

ROMANIA: RECENT ENACTMENTS AND AMENDMENTS IN THE FIELD OF COMMERCIAL LAW

1. Enactment of Law No. 120/2015 on providing incentives for individual investors – business angels

On 17 July 2015, Law no. 120/2015 on the stimulation of individual investors/business angels (the "Law") entered into force, providing certain fiscal deductions to be granted to natural persons investors (so-called "business angels") for their investments in micro and small enterprises, which cumulatively meet the following conditions:

- are established as limited liability companies, as defined by Companies Law no. 31/1990;
- are autonomous enterprises in the sense of law 346/2004; and
- are solvent and face no proceedings relating to bankruptcy or liquidation.

The Law expressly states that investments in companies operating in the banking, insurance and reinsurance field, in the capital market and financial mediation, or performing any other financial activities, real property transactions and development, gambling and betting, steel and coal production and commercialisation, shipbuilding, production and commercialisation of weapons and ammunition, of tobacco, alcoholic drinks, substances under national control, psychotropic plants and narcotics, advisory services are excluded from the facilities granted by the Law.

The eligible individuals for becoming a business angel must cumulatively fulfil the following conditions:

- the individual is not associated in any way with the company's business before the investment is made and the investments consists of cash contribution to the company's share capital;
- the individual's investment ranges between EUR 3,000 and 200,000 and the invested amount will be paid through the banking system in Romania and will be recorded in the account books of the respective company;
- the investment is exclusively aimed at accomplishing the main business activity of the company and the business plan;

- the investor has obtained a tax clearance certificate from the competent authorities at the investment date and he/she also has a clean criminal record; and
- as a result of the investment, the investor cannot hold, either directly or indirectly, a quota exceeding 49% to the share capital of the target company.

The tax incentives from which eligible business angels benefit are:

- (a) exemptions from any tax on dividends for a period of three (3) years with effect from the date on which such investors acquire the shares of the company; and
- (b) exemption from any tax on the proceeds obtained from the transfer of shares, if such operation takes place at least three (3) years after acquiring the shares.

The total value of the amounts to which tax incentives are applicable cannot exceed the value of the investments made in the respective enterprise by all business angels.

2. Notable amendments to Companies Law no. 31/1990

On 13 July 2015, Law no. 152/2015 for amending and supplementing legislative acts regarding trade registry registrations ("Law no. 152/2015") was published in the Romanian Official Gazette. Law no. 152/2015 brought, *inter alia*, significant changes to the Companies Law no. 31/1990 which became effective starting from 16 July 2015.

The main amendments brought to the Companies Law no. 31/1990 refer to the following matters:

- the creation of security interests over the shares issued by a limited liability company must be based upon the approval of the shareholders representing at least $\frac{3}{4}$ of the share capital;
- the creditors of the shareholders are entitled to seize and sell the shareholders' shares in limited liability companies;
- in case of enforcement of the shares issued by joint stock companies and limited liability companies, directors and the members of the company's directorate are obliged to provide the secured creditor or the bailiff with any necessary information for evaluating the shares and also to facilitate their takeover;
- the grounds for the companies' dissolution approved by the competent court of law encompass new situations, as follows: (i) the company failed to submit the annual financial statements and the accounting reports to the territorial units of

the Ministry of Public Finance, within more than 60 business days following the due date; (ii) the company failed to submit the statement on the lack of business activity since its incorporation, within more than 60 business days following the due date; and (iii) the company failed to meet the legal requirements in connection with its registered office (i.e. the titled over the registered office expired or the ownership/occupancy right over such space is transferred);

- the termination of the voluntary liquidation can be extended with an additional period of 1 year provided that there will be no more than two such prolongations;
- the period within which the liquidators must be appointed, after the registration of the liquidation with the Trade Registry, was extended from 30 to 60 calendar days;
- on the basis of the final liquidation report, the liquidators must submit the request for the deregistration of the company with the Trade Registry, within 15 days after the end of the liquidation process, under the sanction of fines of RON 20 (approx. EUR 4.5) per day of delay;
- the relevant Trade Registry Office where an absorbing company or a newly set-up company is registered must immediately notify the completion of any cross-border merger, via the interconnection system of trade registries, at the company's costs, to the similar authorities from the relevant EU Member States where the companies involved in the merger are incorporated in view of their deregistration;
- in case of a cross-border merger by absorption performed by a company, acting as absorbing company and holding at least 90% but not the entirety of shares of the absorbed company, the reports of the independent experts and the documents subject to control are mandatory only if such requirements are provided by the law governing the absorbing company or the absorbed company.

CONTACTS



Ileana Glodeanu
Partner
ileana.glodeanu@wolftheiss.com



Diana Stetiu
Associate
diana.stetiu@wolftheiss.com

This memorandum has been prepared solely for the purpose of general information and it is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with the contacts listed above, or with:

Wolf Theiss Rechtsanwälte GmbH & Co KG
Bucharest Corporate Center (BCC)
58-60 Gheorghe Polizu Street
Floor 12-13, Sector 1
RO - 011062 Bucuresti
Tel.: (+40) 21 308 81 00
Fax: (+40) 21 308 81 25
bucuresti@wolftheiss.com

www.wolftheiss.com