

MPR | Partners proposes amendments to draft bill on corporate law amendments related to covid-19



I. Context

Considering that the Draft Emergency Ordinance on certain measures related to corporate law (the "**Draft Emergency Ordinance**") has been launched for public debate and proposes various measures aiming to help Romanian companies in the Covid-19 outbreak context (for example, the possibility for holding virtual shareholder meetings even if such possibility is not reflected in the company's articles of incorporation), **MPR | Partners** has proposed further amendments in this regard, for the purpose of assisting companies with other formalities that are difficult to achieve in the current context.

II. Proposed amendments

First of all, **MPR | Partners** has proposed the insertion of an article with the following content: "*During the state of emergency, the companies regulated by the Companies Law no. 31/1990, republished, as subsequently amended and supplemented, may send to the trade registry office documents under private signature in electronic form, without any further formalities needed, including the case when the applicable legislation or the practice of the trade registry office requires the submission of the relevant documents in notarized form and/or with apostille.*"

Moreover, **MPR | Partners** has proposed that the Draft Emergency Ordinance should be supplemented with the following definitions of the phrases "*document under private signature*" and "*in electronic form*" reflected in the article proposed as above:

- (i) "*document under private signature means a document which is written and signed by the parties, without the intervention of any state body and without authentication made by a notary public*";
- (ii) "*electronic form means either a scanned form of a document under private signature or the form of a document to which a qualified electronic signature has been incorporated, attached or logically associated, in accordance with Regulation (EU) No. 910/2014 of the European Parliament and of the Council of July 23, 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, or an extended electronic signature, in accordance with the provisions of Law no. 455/2001 on electronic signatures*".

MPR | Partners' proposals for amending the Draft Emergency Ordinance within the above-mentioned terms are based on the following arguments:

- (i) the provisions of Article 67 of Annex no. 1 of April 14, 2020 to the Decree no. 240/2020 on the extension of the state of emergency on the Romanian territory - first emergency measures under direct applicability, according to which affidavits and signature specimens may take the form of documents under private signature or electronic form, during the state of emergency; besides such affidavits and signature specimens other documents such as those mentioned at point (iii) below require formalities difficult or impossible to implement in the current context;
- (ii) the lack of legal definitions for the phrases "*document under private signature*" and "*electronic form*" within the content of the above-mentioned Decree no. 240/2020;
- (iii) the practice of the Trade Registry Offices to also request, in addition to affidavits and specimen signatures, other documents in notarized form and/or with apostille (such as, for example, information excerpts issued by the competent foreign Trade Registry on the shareholders who are foreign legal entities);
- (iv) the difficulty and/or objective impossibility of undertaking the formalities for notarization and/or application of the apostille in the context of the pandemy caused by the spread of the SARS-CoV-2 and the disease caused by it, COVID-19.