



**ROMANIA - LEGAL SURVEY:
SHARE CAPITAL, FINANCIAL ASSISTANCE, CORPORATE GOVERNANCE
AND ECONOMIC DATA**
*According to the latest amendments to the Trade Companies Law in force starting with
December 1st, 2006*

1. SHARE CAPITAL

The corporate issues subject to the present Memo shall be analyzed through the light of the newest legal provisions which governs the trade companies, made according to the European Union legislation and which came into force starting with December 1st, 2006.

Also, we shall analyze these issues with respect to the legal provisions which apply for the two of the most common trade companies in Romania:

- the Limited Liability Company (Societate cu Raspundere Limitata – “SRL”)
- the Joint Stock Company (Societate pe Actiuni – “SA”).

1.1. The procedure for the issuance of share capital for cash consideration in a private company

According to the Romanian Law on trade companies, as it was amended on December 1st, 2006, the share capital of a company can be increased for cash consideration either by issuing new shares, or by increasing the nominal value of the existing shares.

According to the law, the competent corporate bodies to decide upon the increasing of the share capital are:

- the General Extraordinary Assembly of the Shareholders *or*
- the Board of Directors or the Directorate (only for SA companies).

1.1.1. *The procedure for the issuance of the share capital, when the competent body to decide upon is the General Extraordinary Assembly of the Shareholders:*

- The Board of Directors summons the General Assembly of the Shareholders in order to approve the increase of the share capital. The summons is published in a local newspaper and in the Official Journal of Romania, with at least 30 days before the General Assembly of the Shareholders is appointed;
- The General Assembly of the Shareholders shall decide upon the increase of the share capital by a Decision which shall provide:

- the value of the issuance of the share capital;
- the nominal value of the shares;
- the total number of the new shares which are issued (if the increase is made by issuance of new shares);
- the period of at least one month, starting with the date the Decision is published in the Official Journal of Romania, when the shareholders can exercise their preference right to subscribe the new shares or the new share capital. The preference right can be limited or annulled only by the decision of the shareholders (only for SA companies).

For the validity of the Decision the following quorum is required:

- a majority of 2/3 of the present or represented shareholders (if the share capital is increased by the issuance of new shares);
- unanimity of the shareholders (if the share capital is increased by increasing the nominal value of the existing shares).

(Note: even the law doesn't clearly stipulates in this respect, in our opinion the unanimous decision of the shareholders for the increasing of the share capital by increasing the nominal value of the shares should be sufficient to register with the Trade Registry the increased value of the share capital. Therefore, the following steps should be regarded as related to the increase of the share capital by issuance of new shares).

- The Decision of the General Assembly of the Shareholders is published in the Official Journal of Romania. The period for exercising the preference right of the shareholders starts on this date. During this period, the shareholders have the right to subscribe the new shares proportional to the percentage of the share capital they hold. The shareholders have the right to pay at least 30% of the subscribed shares, provided that the rest of 70% to be paid within 3 years starting with the date the second Decision (analyzed below) is published in the Official Journal of Romania.
- After the expiry of the period for exercising the preference right, the Board of Directors summons a second General Extraordinary Assembly of the Shareholders, following the same publishing rules as above mentioned;
- The second General Extraordinary Assembly of the Shareholders shall approve, by a second Decision:
 - The value of the share capital which has been increased with the total value of the shares subscribed by the shareholders during the period for exercising the preference right;
 - The total number of shares resulted after the shareholders have exercised their preference right;
 - The annulment of the shares which haven't been subscribed by the shareholders;
 - The modification of the Incorporation Deed as regards the share capital and the shareholders' contribution to the share capital, as well as the entire text of the articles which are modified.
- The second Decision of the General Extraordinary Assembly of the Shareholders shall be published in the Official Journal of Romania and shall be registered with the Trade Registry. Starting with this registration, the new share capital structure becomes opposable to third parties.

1.1.2. The procedure for the issuance of the share capital, when the competent body to decide upon is the Board of Directors or the Directorate:

According to the law, the trade companies can chose between two management systems

- the unitary system (when the company is managed by the Board of Directors);
- the dual system (when the company is managed by the Directorate and the Control Council).

Only the General Extraordinary Assembly of the Shareholders can grant the power to increase the share capital to the Board of Directors or to the Directorate and only within certain limits:

- within a period of 5 years starting with the date of the decision of the General Assembly of the Shareholders; *and*
- within a maximum value (“authorized capital”) which cannot exceed half of the value of the share capital registered on the date of the decision of the General Assembly.

The Board of Directors or the Directorate will decide according to the procedure for taking the decisions, as it is stipulated in the incorporation deed of the company (only for SA companies).

1.2. The procedure for the transfer of share capital for cash consideration in a private company

The transfer procedure varies with the type of shares and with the type of company:

1.2.1. as regards the SRL companies, the procedure is as follows:

- the current shareholders approve that a part of /all the shares to be transferred to another person (the buyer), by a Decision of the General Assembly of the Shareholders;
- a sale purchase contract for the shares is concluded between the buyer and the shareholder/s who sells its/their shares;
- by a second Decision of the General Assembly of the shareholders (including the buyer), the transfer is approved and the Incorporation Deed of the company is modified;
- the decision is published in the Official Journal of Romania and registered with the Trade Registry and becomes opposable to third parties starting with the date of registration.

