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# Digitization of the Company Share Registration System



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## Introduction

Croatia has made significant steps in its social and economic transition to a democratic society and a market economy. On this path, it has adopted a number of developed countries' trends. In addition, membership in the European Union and efforts to join the OECD make significant contribution to the continuous development and improvement of business conditions for Croatian entrepreneurs and foreign investors.

In recent years, the IT scene has gained in importance, with the increased establishment of start-ups that achieve notable results and are increasingly successful on the global market. However, some processes and restrictive regulations that reduce flexibility still make many young, successful entrepreneurs leave Croatia after they achieve a certain level of success.

One such process, which is very important, refers to the share transfer procedure in limited liability companies. These companies, d.o.o. and j.d.o.o., make up over 90% of all businesses in Croatia. In addition, today such processes require a higher level of flexibility and speed and should be secure and accessible to company founders, investors, employees and potential customers with no stress.

Croatia has digitized some important processes, including the electronic business start-up system START, as an easier start for new entrepreneurs. AmCham believes that it is a good time to digitize other processes related to management rights in companies. One of the key ones is the management, administration and disposal of company shares.

## Digital depository of company shares

### Existing regulations and process

The share transfer in limited liability companies was regulated in the initial version of the Companies Act, which was adopted in 1993 and entered into force in 1995. In short, shares in a d.o.o. are transferred by a notarial deed or a certified private document. While it is possible to draft the legal transaction that is the basis for the transfer (purchase, exchange, etc.) in writing without any special form, the transfer contract itself is a strictly formal document. This often makes it quite expensive in relation to the value of the share itself, since the parties must bear certification and often attorney costs.

In addition, since 2009, all members of a limited liability company and all changes in membership need to be registered in the court register. This additional step in the process has also caused additional costs and has prolonged each transfer procedure, sometimes by weeks. In addition, over the years, the court registers of various commercial courts in Croatia have adopted quite different practices regarding the content of the transfer contract, so quite often this fairly simple document must comply with the requirements of individual courts and judges.

Therefore, the current process of share transfer in a d.o.o./j.d.o.o. requires three steps:

Parties (contract and conclusion of the contract) → Notary (certification, preparation of the list of members, preparation of the application for registration in the court register) → Court register (registration of the change of members)

In this case, the entire procedure of the simplest share transfer in which the parties know everything about the company whose share is being transferred, looks like this:

1. Preliminary check: the acquirer should check the data on the status of the shares with at least three parties:
  - a. Company: is the transferor registered in the share register, and are all shares that are being transferred registered with the transferor as their holder and are there any additional entries, annotations or notes; finally, is there any pre-emption right or another restriction on the transfer that needs to be resolved beforehand,
  - b. Court register: is the transferor a registered member of the company,



- c. Financial Agency - FINA, register of court and notarial insurance: are shares that are being transferred subject to any encumbrances, prohibitions on the disposal of shares, etc.
2. Drafting the contract: the contract is drawn up in written form; the digital form is not valid. Two documents are usually drawn up: A sales/exchange contract, etc., and a share transfer contract.
3. Obtaining the latest list of company members: the notary must be notified of the conclusion of the contract at least a few days in advance, so that the notary can obtain from the court register the latest list of company members that was submitted to the court by the notary who certified the documentation at the time.
4. Conclusion of the contract: the share transfer contract must be concluded before a notary public, in the form of a notarial deed or a certified private document. In addition, notaries often ask the parties to prove whether there are any additional conditions for the transfer and whether they have been met.
5. New list of members and other documentation: in addition to the transfer contract itself, the parties must also make other statements proving their "suitability" for acquiring a share, while the notary must draw up a new list of company members.
6. Delivery of documentation to the company: since the company is often not a party to such transfer, it needs to have a copy of the certified contract for entry in the share register and entry of the change of members in the court register of the competent commercial court.
7. Entry of the transfer: after the company receives the contract, its management is obliged to enter the transfer in the share register (if it is kept at all and if there are no obstacles in the form of additional conditions) and submit an application to the court register for entry of the change of company members. The company does not have to prove to the transferor and the acquirer that the entry in the share register has been made.
8. Entry of the change of members in the court register: the last step in implementing the share transfer. Although as a rule the transfer does not depend on the entry itself, various institutions and other bodies often request an extract from the court register as a proof of membership in the company.
9. Entry in the register of beneficial owners: if it is a change in the structure of company "ownership" in accordance with the regulations on the prevention of money laundering, the changes must also be entered in the register of beneficial owners.

