. (L.L.C.) in Romania

In order to carry out lucrative activities, individuals and legal entities can associate and incorporate commercial companies, in compliance with the legal provisions of Law no. 31/1990 regarding commercial companies³, as revised (“the Law”), complete with the provisions of the Civil Code, Fiscal Code and, for certain institutions, with other regulations.

II.2 S.R.L. in the Republic of Moldova

In order to carry out activities for lucrative purposes, individuals and legal entities can associate and incorporate commercial companies as per Law no. 845-XII of 3 January 1992 regarding entrepreneurship and enterprises⁴.

The Limited Liability Company is the commercial company with legal personality whose share capital is split in shares as per the articles of association and whose obligations are secured with the patrimony of the company⁵. The company exerts, as of the date of incorporation, its rights and obligations through the director.

The same as in Romania, in Moldova, the Limited Liability Company has full name and may have abbreviated name. The full name and abbreviated name must include the phrase “Limited Liability Company” in Moldovan state language or the abbreviation “S.R.L.” (LLC).

III. Incorporation and registration

III.1 S.R.L. in Romania

According to Law no. 31/1990, as revised, the signatories of the articles of association, as well as the persons with a material role in the incorporation of the company are considered founders. There cannot be founders the individuals who, according to the law, are unable or have been convicted for fraudulent management, abuse of trust, forgery, use of forgery, deceit, embezzlement, false testimony, taking or giving bribery, for the crimes provided for by Law no. 656/2002 regarding the prevention and punishment of money laundering, as well as for instating various measures aiming at preventing and combatting terrorist financing, as revised, for the crimes provided for by art. 143–145 of Law no. 85/2006 regarding insolvency or for the crimes provided for by Law 31/1990, as revised.

A S.R.L. is incorporated by:

- a) company agreement and bylaws;
- b) only bylaws in case of S.R.L. with sole shareholder;
- c) both in case a) and in case b), it can be prepared a sole document entitled Articles of Association.

³ Republished in The Official Gazette no. 1066 of 17 November 2004 as revised.

⁴ published in the Official Gazette no.2/33 of 28 February 1994

⁵ Law no. 135 of 14.06.2007 regarding the limited liability companies, published in the Official Gazette of Moldova no. 127-130 of 17 August 2007, as revised.

The signatories of the articles of association, as well as the persons that have a material role in the incorporation of the company are considered founders.

The registration of the Limited Liability Company is made within 24 hours of the date of pronouncing the ruling of the delegate judge authorizing the registration of the company. The commercial company acquires legal personality as of the time of registration with the Trade Registry (art. 41 of Law 31/1990 as revised). The term for issuing the registration certificate is of 3 days of the date of registering the application.

The documents necessary for the registration with the trade registry, registration for tax purposes and authorization of operation of the limited liability companies are⁶:

1. Registration application (original);
2. Evidence of verification of availability and reservation of the company (original);
3. If applicable, the agreement for using the name, as provided for by art. 39 of Law no.26/1990, as revised (original);
4. Articles of association (original);
5. The document that attests the right to use the space as registered office, registered with the tax authorities of relevant jurisdiction;
6. The certificate issued by the relevant tax authorities, certifying that for the immovable asset used as registered office it has not been registered another document attesting the alienation of the right to use over the same immovable asset, in exchange for consideration of free of charge;
7. An authenticated statement on own account regarding the compliance with the conditions in respect of the registered office, if the certificate issued according to point 7 shows that there already are other documents registered with the tax authorities attesting the alienation of the right to use the same immovable asset as registered office;
8. If applicable, the endorsement regarding the change in the destination of the collective immovable assets that have a dwelling regime, provided for by Law no. 230/2007 (standard form, filled, original);
9. The evidence regarding the making of the payments pertaining to the contributions of the shareholders to the share capital (copies);
10. The title deeds for the contributions in kind subscribed and paid in upon incorporation; if among them there are also immovable assets, the certificate of incumbency regarding the related liens;
11. The representations made on own account, as the case may be, by the founders/directors/censors or individuals representing the legal entity appointed administrator or censor, showing that they meet the legal conditions for holding those capacities (original);
12. The representations on own account by the founders, showing that prior to the date of registration of the company with trade registry they have not held and

⁶ <http://www.onrc.ro/documente/ghid/1bis.pdf>

do not hold the capacity of shareholder or member of the management bodies of an enterprise incorporated in the European Economic Area (original);

