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Proposed changes to the legal regime of Romanian companies

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Proposed changes to the legal regime of Romanian companies

On 27 June 2017, the legislative initiative (the “**Draft Law**”) amending and supplementing the Law on companies no. 31/1990 (the “**Companies Law**”), the Law on accounting no. 82/1991 (the “**Accounting Law**”) and the Law on the organization and operation of cooperatives no.1 / 2005 (the “**Cooperatives Law**”) was adopted by the Senate, and is currently under registration process with the Chambers of Deputies for debate purposes.

The Draft Law introduces as an absolute novelty the possibility for the shareholders of a company to receive dividends **every quarter**, and not only on an annual basis, as currently provided by the legislation in force.

We summarise below the main amendments brought by the Draft Law, in the form adopted by the Senate:

1. Dividends distribution:

- ◆ The dividends can be distributed optionally to the shareholders **every quarter** on the basis of the balance sheet, and annually after the regularization by the annual financial statements, unless the articles of association provide otherwise.
- ◆ The distribution of dividends is subject to the approval of the General Shareholders Meeting, that shall also set **the term** in which the payment of the dividends will be made, unless such term is provided by special laws (as case may be).
- ◆ The regularisation of the variations arising from the distribution of dividends during the fiscal year will be made through the annual financial statements. The company is obliged to pay any additional dividends owed no later than six (6) months as of the approval of the annual financial statements. After such period has expired, the company will pay delay penalties at the level provided by the law. As for the shareholders, they are obliged to pay back to the company any excess amount distributed as dividend in 60 days, according to the Accounting Law as amended by the Draft Law. However, any delay penalties shall be paid by the shareholders in the same conditions as for the company, respectively after the expiry of a six (6) months term as of the approval of the annual financial statements, as per the Companies Law amended by the Draft Law.



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- ◆ The records of partial distribution of dividends every quarter will be made available for the shareholders at the company's headquarters.
- ◆ As in the case of shareholders of companies, the cooperative members can also be distributed every quarter dividends, and not only annually, as per the legislation in force.
- ◆ Very important, the Draft Law amends the Accounting Law by allowing companies to access **up to 100% of the quarterly net accounting profit** (minus any losses incurred and deposited reserves) for the optional distribution of profit every quarter. This amendment seems thus to apply to all entities governed by the Accounting Law which distribute profits, thus to companies as well. As such, the distribution of profits quarterly is not held by any specific limits.

2. Decriminalisation of certain conducts

- ◆ The Draft Law decriminalises the **use of the company's credit in bad faith** by the directors, founders, legal representatives of the company, managers, executive managers, members of the supervisory board or of the directorate (art. 272 letter b of the Companies Law) and **the prohibition** by the directors and the above mentioned persons **to borrow money from the company** in excess of the regulated EUR 5,000 threshold (art. 272 letter c of the Companies Law). This decriminalisation obviously gives a larger room for manoeuvre to the directors and founders. However, the general offences regulated by the Criminal Code such as abuse of trust or fraudulent management remain in force..

3. Criminalisation of certain conducts

- ◆ The Draft Law criminalises the conduct of the he founder, director, manager, executive manager, member of the supervisory board or of the directorate or the legal representative of the company, who cashes in or pays **dividends**, under any form, **resulting from fictitious profits** or that could not be distributed within the fiscal year and based on the balance sheet for every quarter, and on the financial statements, annually, or in the absence of or contrary to the information in the financial statements of the company.
- ◆ This new criminal offense is just a re-writing of the current version in force, with a view to adapt it to the new legislative amendments on the distribution of dividends.

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