



# GLOBAL EXPANSION GUIDEBOOK CORPORATE

*Romania*



Downloaded: 24 Apr 2025

## INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Corporate*.

### GLOBAL EXPANSION GUIDEBOOK SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

### CORPORATE

The *Global Expansion Guidebook – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Global Expansion Guidebook – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

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## ROMANIA



Last modified 28 June 2024

### FORM OF ENTITY

Several types of companies may be used as corporate vehicles in Romania. Joint stock companies (*societate pe actiuni* or JSC) and limited liability companies (*societate cu raspundere limitata* or LLC) are the most commonly used given their flexible incorporation procedure and limitation of the shareholders' liability.

#### Joint stock company (JSC)

It is a separate and distinct legal entity. A JSC may be managed by:

- 1 or more directors (forming a board of directors), with the possibility of management delegation, in the 1-tier system; directors are appointed by the general meeting of shareholders while managers are appointed by the board of directors or
- An executive board and a supervisory board in the 2-tier system; members of the executive board are appointed by the supervisory board; members of the supervisory board are appointed by the general meeting of shareholders.

Generally, if a JSC is managed in a 1-tier system, a sole director/board of directors represent(s) the company through its president. Under the 2-tier system, representation power is exercised by members of the executive board.

Special provisions apply in case of public listed companies.

#### Limited liability company (LLC)

It is a separate and distinct legal entity.

An LLC may be managed by 1 or more directors, appointed by the general meeting of shareholders.

A company is represented by its directors.

### ENTITY SET UP

## Joint stock company (JSC)

- Unlimited number of shareholders; minimum number of shareholders is 2
- Personal liability of shareholders is limited to their contribution to the share capital; however, in certain situations, their liability may be extended (eg, piercing the corporate veil)
- A JSC is registered by default by the Trade Registry as a micro-enterprise and will automatically switch to the corporate income tax regime (ie, taxing the profits) after the level of taxable revenues reaches the threshold of EUR500,000
- A JSC may opt to apply the corporate income tax regime since incorporation provided that it fulfills certain conditions in terms of value of the share capital and number of employees
- A fiscal registration number is allocated by the Trade Registry at the moment JSC is incorporated; other types of fiscal registrations (eg, for VAT purposes, for social security contributions) should be considered depending on the economic activity to be performed
- The fiscal year is generally a calendar year with the possibility to change it with another period, but only if the JSC is subject to corporate income tax regime
- Typical charter documents:
  - Articles of association
  - Resolutions of the competent corporate body (eg, general meeting of shareholders / board of directors) of each founder approving the incorporation of the JSC
  - Shareholders' register
- Shares can be either common or preferred

## Limited liability company (LLC)

- Up to 50 shareholders; may be incorporated/owned by a sole shareholder
- Personal liability of shareholders is limited to their contribution to the share capital; however, in certain situations, their liability may be extended (eg, piercing the corporate veil)
- An LLC is registered by default by the Trade Registry as micro enterprise and will automatically switch to the corporate income tax regime (ie, taxing the profits) after the level of taxable revenues reaches the threshold of EUR500,000.
- An LLC may opt to apply the corporate income tax regime since incorporation provided that it fulfills certain conditions in terms of value of share capital and number of employees.
- A fiscal registration number is allocated by the Trade Registry at the moment LLC is incorporated; other



- types of fiscal registrations (eg, for VAT purposes, social security contributions) should be considered depending on the economic activity to be performed
- The fiscal year is generally the calendar year with the possibility to change it with another period, but only if the LLC is subject to the corporate income tax regime
- Typical charter documents include:
  - Articles of association
  - Resolutions of the competent corporate body (eg, general meeting of shareholders / board of directors) of (each) founder approving the incorporation of the LLC
  - Shareholders' register
- Only 1 class of shares is allowed

## MINIMUM CAPITAL REQUIREMENT

### Joint stock company (JSC)

- Minimum share capital of RON90,000
- Minimum nominal value per share of RON0.1

### Limited liability company (LLC)

- Minimum share capital – no minimum value
- Minimum nominal value per share – no minimum value

## LEGAL LIABILITY

Shareholders of a JSC or an LLC are generally not liable for the debts of the company; their liability is limited to their contribution to the share capital of the company; however, in certain situations, their liability may be extended (eg, piercing the corporate veil).