13. The IDs of the founders, directors or censors or auditors individuals (copies);

14. The sample signatures of the company's representatives (original);

15. Certificates of fiscal record for the shareholders or legal representatives of the commercial companies that have the domicile/residence/registered office in Romania for the foreign individuals or legal entities that hold this capacity and are registered for tax purposes in Romania or, as the case may be, an authenticated representation on own account of the individual foreign citizen in own name or as a representative of a foreign legal entity that is not registered in Romania for tax purposes showing that they do not have outstanding tax debts, in the original, and as the case may be the translation by an authorized translator whose signature is notarized by a notary public;

16. Standard representation on own account signed by the shareholders or directors showing, as the case may be, that the legal entity meets the operation conditions provided for by the specific legislation in the health field, sanitary-veterinarian, environmental, and health and safety field for the specified activities in the standard form (model 2 - original).

17. If applicable:

- the prior endorsement provided for by the special laws (copy);
- special advocate power of attorney (in authentic form) for the persons designated to perform the legal formalities (original).

III.2 S.R.L. in the Republic of Moldova

III.2.1 Principles of registration

1. The entrepreneur is obligated to register the enterprise, its subsidiaries and representative offices (hereinafter enterprises) incorporated by it on the territory of the Republic of Moldova before the commencement of their business, in accordance with Law no.1265-XIV of 5 October 2000 regarding the registration with the state of enterprises and organizations.

2. The enterprise is registered with the Chamber of State Registration with the Department of Information Technology at the place of the registered office of the enterprise. The registered office of the enterprise is considered the place where its management bodies are located.

3. The enterprise shall be registered with the tax authorities in order to be assigned a tax code in accordance with the laws in force⁷.

⁷ Art. 27 of Law no. 768-XV of 27.12.2001

III.2.2 Procedure of registration

For registration purposes, the enterprise shall present the documents specified in article 11 of Law regarding the state registration of enterprises and organizations, namely:

- ✓ application for registration according to the form approved by the Chamber;
- ✓ decision regarding the incorporation and the articles of association of the enterprise or organization, according to its form of legal organization, in two counterparties;
- ✓ the IDs of the founders or of the persons empowered according to the law, as well as of the main manager of the enterprise or organization;
- ✓ the document confirming the submission by the founders (shareholders) of a quota of the share capital of the enterprise in the size and within the term provided for by the legislation;
- ✓ the evidence of having paid the stamp fee and the evidence of having paid the registration fee.

The Chamber of State Registration, shall send, within 15 days of the date of registration of the enterprise, the local public administration authority, respectively, the tax authority, statistics body and social security authority a copy each of the decision of incorporating the enterprise and, in case of registering an enterprise in whose share capital the state holds a quota, also to the relevant specialized authority⁸.

IV. Articles of Association

IV.1 S.R.L. in Romania

The articles of association of a S.R.L. shall mainly include⁹:

- a) last name and name, place of birth, domicile and citizenship of the shareholders, individuals; name, registered office and nationality of shareholders legal entities.
- b) form, name, registered office and, if applicable, company's emblem;
- c) company's scope of business, mentioning the field and main business;
- d) share capital subscribed and paid in, mentioning the contribution of each shareholder, in cash or in kind, value of the contribution in kind and way of valuation, as well as the date when the share capital subscribed is fully paid in. To be mentioned the number and par value of the shares, as well as the number of shares attributed to each shareholder for their contribution;
- e) the shareholders that represent and administer the company or the directors that are not shareholders, individuals or legal entities, the powers invested in them and whether they are to exert such powers together or separately;
- f) the share of each shareholder of benefits and losses;

⁸ Art. 28 of Law no. 768-XV of 27.12.2001

⁹ According to art. 7 of Law no. 31/1990, amended and republished

- g) secondary offices – branches, agencies, representative offices or other similar units without legal personality;
- h) term of incorporation;
- i) way of dissolution and liquidation of the company.

IV.2 S.R.L. in the Republic of Moldova

The articles of association of the commercial company shall indicate¹⁰:

- a) name, place and date of birth, domicile, citizenship and data included in the ID of the founder individual; name, registered office, nationality, registration number of the founder, legal entity;
- b) name of the company;
- c) scope of business;
- d) shareholders' investments in the company and the way of making the payment and the term;
- e) value of the goods placed as contribution in kind and way of valuation, if such contributions have been made;
- f) registered office;
- g) structure, responsibilities, way of incorporation and operation of the company's bodies;
- h) way of representation;
- i) company's subsidiaries and representative offices;

The articles of association of the commercial company can also include other clauses that do not run counter to the law.

The articles of association of the commercial company shall be prepared in the state Moldovan language and shall be signed by all the founding shareholders.

