Amendment of Company Law

TAX&LAW

By Cornel Popa
Partner at Tuca Zbârcea & Asociatii

Law No. 31/1990 that applies to commercial companies was initially based on the companies' regulation as proposed by the so-called Commercial Code of Carol II of Romania. It was intended that the Commercial Code would come into force in 1940, but this did not happen due to World War II. The initial regulation has been amended many times, the current form of the law being for the most part the one republished in the Official Gazette No. 1066/17, in November 2004. But in the light of Romania's imminent accession to the EU, a review of certain texts in the Company Law has proved necessary to bring these texts into line with European directives.

Therefore, the Ministry of Justice has recently proposed a project for the amendment of Company Law, submitting it to a public debate. Currently, it is about to be passed by the government. According to the Constitution, Parliament will have the last word in the discussion of the project and in passing the proposed legislative amendments. Once passed, the amendment will bring about outstanding changes, the more important of which are commented on below.

For example, the minimum number of shareholders in a joint stock company is to be decreased from five to two. The minimum share capital of joint stock companies will be increased to RON 90,000, an amount that may be reviewed by the government depending on fluctuations in the exchange rate between the RON and the EUR. On the other hand, joint stock companies will be able to approve so-called authorized capital, representing in fact the value up to which the company's board of directors may increase the subscribed share capital within a period of no more than five years.

However, the provisions likely to give rise to many discussions are those related to quorum and majority requirements in the general meetings of shareholders. If the quorum thresholds are generally lower than those provided by the current regulation, there will be problems in relation to the extraordinary general meeting of shareholders who will have the right to amend the constitutive act and to take certain important decisions related to the company's life.

We note the same trend towards decreasing the quorum requirements in this field. For instance, instead of a quorum equivalent to 50 percent of the share capital, at the second convening of the meeting, according to the project, a quorum equivalent to 1/3 of the share capital will suffice. However, a practical problem arises from the proposed increase of the majority required for decision-making within the general meeting to 2/3 of the voting rights held by the present shareholders.

This increased majority is required by certain European directives, but not as a principle, and only for certain decisions, such as the merger or the division of a company. While, currently, only one shareholder with at least 50 percent plus one share of the share capital is certain that he/she will be able to get a decision on the amendment of the constitutive act passed, even if other shareholders oppose it, this will no longer be possible in the future. In actual fact, if they wish to retain the power to pass decisions in the extraordinary general meeting, the majority shareholders will have to increase their stake in the share capital to 2/3.

Another controversial issue in the project is the increase of the general meeting's convening term from its current duration of 15 days to 30 days from its publication in the Official Gazette. One additional, questionable piece of news is whether or not, according to the draft law, a minimum of 5 percent of the shareholders requesting the inclusion of items on the agenda to be discussed at general meetings is, in fact, pointless red tape. When one considers that the same shareholders already have the possibility – strengthened by the new proposals – to have a general meeting convened to discuss specific issues that concern them, it does seem rather superfluous to requirements.

It is to be noted that the lawmakers have lifted the prohibition of conventions on the voting rights, a prohibition that did not comply with international practice. According to the project, only the conventions whereby the shareholder undertakes to comply with the instructions given by the company or the representatives will be prohibited.

Lawmaker's efforts to bring clarification in the management of joint stock companies must also be noted. For the first time, it is stipulated that the joint stock company may appoint independent directors. In addition, the project envisages the separation of executive management positions. They will be entrusted to the company's executives as well as positions of control; and those concerning the general establishment of the company's strategy will be held by the Board of Directors.

According to the project, the existing shareholders will have a preference right when new shares are issued, even if the increase results from contributions in kind; the preference right may be annulled by a decision of the general meeting, passed with a majority equivalent to 3/4 of the subscribed share capital.

The repeal of the current article 236 is of special interest for the groups of companies. According to the current text, in the case that a limited liability company with a sole shareholder is dissolved, the assets and liabilities would be transferred to the sole shareholder without liquidation proceedings. The new regulation regards this process as a simplified form of merger by absorption, applicable to all forms of companies, in the case that a shareholder holds all voting rights in a company that ceases to exist. ■

BUSINESS REVIEW / May 1 - 7, 2006