



## NEW TRANSPARENCY MEASURES IN THE PUBLIC PROCUREMENT FIELD

### 1. Background

Despite the constant update of the public procurement legal framework, the Romanian authorities have signalled several issues related to the public procurement contracts granted to certain companies, in circumstances which are not able to comply, in all cases, with the general principles of transparency and equal treatment.

Thus, in order to ensure the observance of such principles to a higher extent, on July 24, 2020 Law no. 148/2020 for the completion of Law no. 98/2016 on public procurement ("**Law 148/2020**") has been enacted. Consequently, Law 148/2020 introduces a set of obligations which must be fulfilled by joint stock companies with share capital consisting of bearer shares ("**JSC**").

Even though Law 148/2020 is a legal novelty in its essence, the same does not necessarily come as a surprise for the business environment. This fact is due to several obligations enacted last year for JSC, related to the prohibition of issuing new bearer shares and the conversion of the current bearer shares into registered shares until January 2021.

### 2. The measures set forth in Law 148/2020

The main provisions of Law 148/2020 refer to the following:

- (i) at the request of the contracting authority, any JSC will have to communicate the personal identification data of the beneficial owner ("**BO**") of the bearer shares, in order to be able to participate in any procedure for awarding a public procurement contract as a tenderer, candidate, subcontractor or supporting entity; in such scenario, JSC shall issue an affidavit regarding the BO of the bearer shares;

- (ii) if the JSC does not comply with the above request, this may be qualified as a potential conflict-of-interest situation;
- (iii) the contracting authority will be obliged to exclude from a public procurement procedure any JSC which does not prove the identity of the BO of the bearer shares.

### 3. Conclusions

Seeing the legislative novelties in the public procurement field, it is clear that the Romanian authorities implemented such changes in order to prevent companies with non-transparent shareholding structure to participate in any public procurement procedures in case they do not ensure the transparency principle, in line with the policy applicable at the European Union level.

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This article contains general information and should not be considered as legal advice.



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