V. Share Capital and Contributions

V.1 SRL. in Romania

V.1.1 Share Capital

In Romania, according to art. 11 of Law no.31/1990, as revised, the share capital of a Limited Liability Company cannot be smaller than RON 200 and is split in equal shares, that cannot be smaller than RON 10. The shares cannot be represented by negotiable securities. In a Limited Liability Company, the number of shareholders cannot be higher than 50. The share capital is constituted of the contributions be the shareholders upon incorporation, contributions that can be in cash and/or in kind.

The documents necessary for the registration of the mention regarding the share capital increase of the commercial companies¹¹:

1. Application for registration (original);

¹⁰ According to L. No. 845 of 03.01.1992 regarding entrepreneurship and enterprises, as revised.

¹¹ <http://www.onrc.ro/documente/ghid/29.pdf>

2. The document amending the articles of association (the decision by the general meeting of shareholders, decision by sole shareholder/decision by the Board of Directors or the addendum to the articles of association, original);

3. Evidence of title deed of the shareholder/member of the legal entity in respect of the contribution in kind (notarized copy); if the contribution in kind is constituted of an immovable asset, there shall also be attached the extract from the land registry in the original;

4. The valuation report prepared by the expert designated by the director of the trade registry office with the tribunal and/or designated person or persons (original);

5. Evidence regarding the payment of the contributions to the share capital (copies);

6. Updated articles of association;

7. Prospectus of issuance bearing the authentic signatures of two of the directors, in case of public subscription (copy); in case of companies regulated by the legislation of the capital market, the prospectus of issuance shall be endorsed by CNVM (National Commission of Securities) (in notarized form);

8. If applicable:

- decision of the general meeting of shareholders limiting or enlarging the preference right, to be published in the Official Gazette and mentioned in the trade registry;
- decision of the board limiting or enlarging the preference right of the existing shareholders, to be published in the Official Gazette;
- in case of increasing the share capital by primary public offer or based on simplified subscription prospectus, the evidence of the notice by the company to CNVM in respect of the results of the public offer;
- the financial statements and related balance sheet in case of share capital increase by incorporating the reserves/benefits/share premiums;
- the document proving the receivable, financial statements and related balance sheet, as the case may be, if the share capital increase is made by the translation of certain, liquid and due receivables to the joint stock company;
- the evidence regarding the issuing, subscription and payment of the bonds, decision by the general meeting regarding the issuance of bonds convertible to shares and the related decision of the general meeting of the obligors, if the share capital is increased by the translation of the bonds to shares.

9. If applicable:

- representations on own account by the sole shareholder/new shareholders which by way of assignment or inheritance has/have acquired shares/the new directors showing that they meet the legal conditions for holding such capacity (original);
- certificates of tax record for the shareholders that enter the company, in case the shares of interest or shares are sent to persons outside the company;

- original or notarized copy of the certificate and the translation made by an authorized translator whose signature is notarized by a notary public, from the registry with which the foreign legal entity is registered, attesting the existence of such legal entity;
10. If applicable:
- the prior endorsements provided for by the special laws (original);
 - special advocate power of attorney (notarized) for the persons designated to carry out the legal formalities (original).
11. Evidence regarding the payment of the legal dues:
- registry fee;
 - fee of publication in the Official Gazette, Part IV.

V.1.2 Categories of contributions

The contribution of the shareholders can be in cash (mandatory) and in kind (optional); the contribution in cash is an amount of money that the shareholder undertakes to transfer to the company.

As money is indispensable to commencing a commercial activity, the contributions in cash are mandatory upon the incorporation of a commercial company, irrespective of its form.

The contribution to the share capital does not bear interest.

The contribution in kind is constituted of certain immovable assets (buildings, installations, etc.), tangible movable assets (materials, goods, etc.) or intangible assets (receivables, goodwill, etc.).

Contributions in kind are allowed for all the forms of commercial companies. These contributions are made by the transfer of the related rights and the actual handover of the goods to the company.

The contribution may consist in transferring to the company the title deed over the asset or merely the right to use. In the absence of a contrary provision, goods become the property of the company. It is understood that if it has been agreed on the transfer of the title deed, the asset shall enter the patrimony of the company, the shareholder no longer having any right over it. As a result, the asset can no longer be pursued by the creditors of the shareholder and upon the dissolution of the company the shareholder shall not be entitled to being returned the asset, but only the value of such asset.

If the contribution is constituted of an immovable asset or a mobile tangible asset, the rapports between the shareholder and the company are legal rapports resembling those between a seller and a buyer.

