

Proposals for the amendment of Company Law No. 31/1990



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Company Law No. 31/1990 is the "Holy Book" of regulations on companies' establishment and operation in Romania.

It's been a while since the issue of updating this law in accordance with EC norms, especially the European Commission recommendations and the relevant principles issued by the Organization for Economic Cooperation and Development (OECD), has been raised.

The Ministry of Justice has initiated the consulting process for drafting the enactment, taking into account the opinions and comments of all interested parties: public institutions, courts of law, law firms and consulting companies and business environment experts.

The advisors of the Ministry of Justice also use as sources the modern legislations on trade companies, and last but not least the experience of Western and Eastern European States.

The amendments to Law No. 31/1990 mainly refer to changes in the shareholders' rights and in the directors' status and board of directors' structure.

As regards the issue of shareholders' rights, the proposed amendments concern both the addition of new provisions to Law No. 31/1990 and the modernization of existing provisions.

The protection and facilitation of shareholders' rights are intended, as well as ensuring a fair treatment for

such shareholders.

According to the proposed amendments, reference is made to: the consolidation of minority shareholders' rights (facilitating the convening of the general meeting at the request of minority shareholders; modernizing the rules regarding the derived shares, whereby the shareholders file a complaint, on behalf of the company, against the directors for covering the losses, when direct action has been omitted; instituting a rule which would allow, in certain clearly determined cases, that the directors or majority shareholders be liable for the company's debts; reform of the share assignment right and withdrawal from the company).

In addition, ensuring fair treatment for all shareholders, decreasing the minimum legal number of shareholders, limiting the creditors' right to oppose the decisions of the general meeting of shareholders are taken into account.

Last but not least, the main proposals also regard the creation of conditions for the shareholders to participate in the general meetings (general right of minority shareholders to add items on the agenda, publication of the shareholders' proposals, improvement of the notification system, new convening terms, electronic voting, voting in absentia, right to participate in the general meeting for the holders of shares with priority dividend without voting right), reviewing the decision-making proceedings (quorum and majority conditions).

The amendments to Law No. 31/1990 on the directors' status include clear provisions regarding the duration of the mandate for the directors appointed by the constitutive act and those ap-

pointed subsequently, awarding a larger autonomy to such directors in the exercise of their mandate, and clearly defining the capacity to represent the company in its relations with third parties.

Other amendments concern the possibility to set up, by the constitutive act, certain additional eligibility criteria regarding the directors' professionalism and independence, provisions on conflict of interests, especially regarding the non-competitive clause and the holding of several mandates simultaneously.

Provisions on the directors' loyalty to the company are also proposed, respectively the exercise of their mandate in good faith, as well as provisions according to which, to the extent they acted in good faith, they are not personally liable for a business decision which may subsequently prove to be wrong.

Another set of legal amendments concern the structure of the board of directors. They refer to the consolidation of the position of non-executive board members by awarding the right to supervise the internal and external control, clarifying the role of the board chairman: board coordinator, general manager or both?

Other additions or amendments regard the establishment of a minimum number of directors in the companies, as well as separating companies' executive and non-executive positions.

The business environment looks forward to seeing to what extent the final version of Law No. 31/1990 complies with the current requirements, considering the proposals made, and hopes that its provisions shall be enforced as soon as possible. ■