As can be seen, this is a multi-step process. Compared to today's modern digital processes, this procedure has certain disadvantages:

**Expensiveness**: costs of certification, legal advice and court fees

**Complexity for parties**: full of formal requirements and steps from the beginning to the final implementation

**Complications in implementation**: too long duration, inconsistent court practice, outdated in relation to the requirements of today's market

**False security**: regardless of formal checks, the system does not guarantee security for investors, entrepreneurs or creditors

All of the above makes the Croatian system of share transfer one of the most complicated in the EU and directly affects the willingness of certain investors to use Croatian companies as their businesses to carry out operations in Croatia or more broadly in the EU.

## Proposal for a new system

In order to simplify the entire system of share transfer for parties, while at the same time speeding it up and improving it in terms of information security, it is necessary to completely digitize it and create a single depository. The single depository should be connected to the courts, the tax administration and all other stakeholders participating in the process or having a direct legal interest in the information in that depository.

In order for the depository to make sense and come to life as a single register of everything related to shares in limited liability companies, it is necessary to:

Unify the registration of all data on shares, their holders, transfer procedures and other share-related procedures, as well as encumbrances and other entries regarding/in connection with shares.

Digitize the transfer procedure using the digital identification of the parties, provided that the parties may continue to contact notaries and conclude contracts with them, with the automatic registration in the depository by the notary.

Abolish the registration of company members in the court register, as well as all other share entries in other registries.

In this way, all information on shares would be consolidated in one place and fully digitized. Additionally, this would make the procedure for concluding a share transfer contract fully digital as well as other contracts such as a lien contract, etc.

## Contents of the depository

In order for the depository to work, it needs to have the following data:

- Company data (synchronized with the court register)
- Data on shares:
  - Ordinal number
  - Nominal amount
  - Share in equity
  - Rights from the share
  - Special benefits and notes
  - Share encumbrances
  - Pre-emption right, consent to transfer and other internal restrictions on transfer
  - All other annotations and notes
- Data on the share holder:
  - Personal information
  - Total number of shares held in the company
  - Historical data on previous holders
  - Personal notes, annotations and prohibitions
  - All other necessary data

## Share transfer procedure

One of the main changes in the share transfer system itself refers to the transfer procedure. Although it is still possible to carry out the transfer by concluding a share transfer contract before a notary public, i.e. by certification or in the form of a notarial deed, the basic procedure is to conclude a digital contract.

The existing NIAS system allows all citizens and legal entities registered in Croatia to use digital services with the help of identity verification using eOI, i.e. the Certilia service. In addition, on May 20, 2024, the so-called eIDAS 2 Regulation came into force in the European Union, which obliges all EU member states' citizens to have a digital "wallet" for digital personal identification by May 20, 2026 at the latest which will be universally usable throughout the EU. This will make Croatian digital services accessible to all EU citizens, making the digital transfer of shares in a Croatian limited liability company available to almost half a billion EU residents and most business entities headquartered in the member states.



The procedure itself would, in principle, continue to follow the basic principles of the share transfer. However, since the depository system would contain all the necessary data, both on the content of the shares and on any restrictions on the transfer (personal ones or restrictions related to the shares themselves), the possibility of errors, manipulation and abuse would be significantly lower compared to the current system. In addition, the entire procedure would be much faster and simpler, while simple and unconditional transfer could be carried out completely automatically within the system, within a few seconds of concluding the contract.

In short, the proposal for a new procedure for digital share transfer contract would be as follows:

1. Preliminary check: the transferor could carry out a complete basic check by inspecting the depository, without the need for checks in other registers or taking someone's word for it.
2. Drafting the contract: the transfer contract is prepared by filling out a pre-defined form for implementing the transfer. Given that the system is connected to all data, any limitations and impossibility of implementing the contract would appear as "red flags" already when filling out the form itself and the parties would not be able to complete the procedure if the necessary prior actions (e.g. pre-emption right, company consent, etc.) have not been taken, or if there is some prohibition on the transfer. The parties could enter the purchase and sale terms in the form itself (the price would necessarily be indicated in the digital transfer contract that is subject to taxation), or it would only be indicated that it is a special internal contract between the parties.
3. Conclusion of the contract: The share transfer contract, after its content has been finalized, would be concluded using digital signature, i.e. an eID (eIDAS 2 compatible) certificate. If the party were a third-country citizen without an adequate digital identity, the contract could be concluded on behalf of that party by a lawyer or a notary public from Croatia. If the contract is concluded in writing before a notary public, the notary public digitizes, i.e. scans, the contract, registers its conclusion via an application and initiates its implementation.
4. Implementation of the transfer: from the moment the contract is concluded in a valid manner, the implementation of the contract and the share transfer are almost automated. If there are no additional conditions and the contract is concluded in a digital form, the transfer can also be completely automatic. In other cases that are not automatically verifiable, such as, for example, when concluding a contract with a notary public or in case of restrictions, the transfer is carried out with additional human verification.