In respect of the transfer of ownership over the asset, Law no. 31/1190 as revised, states that the asset becomes property of the company “as of the time of registration of the company with the Trade Registry”.

If the asset ceases to exist before the registration of the company, the risk is taken by the shareholder; the shareholder will have to contribute another asset to the company or an equivalent amount of money.

The asset that represents the contribution in kind shall be valued in money, in order to establish the value of the shares of interest or shares due to the

shareholder in exchange of the contribution. This valuation is performed by the shareholders or, as necessary, by experts. From the interpretation of the recent regulations, we consider that the meaning is that conventional valuation is no longer possible, being mandatory the valuation of experts. This change is explained by the fact that in some cases, in practice there have been overstatements of the assets contributed, which has led to a diminution of the guarantee of the social creditors. The articles of association shall also include the value of the asset and the way of valuation.

If the asset representing the contribution in kind has been brought to be used by the company, the doctrine considers that the rapports between the shareholder and the company are governed by the rules regarding usufruct. As the company acquires only a right to use, the shareholder remains the owner of the asset and in this capacity, upon the dissolution of the company, the shareholder is entitled to take back the asset.

The contribution in kind can be represented by intangible assets, such as receivables, patents, trademarks, know-how¹².

In case of limited liability companies with sole shareholder, if there are contributions in kind, it is required that first it is appointed by the director of the trade registry office with the tribunal and/or the designated person(s) of an expert accountant to value such assets. The application is submitted to the trade registry office and it involves the payment of the registry fee.

The evidence of having made the payments of the contributions to the share capital can be made, as the cash may be:

➤ for the contributions in cash, payment bill, payment order or check receipt;

➤ for the contributions in kind subscribed to the share capital: title deed (invoices, title deeds over the immovable assets, including the certificate of liens of these goods); if applicable, also the valuation report of the goods prepared by persons authorized according to the law. The valuation report is mandatory in case of a SRL with a sole shareholder.

V.2 S.R.L. in the Republic of Moldova

V.2.1 Share Capital

The share capital of the company is constituted of the contributions of the shareholders and represents the minimum value of the assets, expressed in MDL, that the company must hold.

The share capital of the company cannot be lower than MDL 5,400¹³.

Consumable goods cannot be brought as contribution to the share capital.

¹² According to Law no. 31/1990 as revised. See S. Cristea, *Dreptul afacerilor (Business Law)*, 3rd ed., Universitara Publishing House, Bucharest, 2012, pp.126-127.

¹³ As per art 21 of Law no. 135 of 14.06.2007 regarding the limited liability companies, as revised.

V.2.2 Contributions

By the date of the state registration of the company, each founder shall pay in cash at least 40% of the amount of the capital subscribed, if the law or articles of association do not provide for a higher ratio. Each shareholder shall pay in full the contribution subscribed within 6 months of the company's registration date. The receivable right of the company regarding shareholders' contributions have a statute of limitation of 3 years of the state registration of the company.

The total amount of the contributions cannot be lower than the amount of the share capital.

The shareholders cannot be released from the obligation of paying the contribution. The company's receivable regarding the transfer of the contribution cannot be extinguished by offsetting. To the subject of the contribution in kind, there cannot be legally enforced the retention right based on a receivable that does not refer to that subject.

In case of reducing the share capital of the company, the shareholders can be released from the obligation of paying the contribution in the amount that does not exceed the amount by which the share capital has been reduced¹⁴.

Contribution in kind

Any item in the civil circuit can be subject to the contribution in kind. The item that is subject to the contribution in kind shall be indicated in the articles of association.

The contributions in kind are assessed in money by an independent valuator and are approved by the general meeting of shareholders.

The goods subject to a contribution in kind become property of the company, if the articles of association do not provide for otherwise¹⁵.

If we compare the two regulations, the following differences can be distinguished:

- in Romanian law, the valuation of the goods can also be made by the convention of the parties, whereas in the Republic of Moldova, the expert valuation is mandatory;
- whereas in the Romanian law the statute of limitation for the payment of the contribution is a special one (2 years), in Moldova the statute of limitation is a general one (3 years);
- the maximum term within which it is allowed the payment of the contribution in cash is of 1 year in Romanian law, whereas in Moldova it is of 6 months (less permissive);
- the Moldovan lawmaker is more thorough in regulating the contribution in kind; for instance, non-consumable goods are not allowed, it is not allowed the offsetting of receivables between the shareholder and the commercial company in

¹⁴ As per art.22 of Law no. 135 of 14.06.2007 regarding the limited liability companies, as revised.