1.2.2. as regards the SA companies, the procedure is as follows:

- for the registered shares:
 - the seller and the buyer make a statement regarding the transfer which is registered with the shareholders book and signed by both seller and buyer;
 - the transfer is mentioned in the shares (if they are issued on a material support). Both the seller and the buyer signs below this mention;
 - the General Assembly of the Shareholders will approve, by a decision, the modification of the Incorporation Deed as a result of the transfer;
 - the Decision is published in the Official Journal of Romania and registered with the Trade Registry and becomes opposable to third parties starting with this registration.

1.3. How the above procedures differ if the consideration for the issuance or transfer is other than cash

The other consideration allowed by the law for the issuance of the share capital is the consideration in kind having as object:

- any material assets, which can be assessed and which have an economical value;
- the debts (for SA companies), which are considered by the law as contribution in kind.

In both situations analyzed above (issuance and transfer), certain issues should be considered:

- the asset object of the consideration should be assessed by an expert. The expert’s report should provide the description of each asset, the method of assessment, the fact that the value of the asset covers the number of the shares for which the consideration in kind has been made;
- in case the consideration has as object a land, then the decision of the general assembly of the shareholders which approved the issuance (in case of issuance of

share capital) or the sale-purchase of shares contract and the decision of the general assembly of the shareholders approving the transfer (in case of transfer) should be notarized by a public notary;

- in case the consideration has as object a debt, the shareholder is considered to fulfill its obligation to entirely pay the shares only when the company has obtained the payment of the amount for which the debts were deposited.

2. FINANCIAL ASSISTANCE

2.1. The restrictions on the acquirer's use of the target's asset to fund or provide security for the funding of the acquisition of share capital

According to the law, a company cannot loan or set any pledges in favor of a third party in order for this third party to subscribe or to acquire the company's shares.

There are two exceptions provided by the law:

- the transactions occurred during the current operations of credit institutions and of other financial institutions;
- the transactions occurred in order for the company's employees to acquire the company's shares.

These exceptions shall apply provided that the above mentioned transactions do not diminish the net assets under a certain threshold.

This threshold is determined as the aggregate amount of the registered share capital and the reserves which cannot be distributed according to the law or according to the Incorporation Deed of the company. (For instance, both SA and SRL companies are compelled to retain 5% of the profit each year in order to create the reserve fund until it amounts to a minimum of a fifth part of the registered capital.)

3. CORPORATE GOVERNANCE LAW

3.1. The operative corporate governance law in Romania

3.1.1. The general laws:

- Commercial Code (1887)
 - Provides the general principles which apply to the commercial relations and to the commercial deeds
- Law no. 31/1990 on trading companies, as it was amended (the last amendment has been made on December 1st, 2006, in order to include the EU provisions in this field)
 - Provides the general corporate governance rules which apply to all trading companies in Romania;
- Law no. 29/1990 on trade register, as it was amended on December 1st, 2006 in order to include the EU provisions in this field and the rules and regulations issued by the Romanian Government for its application
 - Regulates the procedure for the registration of incorporation and of any modification that occurred after the registration as regards any corporate matters;

Note: The Government intends to modify both Law no. 31/1990 and Law no. 26/1990 by an Emergency Ordinance, in order to clarify certain articles which are not clear.

3.1.2. The specific laws:

- for the public companies which are listed on a stock exchange market

- Law no. 297/2004 on capital market (as it has been amended up to present)
 - Regulates the setting up and operation of the financial instruments markets, with their specific institutions and operations as well as of undertakings for collective investment, in order to mobilize the financial availabilities through investments in financial instruments
- The Regulations and Instructions issued by the Romanian National Securities Commission
 - for the subsidiaries of foreign companies in Romania
- Law no. 122/1990 on the authorization and operation in Romania of the subsidiaries of the foreign trading companies and of the foreign trading organizations
 - Regulates the procedure for the incorporation and the rules regarding the operation of the subsidiaries of the foreign trading companies and trading organizations
- Law no. 346/2004 on the encouragement of the incorporation and development of the small and medium sized enterprises
 - Regulates the procedural rules and the principles which apply to the incorporation and operation of small and medium sized enterprises
 - for the former state companies which have been subject to the privatization procedure
- Emergency Government Ordinance no. 88/1997 on the privatization of the trading companies and the rules and regulations issued by the Government for its application;
- Law no. 137/2002 regarding the measures for the acceleration of the privatization procedure;
- Government Ordinance no. 25/2002 on certain measures for post privatization monitoring of the sale purchase contracts having as their objects the shares held by the state with the trading companies.

3.2. Web links to the corporate governance law in Romania

- for the general laws:
 - <http://www.onrc.ro/english/legislation.php> (includes the list of the applicable laws, Government's decisions, ordinances and regulations in force)
- for the specific laws:
 - <http://www.cnvmr.ro/en/index.htm>;
 - <http://en.animmc.ro/> (even if it doesn't display legislation in English, useful information about the small and medium sized enterprises can be found on this web site)
 - <http://www.avas.gov.ro/index.php?lang=en> (even if it doesn't display legislation in English, useful information about the privatization and post privatization of the former state trading companies can be found on this web site)

4. ECONOMIC DATA

4.1. Web link to a banking institution which provides periodic economic information about your jurisdiction

The website of the National Bank of Romania: http://www.bnro.ro/def_en.htm.