



ROMANIA – NEW LEGISLATION ON REPRESENTATIVE OFFICES

1. Overview

On August 4, 2022, Ordinance no. 18/2022 on the authorization and functioning of representative offices of foreign companies and economic organizations in Romania (“GO 18/2022”) adopted by the Romanian Government has been published in the Official Gazette.

GO 18/2022 represents the first change of Romanian legislation on representative offices adopted since 1990, thus bringing much needed updates in the field, including as regards the means by which the procedure will be undertaken, namely via a digital platform.

Registering a Romanian representative office implies the payment of an authorization tax amounting to EUR 1,000 per year.

2. Registration procedure

As anticipated above, the registration of Romanian representative offices by foreign legal entities will be undertaken via a digital platform to be set-up by the Romanian Ministry of Entrepreneurship and Tourism (“MAT”). Such platform will be put in place within 180 days as of the entry into force of GO 18/2022.

The procedure implies the submission by the foreign legal entity registering the representative offices of a request reflecting the following information:

- (i) the name, registered office address and tax code of the foreign legal entity;
- (ii) the business object of the representative office, which will need to be in line with that of the legal entity;
- (iii) the duration of the representative office (minimum one year);
- (iv) the representative of the representative office before third parties;
- (v) the registered office address of the representative office.

In addition to the information mentioned above, the registration request will need to be accompanied by the following documents:

- (i) a document issued by the competent authority from the country where the legal entity setting up the representative office is headquartered reflecting the identification details of such entity, its business object and share capital along with an authorized translation thereof bearing a qualified or an advanced electronic signature; such document should normally consist of company excerpts issued by the competent company/trade registry;
- (ii) the articles of association of the legal entity accompanied also by an authorized translation bearing a qualified or an advanced electronic signature;
- (iii) the power of attorney for the individual appointed to represent the representative office;
- (iv) the proof of payment of the aforementioned EUR 1,000 authorization tax;
- (v) a letter of creditworthiness issued by the legal entity's main bank;
- (vi) proof of the registered office of the representative office; normally this should consist of a (free) lease agreement regarding the relevant premises where the representative office's registered office will be established.

The entire registration procedure (including potential requests from the MAT to supplement/amend the registration documents) will be undertaken via the above-mentioned digital platform, including the issue of the representative office's functioning permit to be issued by the Ministry.

3. Liability

GO 18/2022 also provides liability rules in connection to Romanian representative offices, as follows:

- (i) the foreign company/economic organization setting-up the representative office will be liable for the legal acts and activity of its representative; while not

expressly provided under GO 18/2022, this is the result of representative offices not having legal personality;

- (ii) in addition to the above, the foreign company/economic organization will be jointly and severally liable with employees of the representative office as regards damages resulting from illicit acts of such employees as part of the representative office's activity.

4. Tax registration

Same as prior to the enactment of GO 18/2022, representative offices need to be fiscally registered before the Romanian tax authorities and pay taxes. Currently, the taxes imposed upon representative offices amounts to a pre-determined yearly amount of RON 18,000 (approximately EUR 3,600) though it remains to be seen whether the same will be updated in the Romanian Tax Code.

5. Other relevant aspects

In addition to the above, GO 18/2022 contains few other relevant provisions for representative offices, such as:

- (i) MAT can decide to revoke the functioning permit in case the same do not comply with Romanian legislation on money laundering and terrorism financing, with their business object or with their tax obligations;
- (ii) the de-registration of a representative office implies two steps, first being the de-registration from the tax authority's database followed by submission of the proof thereof before MAT.

6. Conclusions

GO 18/2022 significantly reduces bureaucracy for setting up Romanian representative offices, especially as it seems that entire registration and de-registration procedure will be undertaken by digital means.

This should normally encourage foreign companies to set up representative office in Romania where their activity therein can be achieved without setting up a distinct Romanian company.

As GO 18/2022 will be followed by enforcement guidelines to be issued by MAT within 60 days as of the entry into force of the Ordinance, it remains to be seen how the same will impact the registration and functioning of such entities.



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