¹⁵ Art. 23 paragraph (3) of LP269 of 30.11.12, MO1-5/04.01.13 art. 8 as revised

respect of the contribution and, lastly, it is forbidden to exert the retention right of the shareholder in the rapports with the debtor company, when contributing an asset is involved.

There is also a significant resemblance regarding the assumption that in the absence of any mention, the asset is considered transferred with title deed.

VI. Management and organization

VI.1 S.R.L. in Romania

The management of the limited liability companies is ensured by the General Meeting of Shareholders, which has key responsibilities in respect of the operation of the company and by the director or board of directors.

The company is administered by one or several directors, appointed by articles of association or elected by the general meeting of shareholders from the shareholders or persons from outside the entity. Control is ensured either by means of censors, or directly by the shareholders that are not directors.

The general meeting of shareholders has mainly the following obligations:

- ✓ to approve the balance sheet and to establish the allocation of the net benefit;
- ✓ to designate the directors and censors;
- ✓ to decide the pursuit of the directors and censors for the damages caused to the company;
- ✓ to amend the articles of association.

The right to represent the company bears with each director, except for where the articles of association provide for the contrary. The powers and limits of the director are established under the articles of association.

VI.1.1 Control of the company

The control over the company is exerted by one or several censors elected by the general meeting of shareholders. The appointment of censors is mandatory only if the number of shareholders is bigger than 15. The term in office of a censor is of 3 years. Censors must be registered with the Trade Registry. In the absence of appointed censors, the control is exerted by the shareholders that are not directors.

In a Limited Liability Company, the general meeting of shareholders is convened to discuss and make decisions on ordinary issues for the good operation of the company and also on special issues that are of interest to the fundamental elements of the commercial company. In order for the decisions to be valid and implemented, the absolute majority of the shareholders, that is 50% of them, must be present at the vote. An exception to this rule is represented by the decisions that regard fundamental elements, a case where all the company's shareholders must be present at the vote.

S.R.L. may have one or several directors, but their number must be always uneven. The term in office is of 2 years, for the first directors and of maximum 4

years for the rest of the directors (if the articles of association do not provide otherwise). A director cannot have successively more than 5 terms in office. The first directors are appointed under the articles of association and subsequently by an ordinary General Meeting of Shareholders.

The management of the company can be entrusted to one or several directors, appointed by the Board of Directors.

For an SRL, the appointment of censors is mandatory only if the company has more than 15 shareholders. The number of directors must be uneven. Censors are obligated:

- ✓ To monitor the management of the company.
- ✓ To preserve the secrecy of the information.
- ✓ To verify the financial statements and their legality.

VI.2 S.R.L. in the Republic of Moldova

VI.2.1 General Meeting of Shareholders

The supreme body of the company is the general meeting of shareholders. The shareholders can be convened to ordinary and extraordinary general meetings.

The articles of association may also provide for the vote by correspondence. In such a case, the articles of association must also include the procedure of voting by correspondence, which includes, mainly, the way of informing the shareholders in respect of the matters subject to a vote and the procedure of changing such matters, sending the information and the necessary documents, the term for concluding the voting procedure and the term of informing the shareholders in respect of the result of the vote¹⁶.

VI.2.2 Competence of the general meeting of shareholders

Under the scope of exclusive competence of the general meeting of shareholders, there fall:

- a) to amend and complete the articles of association, including the adoption of the articles of association under a new form;
- b) to amend the amount of the share capital;
- c) to designate the members of the company's board and the censor, to dismiss them before the end of their term in office;
- d) to legally pursue the members of the board and censor for the prejudices caused to the company;
- e) to approve the Regulation of the company's board;
- f) to approve the reports of the board, the reports of the censor or the endorsements of the independent auditor's report;
- g) to approve the annual balance sheet;
- h) to approve the decision regarding the distribution of the net profit to the shareholders;

¹⁶ As per art 48 of Law no. 135 of 14.06.2007 regarding the limited liability companies, as revised.

- i) to adopt the decision regarding the reorganization of the company and to approve the reorganization plan¹⁷;
- j) to adopt the decisions regarding the liquidation of the company, to appoint the liquidator and to approve the liquidation balance sheet;
- k) to approve the size and way of forming the funds of the company;
- l) to approve the size and payment of the remuneration of the members of the board and censor;
- m) to approve in advance the conclusion of the contracts under which the company transfers ownership or assigns, free of charge, rights to third parties, including to shareholders;
- n) to incorporate subsidiaries and representative offices of the company;
- o) to approve the incorporation of other legal entities;
- p) to approve the participation of co-founder of other legal entities.

