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SHEDDING LIGHT ON THE CONVENING TERM APPLICABLE FOR LIMITED LIABILITY COMPANIES

1. Background

As regards Romanian limited liability companies, the convening of the general assembly of shareholders is done in accordance with the articles of association or as provided under Romanian Companies Law 30/1991 (the "**Companies Law**"), specifically through registered letter at least ten days before the date set for the general assembly.

The Companies Law does not contain any additional provisions in order to clarify in what manner this term should be calculated. This is particularly important to clarify, seen that non-observance of the ten days term represents a violation of the legal provisions regarding the convening of general assemblies and can be sanctioned with the nullity of the shareholders resolution issued in the relevant assembly.

Under these circumstances, if the method of convening is not clearly established and further detailed by the shareholders in the articles of association of the company, the aforementioned legal provision can lead to different interpretations regarding the exact moment from which the ten days term should be calculated.

In other words, the legal provisions regulating this matter raises the question of whether the ten days term starts from the date of delivering the convening by registered letter or from the date on which a shareholder receives that letter.

As a result of this situation, in the context of a pending litigation before the Romanian courts, the High Court of Cassation and Justice (the "**High Court**") was requested to render a decision establishing which of the two interpretations is valid.

2. Ruling of the High Court

The matter regarding the interpretation of the legal provisions in question was brought before the High Court, which rendered the Decision no. 55 dated September 21, 2020 and published in the Romanian Official Gazette no. 969 dated October 21, 2020 (the "**Decision no. 55**").

First of all, the High Court revealed that different courts of law invited to provide opinions in connection to the analysed matter, provided conflicting interpretations, which translates into a rather high risk of non-unitary practice.

Taking into consideration all arguments presented by the parties as well as the opinions provided by various courts of law, the High Court rendered that the ten days term starts from the moment of receipt of the convening notice by a shareholder.

To reach this conclusion, the questioned courts of law and the High Court argued that the intention of the legislator is to allow the shareholders to be informed in advance about the agenda of the general assembly in order to prepare their standings and ultimately their votes. A different interpretation would bring generate disruptions to the will of the company, which might lead to the nullity of the resolution of the general assembly of shareholders.

Thus, the aforementioned term is considered to be set in favour of the shareholders, in order to enable them to be informed in an effective manner as regards the items on the agenda and to be allowed to prepare their viewpoint on the respective matters and, ultimately, to participate to the assembly in order to support the same via their vote.

The contrary interpretation (*i.e.* that the term would be calculated from the moment of delivery of the convening notice) could be detrimental for example to foreign shareholders, where it is likely for the registered letter containing the convening notice to not reach them within the ten days term. In some circumstances, the convening notices may even reach such shareholders even after the date set for the general assembly. In such cases, the will of the company would not be actually met, as such shareholders with not be in the position to exercise their votes.

The High Court emphasized the fact that the right to vote in a general assembly is with the shareholder starting with the incorporation of the company and may be expressed only in the general assembly. Thus, by not being informed in due time as regards the agenda of the assembly, the exercise of this right is infringed, as the shareholders are indirectly denied of the opportunity to properly exercise their vote.

The High Court also pointed that the convening of the general assembly is an unilateral deed and in accordance with the Romanian Civil Code, the same must be communicated to the addressee, in order to generate legal effects.

Although this view can lead to certain difficulties in properly establishing the term prior to the general assembly when the convening notice should be delivered, the High Court argued that it is more important to inform the shareholders in a concrete and timely manner and doing so to enable them to exercise the right to analyse the agenda, prepare for the assembly and vote in accordance with their viewpoint and this can be achieved by calculating the term from the moment of receipt of the convening notice.

3. Conclusions

As a result of Decision no. 55, which has general applicability and mandatory effects, the differences of interpretation regarding the means of calculating the term for convening the general assembly of Romanian limited liability companies are eliminated.

In practice, the shareholders will benefit from at least a ten days term before a general assembly in order to prepare their position in relation to the items on the agenda and to vote accordingly, so that the will of the company reflects the will of its shareholders.

Consequently, the directors of limited liability companies will have to comply with this interpretation and convene the general assembly with the observance of the minimum ten days term between the receipt of the convening notice by a shareholder and the date on which the general assembly is held.

Specifically, the convening notices should be sent in advance with a reasonable amount of time, in order to be received with at least 10 days prior to the general assembly by all the convened shareholders.

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Daniel Alexie

Senior Associate

daniel.alexie@mprpartners.com

Diana Borcean

Associate

diana.borcean@mprpartners.com