## TAX PRESENCE

Similar tax and accounting reporting requirements are applicable for both JSCs and LLCs established in Romania. Further to the incorporation, both JSCs and LLCs are in principle subject to the following taxes:

- The micro-companies tax: JSCs and LLCs have the option to pay a micro-companies tax of 1 percent (subject to meeting specific criteria, including the obligation to have at least 1 employee and register a level

of turnover below EUR0.5 million) is higher than EUR1 million, JSCs and LLCs are subject to 16 percent profit tax, applied on the fiscal result determined starting from the accounting profits adjusted with fiscal items

- **Profit tax:** the default tax regime for local entities. Under this regime, JSCs and LLCs are subject to 16 percent profit tax, applied on the fiscal result determined starting from the accounting profits adjusted with fiscal items (non-taxable income and/or non-deductible expenses, as the case may be).
- **Value added tax (VAT):** the standard VAT rate in Romania is currently 19 percent. The reduced VAT rates are of 9 percent (eg, for medicines, food and beverages - except alcohol, among others) or 5 percent (eg, for school manuals, books, newspapers and magazines, hotel accommodation and similar accommodation, restaurant and catering services, supplies of social housing including related land, in certain conditions). Registration for VAT purposes is required if the turnover resulting from the economic activity exceeds the threshold of RON300,000 in a calendar year
- **Local tax:** due by companies for assets in their patrimony (ie, for buildings, land and vehicles owned) or taxes on publicity and advertising and outdoor advertising
- **Withholding tax (WHT):** WHT is due on cross-border payment of dividends, interest, royalties, commissions and services. As per the domestic tax legislation, income derived by non-residents from Romania is, as a general rule, subject to 16-percent WHT in Romania. However, such rates can be reduced (even to nil) under the provisions of the EU Directives or double tax treaties entered into by Romania with different countries.
- **Salary and mandatory social security charges:** the existence of employees at the level of the JSC and LLC triggers the obligation to pay salary tax and mandatory social security contributions. A flat income tax rate of 10 percent applies to the income obtained by employees. Moreover, both the employer and the employee are required to contribute to the social security system (ie, 35 percent cumulated contribution to pension and health funds due by employees working in normal conditions and labor insurance contribution of 2.25 percent due by the employer).
- **Customs duties:** applicable if JSC or LLC performs imports of goods from outside the EU to Romania (certain exemptions may apply though).
- **Accounting requirements:** both JSCs and LLCs are required to organize and manage its own accounts based on the Romanian accounting rules.

## INCORPORATION PROCESS

Certain documents, such as articles of association, incorporation resolution, statements of shareholder(s) and director(s), must be submitted with the competent Trade Registry.

## BUSINESS RECOGNITION

JSCs and LLCs are well regarded and widely used, as opposed to other types of companies.

## SHAREHOLDER MEETING REQUIREMENTS

JSCs and LLCs are required to hold annual meetings of shareholders to vote on certain items, such as approval of financial statements. In the case of a JSC, general meeting of shareholders can either be ordinary or extraordinary depending on the matter on the agenda.

## BOARD OF DIRECTOR MEETING REQUIREMENTS

### Joint stock company (JSC)

The board of directors or supervisory board is required to meet every 3 months.

### Limited liability company (LLC)

Not specified by law. Directors are not required by law to form a board of directors.

## ANNUAL COMPANY TAX RETURNS

The following tax returns are to be submitted both by JSC and LLC:

- If the company is subject to corporate income tax regime : (i) Quarterly profit tax returns (*ie*, for the quarters I, II and III) by the 25th of the first month following the quarter for which the profit tax liability is computed and (ii) annual profit tax return no later than March 25 of the year following the one for which the profits tax is computed if the company is liable for profit tax, provided that the fiscal year coincides with the calendar year. Other corporate income tax compliance regimes apply for companies activating in certain domains (*eg*, financial industry).
- If the company is subject to micro-enterprise tax regime: quarterly micro-company returns by the 25th of the first month following the quarter for which the micro-company liability is computed.
- VAT returns (*ie*, form 300, EC-Sales and Acquisitions List – form 390, Local acquisition/supply of goods /services statement – form 394): By the 25th day of the month following the end of the fiscal period.
- Intrastate statements: On a monthly basis for intra-community movements of goods, starting with the month in which the aggregate value of goods acquired/sold from/to other EU member states reaches the thresholds provided by the Romanian legislation (RON900,000 for both acquisitions and supplies).
- Payroll statements: On a monthly basis, no later than 25th of the month following the one to which the liabilities are computed. Tax returns for salary tax and related social security contributions (form 112) should be submitted by electronic means.
- Financial statements: Annual and final financial statements within 150 days from the end of the financial year; on a bi-annual basis (if specific conditions are fulfilled) and on a quarterly basis (if and when interim distribution of dividends is performed during the year).