VI.2.3 Competence of the board of directors

The competence of the board of directors is established under the articles of association, according to the law, that is the articles of association can establish the following attributions of the company's board:

- a) to designate and dismiss the director before the expiration of their term in office;
- b) to approve the reports of the director and to assess their activity;
- c) to legally pursue the director for the prejudices caused to the company;
- d) to approve the size and way of payment of the director's remuneration;
- e) to present reports in the general meeting of shareholders;
- f) to approve the business plans of the company;
- g) to approve the internal regulations, except for those that fall under the competence of the general meeting of shareholders;
- h) to convene the general meeting of shareholders.

The board may also have other attributions, except for those that are of the exclusive competence of the general meeting of shareholders¹⁸.

VI.2.4 Director's liability

The director is fully and materially responsible for all the prejudices caused by them to the Company, including for illegal payments made by them to the shareholders.

If several directors are appointed, they are jointly liable, if a court ruling has not established otherwise.

¹⁷ Art. 49 paragraph (1), letter h) amended under LP267 of 23.12.11, MO13-14/13.01.12 art. 32; in force since 13.01.12

¹⁸ As per art 48 of Law no. 135 of 14.06.2007 regarding the limited liability companies, as revised.

VI.2.5 Control of the company management

The censor exerts periodically the control of the management at their own initiative or at the request of the shareholders. The censor is obligated to control the economic-financial of the company after the end of the financial year, verifying the financial reports and counting the inventories of the company and also exerting other actions necessary to an objective assessment of the company management. The censor prepares a report on each control made. If there are several censors and there are divergences among them, they shall prepare separate reports. Censors' reports are presented to the general meeting of shareholders. The censor is obligated to convene the general meeting of shareholders if they note facts that run counter to the law or to the articles of association and that have caused or may cause prejudices to the company.

The Director is obligated to make available to the censor all the documents necessary to making the control.

After comparing the two regulations, we note, besides many resemblances also a few significant differences: it is only in the Romanian law that the directors' liability is detailed, in the sense of making reference to the contract of mandate, and also in the sense of detailing the cases of severable/joint liability, as well as of the interdiction of being an employee and also an attorney of the company; the obligations of non-competition, diligence and prudence, loyalty, confidentiality, independence are obligations of the directors presented in the special law when Romania joined the EU; the director shall concluded a professional liability insurance. If their activity effects prejudices to the commercial company, the latter can be indemnified from the insurance policy; taking the concept of "business judgment rule" from the American law; according to it, a "business decision" adopted in a case presumed to be to the interest of the Company, relieves the director from liability, even if, subsequently, the decision proves to be wrong (it causes prejudices to the commercial company).

VII. The Shareholders

VII.1 S.R.L. in Romania

VII.1.1 Participation of the shareholders in benefits and losses

Distribution of the net profit is made by the general meeting of shareholders. The share of the net benefit distributed to be paid to each shareholder is dividend. Dividends are paid to the shareholders prorated to their investment in the share capital paid in if the articles of association does not specify otherwise. Dividends are paid only from the real benefits and based on balance sheet.

The losses incurred by the company are covered prorated to the investment in the share capital, up to the limit of the share capital subscribed.

VII.1.2 Shareholder's Rights

A shareholder is entitled to the rights established by the law and articles of association, including the right:

- ✓ to participate in the management of the company in accordance with the laws in force and articles of association;
- ✓ to vote in the general meetings of shareholders;
- ✓ to be informed of the company's activity;
- ✓ The right to demand an expert appraisal in respect of the management of the company patrimony;
- ✓ The right to take legal action;
- ✓ The right to withdraw from the company;
- ✓ The right to dividends.

VII.2 S.R.L. in Republic of Moldova

VII.2.1 Shareholder's rights

A shareholder is entitled to the rights established by the law and articles of association, including the right:

- ✓ to participate in the management of the company in accordance with the laws in force and articles of association;
- ✓ to vote in the general meetings of shareholders;
- ✓ to be informed of the company's activity;
- ✓ to exert control over the way of management of the company;
- ✓ to alienate and acquire, according to the law, their shares;
- ✓ to demand the dissolution of the company;
- ✓ to participate in the distribution of the net profit;
- ✓ to obtain, in case of liquidation of the company, the value of a part of its patrimony that has remained after the payment of the obligations to the creditors and employees, pro-rated to its shares;
- ✓ to demand the exclusion of a shareholder in accordance with art.47¹⁹.

