

Types of Business

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For a foreign investor coming to Romania to set up business, choosing a form of company, as provided by Romanian legislation, represents the first step of the investment. The most frequently used forms of companies are:

a) **Limited liability company (SRL)** – the shareholders' liability is limited to the amount subscribed as participation to the company's share capital. The share capital of an SRL must be at least RON 200, approximately EUR 47 (calculated at the exchange rate of RON 4.2/EUR), divided into shares with a par value of at least RON 10 each. A limited liability company may be formed by a minimum of one shareholder and a maximum of 50 (fifty). These shareholders may include individuals and/or legal entities. A person, either natural or legal, cannot be the sole shareholder of more than one SRL. If a person intends to form several companies, it would be necessary for a minimum of one share to be held by another person or entity. Moreover, a limited liability company cannot have, as sole shareholder, another limited liability company that is also owned by a sole shareholder.

b) **Joint-stock company (SA)** – the shareholders' liability is limited to the amount subscribed in the company's share capital. Further to the amendments introduced by Law 441/2006 to the Romanian Companies Law, the minimum statutory capital for a joint-stock company shall be RON 90,000, approximately EUR 21,428 (calculated at the exchange rate of RON 4.2/EUR). Shares must be held by a minimum of 2 (two) shareholders, individuals and/or legal entities (there is no maximum limit), and can be open to either public or private participation. The par value of 1 (one) share shall not be less than RON 0.10.

The shareholders may empower the administrators to increase the share capital of the company with a specified amount (the Authorized Capital). Such Authorized Capital may not exceed half of the value of the share capital.

For the administration of joint-stock companies two alternative systems may be elected: the unitary and the dualist system.

1. *The unitary system* - the company shall be managed by one or several administrators, always in an odd number, organized as a Board. The Board may assign the management of the company to one or several directors. For those companies whose financial statements are subject to auditing, such an assignment is compulsory and the minimum number of administrators is three.

2. *The dualist system* – the management of the company is ensured by a Directorate and a Supervisory Board:

- The Directorate carries out exclusively the activity and management of the company and reports to the Supervisory Board;
- The Supervisory Board exerts permanent control over the Directorate of the company and reports to the General Meeting of the Shareholders.

The administrators and the directors, in case of the unitary system, and the members of the Directorate or of the Supervisory Board, in case of the dualist system, may not conclude a labour

agreement with the company. A services provision agreement (management agreement) is required instead.

c) **Representative office** – usually set up by foreign companies in Romania in order to carry out non-commercial activities, such as advertising and market research on behalf of the parent company. Representative offices cannot conduct commercial activities in Romania. In order to register a representative office, company officials should apply to the Ministry Economy, Commerce and Business Environment and pay an annual fee of the RON equivalent of USD 1,200 for the license. Upon the authorization, the representative office must be also registered with the Ministry of Public Finances and with the Romanian Chamber of Commerce. An annual income tax of the RON equivalent of EUR 4,000 must be paid.

d) **Branch of foreign company** – does not have its own legal personality or share capital. Being a unit of the parent company, branch activities cannot exceed the scope of activity of the parent company.

e) **Consortium** – domestic legislation allows for the conclusion of a joint venture agreement (in Romanian “contract de asociere in participatiune”). Under this agreement, parties act together for the accomplishment of a common business goal. This form of doing business in Romania does not create a legal entity. Generally, one party is in charge of the bookkeeping of the joint venture.

f) **Societas Europaea (SE)** – A SE may be created on registration in any of the EU member states in accordance with the EC Regulation 2157/2001. European law requires member states to treat an SE as if it were a public limited company, formed in accordance with the law of the member state in which it has its registered office. By using the SE, businesses operating in several member states can establish themselves as a single company, rather than following different rules for each country in which they have subsidiaries. SEs are only suitable for large companies.

Limited liability companies are the most popular vehicles among local and foreign investors for carrying out business activities in Romania, because they have fewer administrative requirements and greater flexibility in operations than other types of companies. They also have a low initial capital requirement. However, the number of joint-stock companies in Romania is increasing, because of their attractiveness to investors interested in equity investing. A joint-stock company must be set up whenever:

- a) the company wants to carry out certain types of activities (e.g. insurance, banking activities etc.);
- b) the entrepreneurs foresee any advantage or necessity with respect to the acquisition of its own shares by the company (for instance, offering them to the managers);
- c) the entrepreneurs plan to list the company on a stock exchange or on the OTC market;
- d) the entrepreneurs contemplate financing the company through issue of bonds or other financial instruments;

The other forms of doing business are not common among foreign investors in Romania. However, foreign investors still use representative offices if their activity only involves promoting one of their group companies in Romania. Branches are mainly used in cases where foreign investors plan for a short presence in Romania or if the investors decide, for capitalisation (in the case of banks) or commercial reasons, not to legally separate the Romanian entity from the parent.