In any case:

- a. by registering the transfer in the depository, the transfer is deemed carried out,
- b. the company is notified of each transfer carried out through the system itself, and then all members get information,
- c. the court register does not participate in the implementation of the transfer, but only receives notification about it through the networked system,
- d. the tax administration is automatically notified of the transfer through the networked system,
- e. the register of beneficial owners is automatically updated if there is a change that also affects the content of the entry in that register,
- f. all third parties can immediately and easily check the actual status, and it is not possible for the transfer or changes not to be recorded, neither accidentally nor intentionally.

As can be seen, this procedure would require far fewer steps, would be much faster and simpler than the current one, and far safer for all stakeholders (both for the parties and the company, as well as for state institutions that have an interest in having accurate, complete and timely information about the transfer).



## Deciding on the depository manager

The depository management itself offers several options. Of course, choosing the optimal concept is crucial, given that each of the options has its own advantages and challenges.

- **Integration into an existing ministry, agency or other government body**

*Just as various ministries and government agencies already maintain different registers, the management of the depository could be entrusted to an existing body or legal entity with public powers, such as the Ministry of Justice, Public Administration and Digital Transformation (MJPADT). The advantage of this model would be the rapid administrative organization and use of existing resources for management, as well as professional staff with a specific set of knowledge that has not been necessary within the existing elements of the system so far.*

- **Establishment of a separate body or legal entity with public powers**

*Just like the Central Depository and Clearing Company (CDCC) manages the depository of shares, there could also be a new manager of the register, whose main and only activity would be the management of the depository of shares. And while the advantage of that model would be the dedication of the manager and focus on that activity from the very beginning, the challenge would still be of an organizational nature.*

- **Private Manager Licensing Model**

*In contrast to the previous two models, a licensing model is also possible, where the state relies on the regulator or authority (e.g. HANFA or MJPADT) to license one or more private depository managers upon proving that they meet all conditions for depository management, with regulated market competition in the process of acquiring clients, i.e. of companies that would choose an individual manager. The advantage of such a model is that the financial and organizational burden shifts from the state to private managers, who would have to retain clients and make a profit based on their efficiency and user experience. The challenge would be mostly to define the conditions for licensing and implementation of regulatory supervision.*

Each of the proposed models has its role models in some of the existing systems.

Model 1 is applied in many existing registers in Croatia which, although not related to shares in companies, allow for online registrations and are kept electronically.

Model 2 is very common, and almost synchronized among EU countries when it comes to joint stock companies (Clearstream, Euroclear, ECRS, OeKB CSD), and in some countries such as Estonia it is also applied to limited liability companies.

Model 3 is increasingly applied in relation to individual capital markets. In 2023, Croatia introduced rules for all large share portfolios to be primarily registered with brokerage houses.

## Conclusion

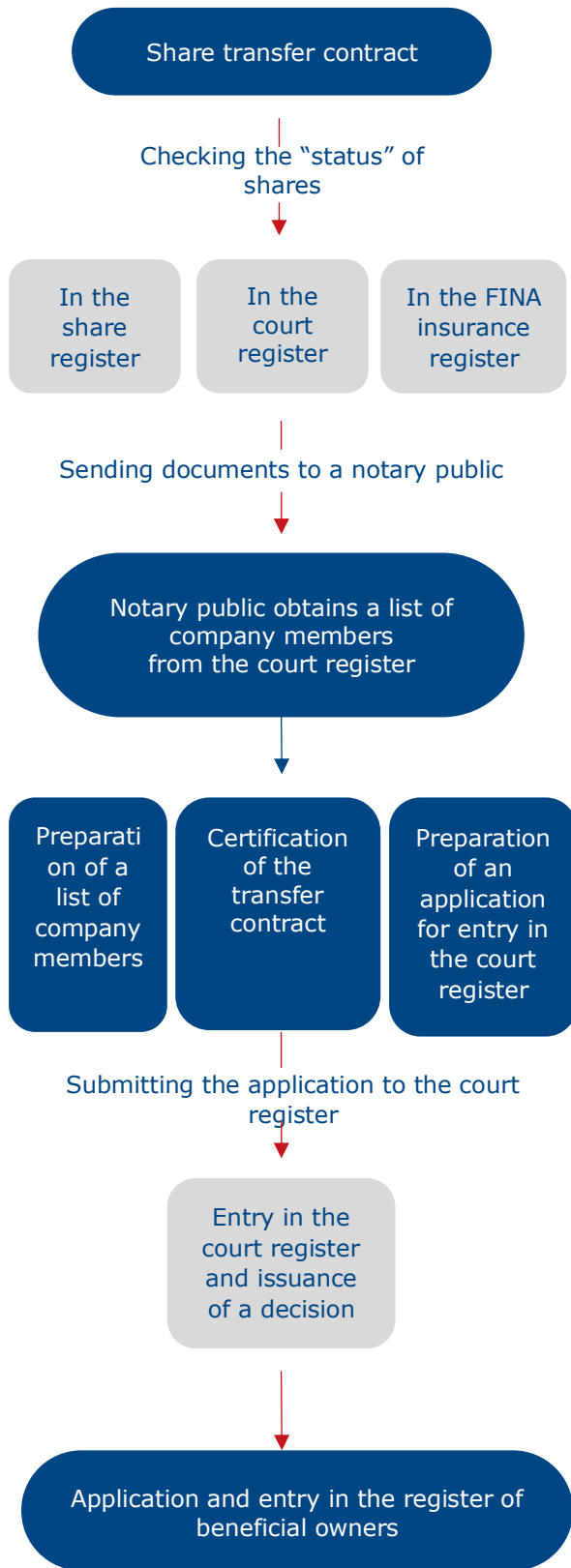
Today's system for managing data on company shares and disposing of shares in limited liability companies in Croatia is ready for digitization and for positive changes that will align the system with modern technologies and operations.