VII.2.2 Shareholder's Obligations

The shareholder has the following obligations:

- ✓ to pay their contribution to the share capital in the amount, way and on the terms set under the articles of association;
- ✓ not to disclose the confidential information of the company;
- ✓ to immediately inform the company of the change in domicile and registered office, name or other information necessary to exerting the rights and meeting the obligations by the company and its shareholders.

¹⁹ Art.43 letter g) amended by LP267 of 23.12.11, published in the Official Gazette of Moldova on 13-14/13.01.12, in force since 13.01.12

Of the differences between the two law systems, we mention those provisions adopted by the Romanian law together with the coming into effect of the new Civil Code, as follows:

- the shareholder cannot compete with the company on own account or on account of a third party and cannot make on its own account or on account of other any operation that might be harming to the company; the shareholder cannot participate on own account or on the account of a third party in an activity that would lead to losing the company assets, provisions or specific knowledge undertaken by the shareholder; the benefits resulted from any of the activities forbidden according to the provisions above are due to the company and the shareholder has the obligation to cover any resulting damage;

- in the absence of a contrary provision, each shareholder can use the social goods in the company's interest, according to their destination and without detriment to the rights of the other shareholders; the shareholder that uses without the written consent of the other shareholders the social goods in its own benefit or in the benefit of a third party is obligated to return to the company the resulting benefits and to cover any possible damage;

- the shareholder that does not agree with a resolution made by the majority can challenge it in court within 15 days of making such resolution, if the shareholder was present to the meeting and as of the date of communication if the shareholder was absent. If the resolution has not been communicated to the shareholder, this term elapses from the date when the shareholder has become informed of the resolution, but no later than one year of the date when the resolution was made; the 15-day term stated above is a statute of limitation;

- provisions regarding the liability of the apparent shareholders, inexistent in the previous regulation. Thus:

- Any person that claims that they are a shareholder or deliberately creates a convincing appearance in this respect, is liable to third parties in good faith just as a shareholder;
- The company shall not be liable to the third party thus misled, unless it has given that person sufficient reasons to be considered a new shareholder, in case, knowing the doings of the claimed shareholder, the company does not take reasonable measures to prevent misleading the third party;
- New provisions are also introduced by the new Romanian Civil Code also in respect of the hidden shareholders; thus hidden shareholders are liable to good faith third parties as the apparent shareholders.

VIII. Dissolution and liquidation of the company

VIII.1 S.R.L. in Romania

According to art.227, paragraph 1 of Law 31/1990, as revised, SRL is dissolved in the following cases:

1. expiration of the term of the company – however, this date can be extended, but the shareholders have to be consulted at least 3 months in advance.
2. impossibility of conducting the business or of achieving the proposed goal;
3. by resolutions of the general meetings of shareholders;
4. bankruptcy of the company;
5. decreasing the share capital under the legal limit, if the shareholders do not decide to complete it;
6. incapacity, exclusion, withdrawal or death of one of the shareholders, when due to such causes, the number of shareholders has been reduced to one and there is no continuation clause with the inheritors and no continuation clause with only one shareholder.

The general principles of liquidating the commercial company are:

- the legal personality of the company continues to exist for the purposes of liquidation; the law requires that all the documents issued by the company should indicate that it is undergoing liquidation;
- the liquidation is made to the interest of the shareholders, which is proven by the fact that liquidation can be requested only by the shareholders, excluding the company's creditors; the meeting of shareholders appoints the liquidators (which take over the management of the company from directors), establishes their powers and the conditions of liquidation themselves are established under the articles of association (by the shareholders);
- the liquidation of the company is mandatory as the company cannot remain in the dissolution phase.

VIII.2 S.R.L. in the Republic of Moldova

VIII.2.1 Liquidation of the company

The liquidation of the company leads to the termination of its business without transferring by succession the rights and obligations to other persons²⁰.

An enterprise can be liquidated by decision of:

- a) the founders (shareholders), in accordance with the conditions stated in the articles of association of the enterprise, including in relation with the expiration of the term for which the respective enterprise was incorporated or the reaching of the goals for which it was incorporated;

²⁰ Subpoint 5 completed with Legea N 768-XV of 27.12.2001

- b) a court of law in case of:
- bankruptcy of the enterprise declared in accordance with the Bankruptcy law;
 - the articles of association of the enterprise have been declared null and void;
 - a breach of the requirements set by the law in respect of conducting a certain type of business, explaining the liquidation of the enterprise;
 - expiration of the term for which the enterprise was incorporated or after reaching the goals (purpose of business) for which the respective enterprise was incorporated²¹.

