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Dividends can now be distributed also quarterly

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On 12 July 2018 **Law no. 163/2018** for the amendment and supplement of the **Accounting Law no. 82/1991**, for the amendment and supplement of the **Companies Law no. 31/1990** and also for the amendment and supplement of **Law no. 1/2005** for the organization and functioning of a cooperative society (“**Law 163**”) was published in the Official Gazette of Romania no. 595 and shall enter into force in 3 days from the publication date.

The novelty brought by Law 163 is represented by the possibility of companies to distribute dividends quarterly, and not only annually. In this respect, Law 163 amends the Companies’ Law no. 31/1990 and the Accounting Law no. 82/1991 in view of establishing the conditions in which the quarterly distribution of dividends may be made.

Also, Law 163 supplements Law no. 1/2005 for the organization and functioning of a cooperative in view of introducing the right of the members of a cooperative society of receiving dividends from the quarterly profit and also, in view of extending the scope of the offenses under this law to the deed of the administrator, the president of the cooperative society or the executive director to cash in or pay dividends, in any form, from fictitious profits or from profits which could not be distributed, in the absence of the interim financial statement.

Quarterly distribution of dividends is optional and can be made within the limit of the quarterly net profit, plus any retained earnings and amounts withdrawn from reserves available for that purpose (minus any losses incurred and amounts deposited in reserves in accordance with legal statutory or requirements).

For the quarterly distribution of dividends, companies must prepare and approve interim financial statements. These interim financial statements are audited (if the company is subject to statutory auditing of the annual financial statements or has opted for their audit) and verified by censors (if, according to the law, the annual financial statements of that company are subject to verification by censors).

Law 163 also provides an adjustment mechanism for the amounts distributed during the financial year which may be performed at the end of the financial year, following the approval of the annual financial statements. Following such adjustment, the dividends distributed and paid in excess during that financial year must be returned in 60 days from the date of approval of the annual financial statements. Failure to return the dividends received in such leads to the sanctioning of associates or shareholders.

Law 163 amends the provisions of the Companies Law no. 31/1990 according to which the dividends paid contrary to the legal provisions shall be restituted if the company proves that the associates were aware of the irregularity of the distribution or should have known it by also applying it to dividends distributed quarterly.

Law 163 also extends the scope of the offenses provided by the Companies Law no. 31/1990 introducing as a crime also the deed of the founder, the administrator, the general director, the director, the member of the supervisory board or the legal representative of the company who receives or pays dividends in any form from fictitious profits or from profits which could not be distributed during the course of the financial year on the basis of the interim financial statement.

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