

New regulation allows quarterly dividend distribution

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Among the numerous legislative changes which have been approved by the Romanian Government in the past few months – most of which have generated, unfortunately, legal and fiscal uncertainty – there is one change that should have a positive influence on the general business environment, especially for small and medium-sized companies.

On 13th June 2018, the Chamber of Deputies approved a draft law regarding the amendment of, *inter alia*, the Companies Law¹ and the Accounting² Law, adopted by the Senate last year. The draft law offers the possibility of early dividend distribution. Now the only thing needed is its signing into law by the President of Romania.

Previous situation

Since the Companies and Accounting Law came into force in Romania, the applicable rule has been that the distribution of dividends could only occur after the annual financial statements have been approved by the General Assembly of Shareholders. Until now, the shareholders had the obligation to determine the company's profits once a year, following the approval of the annual financial statements; the dividends could only be distributed afterwards – within six months. Dividend distribution without the approval of the annual financial statement has been expressly forbidden until now.

The general managers of the company were personally responsible for observing these regulations and ensuring correct dividend distribution; distribution and receipt of dividends without approval of the annual financial statement could even lead to a prison sentence of 1 to 5 years.

Although the aim of this regulation is understandable from a legal and accounting point of view, the situation of shareholders who had no other source of income but their company was rather disadvantageous.

New option regulation

The present draft law gives the General Assembly of Shareholders the option of a quarterly dividend distribution.

It carries, however, a correlative obligation: if the company opts for quarterly distribution through a resolution of the shareholders' assembly, it must prepare provisional financial statements and have them approved by the same body. The distributed quarterly dividends must be registered in the provisional financial statements as receivables of the company against the shareholder.

The final value of the dividends will be determined by means of an annual financial statement approved at the end of the year; a closing statement of the dividends already paid during the

¹ Law No. 31/ 1990

² Law No. 82/ 1991

year will reflect the final profit. The payment of any positive difference to the shareholders, respectively the reimbursement of the negative difference to the company, must occur within 60 days of approval of the final annual financial statement by the shareholders' assembly. In the case of a delay in payment, the company or the shareholder will be charged interest on the period of delay as provided by law, unless other higher interest is established in the articles of incorporation or by a resolution of the General Assembly of Shareholders.

It is important to point out that certain categories of companies must observe an additional rule. Companies whose annual financial statement must be verified by a financial auditor based on legal criteria or according to a resolution of the shareholders must also have the provisional financial statements audited. These rules apply *mutatis mutandis* to joint stock companies and associations limited by shares, whose annual financial statements must be verified by the supervisory board/ the censors.

Conclusion

The distribution of dividends in the course of the financial year, based on provisional quarterly financial statements, may have a positive influence upon company shareholders. This applies especially to small and medium-sized companies whose (sole) shareholder has no other source of income.

Quarterly distribution is also allowable in the legislation of many EU-member states and is considered an important means of support for the development of holding companies. Large companies and global players can also benefit from this rule, whereas their provisional financial statements must be verified by the auditors of the company.

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