VIII.2.2 Procedure of liquidation of the enterprise

The decision to liquidate the enterprise establishes the procedure and terms within which the liquidation will be performed, the deadline for the settlement of the receivables with the creditors, which shall not be shorter than 2 months of the time of publication of the liquidation notice in the Official Gazette of the Republic of Moldova.

The liquidation of the enterprise is performed by the liquidation commission or liquidator designated by the founders (shareholders) or, as the case may be, by a court of law.

The liquidation commission (liquidation of the enterprise) publishes in the Official Gazette of the Republic of Moldova information of the liquidation of the enterprise, the procedures and term within which the liquidation is to be performed and the deadline for settlement of the receivables to creditors, as well as assesses the assets of the enterprise.

After the expiration of the term of settlement of the receivables to the creditors, the liquidation commission (the liquidator of the enterprise) shall submit for approval to the body (person) that incorporated the enterprise the valuation report regarding the assets of the enterprise, the list of receivables notified by the creditors and the related amounts, as well as the result of their examination.

The liquidation commission (the liquidator of the enterprise), after settling all the creditors' receivables, shall prepare the liquidation balance sheet and shall submit it and hand over all the remaining assets of the enterprise to its founders (shareholders), court of law, under the decision of which the enterprise was incorporated.

By derogation from the provisions of the law, the particularities of liquidating farming enterprises that are privatized are established under the Law regarding the restructuring of agricultural enterprises in privatization process²².

²¹ Subpoint 5 completed with Law no. 287-XIV of 18.02.99

²² Point 6 art.35 introduced by Law no. 394-XIV of 13.05.99

The main differences that can be found in the Romanian law refer to the activity of liquidators²³ namely:

- ✓ the document appointing the liquidators issued by the general meeting (or, exceptionally, by a court of law, when the conditions for convening and making the liquidation decision are not met) shall be submitted to the Trade Registry Office;
- ✓ until the liquidators take over their office, the directors shall continue their mandate;
- ✓ liquidators can be both individuals and legal entities, and have to be authorized;
- ✓ liquidators have the same liability as the directors;
- ✓ the liquidators shall prepare the balance sheet after counting the goods;
- ✓ the liquidation operations include operations of liquidating the asset, which comprise translating the company goods to money and collecting the company's receivables from third parties and liquidation of the liability, which means the payment of Company's liabilities to its creditors; after completing these operations, the net asset is distributed to the shareholder and the liquidation procedure is ended;
- ✓ the liquidators meet their obligations under the control of the censors (supervisory board);
- ✓ the liquidation of the company must be completed within 3 years of the date of dissolution and can be extended by 2 years at the most;
- ✓ after the completion of liquidation, liquidators must request the deregistration of the company from the Trade Registry (a date as of which the legal personality of the company ceases to exist). Under the sanction of a legal fine of RON 200 per each day of delay, the deregistration must be requested within 15 days of the completion of the liquidation. The fine shall be applied by the delegate judge. Deregistration can also be made *ex officio*;
- ✓ the Company's registers and documents must be kept for 5 years after the date of submission to the Trade Registry Office.

Conclusions

The Limited Liability Company is the widest spread form of incorporation of a commercial company both in Romania and in the Republic of Moldova, which makes us believe that it is the best regulated and the most accessible.

Both the regulations in Romania and the ones in the Republic of Moldova in respect of the limited liability companies are similar, small differences existing at:

- The minimum share capital of incorporating a Limited Liability Company in Romania is RON 200 lei, whereas in the Republic of Moldova is MDL 5,400.

²³ Silvia Cristea, "The company contract in the new Romanian Civil Code (art.1881-1954). Comparison with the 1865 Civil Code", *Juridical Tribune* vol. 2, issue 1/2012, p. 50-106.

- The documents necessary to incorporating a S.R.L are more numerous and more difficult to obtain in the Republic of Moldova as against Romania.

- The depositing of the contributions for the limited liability companies require that each founder should pay at least 40% of the amount of the capital subscribed. In Romania there is no law regarding this aspect.

As the regulations regarding the other elements of the limited liability companies are similar, we can conclude that these are required by the business practice and that the Moldovan lawmaker has used its brother from across River Prut as a source of inspiration in this regard.

The incorporation of a Limited Liability Company is more advantageous in Romania than in the Republic of Moldova, given the stricter regulations existing in the Republic of Moldova. We can note that, paradoxically, instead of building a legal framework more favorable to the development of business, a less developed state has in place a more rigid and formal legislation, which is an obstacle in the way of its future economic development.

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