- Other tax statements (eg, for local taxes, environmental fund contributions), depending on the specificity of the activity performed by the JSC and LLC.

## BUSINESS REGISTRATION FILING REQUIREMENTS

### Joint stock company (JSC)

Initial registration is required, as well as annual filings. All resolutions of the general meetings of shareholders are required to be filed with the Trade Registry.

### Limited liability company (LLC)

Initial registration is required, as well as annual filings. Only certain resolutions of the general meetings of shareholders are required to be filed with the Trade Registry.

## BUSINESS EXPANSION

### Joint stock company (JSC)

No need to change as business expands. However, secondary offices may need to be opened.

### Limited liability company (LLC)

No need to change as business expands. However, secondary offices may need to be opened. If the number of shareholders becomes higher than 50, the LLC must convert to a JSC. Moreover, irrespective of which type of company we refer to, any business expansion which refers to the establishment of a new business unit, the increase of the production capacity of an existing business unit or the diversification of the production of an existing business unit may amount to a “new investment,” as such is defined in the FDI legislation and, if the relevant criteria are met, may require prior authorization from the Commission for the Assessment of Foreign Direct Investments.

## EXIT STRATEGY

File dissolution documents with the appropriate Trade Registry.

## ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

The annual financial statements of the company must be approved by the general meeting of shareholders.

## DIRECTOR / OFFICER REQUIREMENTS

### Joint stock company (JSC)

Directors may be either legal entities or individuals. Managers must be individuals.

## Limited liability company (LLC)

Directors may be either legal entities or individuals.

For more information on directors' duties, see our [Global Guide to Directors' Duties](#).

## LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable for this jurisdiction.

## LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not applicable for this jurisdiction.

## LOCAL OFFICE LEASE REQUIREMENT

The company must have registered headquarters. Relevant documents attesting the right to use the headquarters are required to be submitted with the Trade Registry.

## OTHER PHYSICAL PRESENCE REQUIREMENTS

Not applicable for this jurisdiction.

## SUFFICIENCY OF VIRTUAL OFFICE

Not applicable for this jurisdiction.

## PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

In certain circumstances, company can use a third-party service provider for headquarters.

## PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Not applicable for this jurisdiction.

## **NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Not applicable for this jurisdiction. Nevertheless, please note that the FDI authorization for the establishment of a new company in Romania, as well as for the investments in existing companies which allow the investor to effectively participate in the management or control of such companies, is required if the legal criteria (regarding the field of activity of the investment and the amount of the investment) are fulfilled.

## **RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Nominee shareholders or directors are not used.

## **SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF**

Directors: Directors' rights (eg, to manage the company, to represent the company towards third parties, to draft the annual report accompanying the annual/quarterly financial statements of the company and business plan) are designed in a broad manner in order to allow for flexible management of the company. All such rights must be exercised within the limits set forth by the applicable legislation, the articles of association and the shareholders' resolutions.

Directors' rights (eg, to manage the company, to represent the company towards third parties and to draft the annual report accompanying the annual/quarterly financial statements of the company and business plan) are designed in a broad manner in order to allow for flexible management of the company. All such rights must be exercised within the limits set forth by the applicable legislation, the articles of association and the shareholders' resolutions.

## **PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

### Joint stock company (JSC)

Identities of shareholders and directors are publicly disclosed at the Trade Registry. Since there is no obligation for documents regarding transfer of shares to be submitted with the Trade Registry, the information available at the Trade Registry may not be entirely accurate with regards to the company's shareholding structure.

### Limited liability company (LLC)

Identities of shareholders and directors are publicly disclosed at the Trade Registry.

## **MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

### Joint stock company (JSC)

## Shareholders:

- Minimum 2; no maximum limit

## Directors:

- If the company is managed in 1-tier system: minimum 1; no maximum limit, but it should always be an odd number
- If the company is managed in 2-tier system:
  - Executive board: minimum 1; no maximum limit, but it should always be an odd number
  - Supervisory board: minimum 3; maximum 11

## Limited liability company (LLC)

### Shareholders:

- Minimum 1; maximum 50

### Directors:

- Minimum 1; no maximum limit

## MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

### Joint stock company (JSC)

- Minimum 2

### Limited liability company (LLC)

- Minimum 1

## REMOVAL OF DIRECTORS OR OFFICERS

### Joint stock company (JSC)

Members of the board of directors/supervisory board may be revoked by the general meeting of shareholders; members of executive board may be revoked by the supervisory board.

