

CMS | Romania passes law allowing authorised individuals, sole proprietorships and family enterprises to become companies



On 2 October 2024, the Romanian Parliament voted to adopt Draft Law No 274/2024 for the completion of Government Emergency Ordinance No 44/2008 on the conduct of economic activities by authorised individuals, sole proprietorships and family enterprises. This draft legislation is currently awaiting promulgation by the President of Romania and publication in the Romanian Official Gazette in order to go into force.

The draft law introduces important amendments to the current applicable legal framework, providing Authorised Natural Persons (PFAs), Sole Proprietorships (IIs), and Family Enterprises (IFs) the possibility to transform, under certain conditions, into limited liability companies (SRL) or other types of commercial companies (i.e. joint-stock companies, general partnership companies, limited partnership companies and limited partnership limited by shares companies) as regulated by Romanian Companies Law No. 31/1990. This legislative initiative was launched to facilitate the transition of small individual entrepreneurs to commercial companies after a surge in natural legal persons professionals was noticed in the Romanian market beginning in 2022.

The draft law was considered essential after many PFAs, IIs, and IFs had grown to a level requiring double-entry bookkeeping and diversification of the relevant NACE codes. Current legislation, however, restricted their transformation, leaving dissolution as the only option, which results in the loss of tax and banking history and business relationships. A legal framework allowing their conversion into legal entities like SRLs is expected to ease administrative burdens, streamline procedures, and support efforts to reduce bureaucracy and simplify processes.

The mechanism for the transformation

The draft law introduces a clear and simplified procedure for the conversion of PFAs, IIs, and IFs into SRLs or other types of commercial companies. The key regulations include:

- **Eligibility:** PFAs, IIs and IFs may apply for transformation into a SRL or other type of commercial company, provided that they meet certain conditions stipulated by law, namely that they were established for a minimum of one year prior to the transformation.
- **Required documentation:** The transformation process involves submitting an application to the Romanian Trade Registry, along with a few supporting documents, which include:
 - the registration certificate obtained by the PFAs, IIs or IFs;
 - the company's articles of incorporation and evidence of subscription of the share capital, except for limited liability companies;

- evidence of a registered office;
- the tax certificate;
- the VAT registration code, where applicable.

□ **Share capital:** In the case of transformation into a SRL or another type of commercial company, the entrepreneur must ensure the minimum share capital required by law for the entity type.

□ **Tax regime:** A PFA that transforms into an SRL will switch from single-entry to double-entry bookkeeping and will be able to add new and different areas of NACE activity. The SRL resulting from the conversion of the PFA will keep its tax identification details and VAT registration code, and its tax and banking history, as well as the old business relationships developed over time by the PFA.

□ **Patrimonial responsibility:** A major advantage of transforming into a SRL is the asset protection offered by this legal form. Entrepreneurs will no longer be personally liable for the entity's debts, but only limited to the subscribed share capital amount.

□ **Continuity of grants:** Another major benefit of this legislative amendment is that entrepreneurs who have accessed grant funds for their projects and choose to convert from PFAs/IIs/IFs to SRLs will no longer be obliged to return the full amount received, including penalties, if they chose to dissolve the entity during the monitoring period of the project. By transforming into commercial companies, they can maintain the economic viability of these companies, ensuring that the objectives of the funded projects are effectively achieved.

Challenges and considerations

While the transformation of PFAs, IIs and IFs into SRLs or other type of commercial companies offers many advantages, there are also challenges to consider:

□ **Initial costs:** Transforming into a SRL or other type of commercial company may involve certain initial costs, such as the minimum share capital and legal fees associated with the transformation process. Moreover, the accounting and legal management of a SRL or other type of commercial company can be more complex than of a PFA, II or IF.

□ **Compliance with legal requirements:** SRLs are subject to stricter legal and administrative requirements, such as the preparation of annual financial statements, holding general meetings, and filing financial reports.

□ **Tax regime:** Although SRL's taxation can be advantageous in certain cases, it is important for entrepreneurs to assess the overall tax impact of the transformation, considering the specifics of their business and the applicable tax regime.

Despite these challenges, the draft law presents PFAs, IIs and IFs with the valuable opportunity to transform into SRLs or other forms of commercial companies. In the long run, this legislative initiative can contribute to strengthening the entrepreneurial environment in Romania and stimulating sustainable economic development by encouraging entrepreneurship and the growth of small and medium-sized enterprises.

For more information on this draft law, contact your CMS client partner or these CMS experts: **Rodica Manea** and **Rebeca Vladislav**.