AmCham's proposal presented in this position paper does not go into too much detail about the implementation itself. However, AmCham representatives are ready to cooperate with the competent institutions on implementing legislative, technical and other issues if the proposal is adopted and a decision is made to digitize the system of share registration.

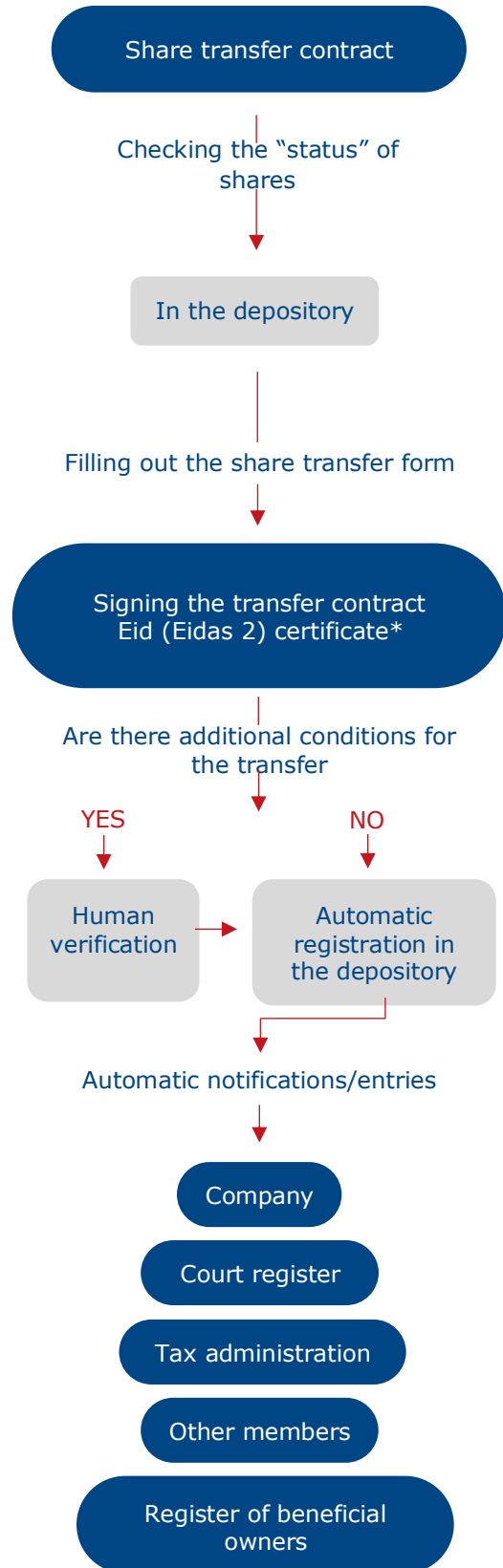
The benefits of digitizing the share registration system are best illustrated by comparing the existing and proposed new model:



## CURRENT STATUS



## AMCHAM'S PROPOSAL



\*If the contract is concluded in writing before a notary public, the notary public digitizes (scans) the contract, registers its conclusion via an application and initiates its implementation.





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