### Limited liability company (LLC)

Directors may be revoked by the general meeting of shareholders.

## REQUIRED AND OPTIONAL OFFICERS

## Joint stock company (JSC)

3 censors and an alternate, unless a higher number is provided by the articles of association (odd number required).

Upon the fulfillment of certain conditions, appointment of financial auditors becomes mandatory.

## Limited liability company (LLC)

Over 15 shareholders, appointment of 1 or more censors is mandatory.

Upon the fulfillment of certain conditions, appointment of financial auditors becomes mandatory.

## BOARD MEETING REQUIREMENTS

### Joint stock company (JSC)

Board of directors/supervisory board shall meet every 3 months.

### Limited liability company (LLC)

Directors are not required by law to form a board of directors.

## QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

### Joint stock company (JSC)

#### *Quorum requirements for shareholders' meeting*

- Ordinary general meeting of shareholders:
  - At least 1/4 of the total number of voting rights at the 1st convening
  - No quorum requirements at 2nd convening
- Extraordinary general meeting of shareholders:
  - At least 1/4 of the total number of voting rights at 1st convening
  - At least 1/5 of the total number of the voting rights at 2nd convening

#### *Voting requirements of shareholders' meeting*

- Ordinary general meeting of shareholders:
  - Majority of the expressed votes at both 1st and 2nd convening



- Extraordinary general meeting of shareholders
  - Majority of votes of present/represented shareholders at both 1st and 2nd convening
  - Certain decisions require a higher voting threshold (eg, at least 2/3 of the voting rights in case of change of the main business object or the increase/decrease of the share capital)

In certain cases, articles of association may deviate from quorum and voting legal requirements.

- Quorum requirements for the board of directors meeting:
  - At least 1/2 of the total number of members, unless the articles of association provide for a higher number
- Voting requirements of board of directors meeting:
  - Vote of majority of the present members

## Limited liability company (LLC)

### *Quorum requirements of shareholders' meeting*

Depend on the voting requirements.

### *Voting requirements of shareholders' meeting*

As a rule, a double majority is required by law (ie, absolute majority of shareholders and shares), unless otherwise provided by the articles of association, at 1st convening; simple majority applies at 2nd convening.

## **MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

From a practical perspective, yes.

## **AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?**

### Joint stock company (JSC)

A JSC managed in the 2-tier system is under the obligation of financial audit. Subject to meeting certain thresholds, financial audit may become mandatory to a JSC managed in the 1-tier system.

### Limited liability company (LLC)

Subject to meeting certain thresholds, financial audit may become mandatory.

## REQUIREMENT REGARDING PAR VALUE OF STOCK

Joint stock company (JSC)

- Minimum nominal value per share amounts to RON0.1

Limited liability company (LLC)

- Minimum nominal value per share – no minimum value

## INCREASING OF CAPITALIZATION IF NEEDED

The share capital may be increased by issue of new shares or increase of the share's nominal value. New shares may be issued in exchange for contribution in cash or in kind by incorporating the company's reserves (if possible) or by offsetting certain receivables.

## SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Depending on the sector of the company activities, specific requirements may apply.

## RESTRICTIONS ON TRANSFERABILITY OF SHARES

Joint stock company (JSC)

Nominal shares are generally transferred through a statement made in the shareholders' registry signed by the assignor and the assignee.

Limited liability company (LLC)

Shares may be transferred to third parties subject to approval by the shareholders representing at least 75 per cent of the share capital, unless the articles of association provide otherwise.

## OBTAINING A NAME AND NAMING REQUIREMENTS

Name reservation is required. A request is filed at the Trade Register to check the availability of the desired name.

It is prohibited to include attributes such as "national," "Romanian" or "institute" or derivatives thereof and/or words specific to central or local public authorities and institutions within the corporate name if likely to create confusion with the name of a central or local public authority or institution.

## SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Depending on the sector of the company activities, specific requirements may apply.

## APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Joint stock company (JSC)

Amendment of the articles of association is subject to approval by the extraordinary shareholders' meeting.

Limited liability company (LLC)

Amendment of the articles of association is subject to approval by the shareholders' meeting.

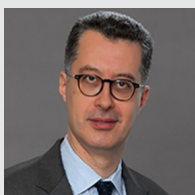
## LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Various permits may be required depending on the specificities of activities to be performed by the company.

## PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Not frequently used in practice. Same rules apply to transfer of shares.

### KEY CONTACTS



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