



Pachiu & Associates
Attorneys at Law

ANSPDCP registration No. 3125

Laurentiu Pachiu	Delia Vasiliu
Marius Petroiu	Remus Ene
Cristina Bujoreanu	Ciprian Paun
Remus Valsan*	Voichita Craciun
Iulia Ispas	Cristina Voevodschi
Ana-Maria Goga	Anca Theodora Stefan
Alexandru Lefter	Adrian Lefter**
Magda Zudor	Nicu Lupascu**
Andrei Dumitrache	

NEWSLETTER

Romanian legal developments enacted between November 25 and December 31, 2006

COMPANY LAW

- *Law No. 441/2006 on amending and supplementing the provisions of Law No. 31/1990 on companies and of Law No. 26/1990 on the register of commerce registration procedures (“Law No. 441/2006”)*

On November 28, 2006, Law No. 441/2006 was published with the Official Gazette No. 955. Law No. 441/2006 entered into force as of December 1, 2006.

We shall provide below with a list of amendments available under by Law No. 441/2006:

I. Joint-stock companies (Rom. “SA”):

1.1 Constitutive act provisions:

- Minimum share capital value is of RON 90,000 (equivalent of EUR 25,000). Government may modify every two years such value to comply with RON/EUR applicable rate.
- Minimum number of shareholders is of two.
- Administration of joint-stock companies: Joint stock companies shareholders may choose between two administration systems: **the “unitar” system** (includes a board of administrators) and **the “dualist” system** (include a “directorate” and a “supervision council”).
- Constitutive acts must provide for any applicable restriction in case of transfer of shares;

1.2 Shareholders rights:

- Shareholders directly or indirectly representing at least 5% of the share capital have the right to submit proposals to the shareholders assemblies’ agenda.
- Shareholders directly or indirectly representing at least 5% of the share capital may also request the board/directorate (in dualist system) to convene a shareholders general assembly; in case of refusal, a court may convene such assembly, upon request.
- Shareholders may submit questions to the board of administrators/directorate (in dualist system). The board must provide with an answer.

*Currently PhD candidate with McGill University | **Off - counsel

Main Office

Bucharest

36 Spatarului Street, Entrance 1, 1st Floor, Suite No. 4,
Bucharest 2, Romania
Phone: +40 (21) 212 00 23, Fax: +40 (21) 211 56 36

Secondary Office

Cluj-Napoca

48 Traian Mosoiu Str, Suite No. 22, Cluj-Napoca
Cluj County, Romania
Phone: +40 (364) 107 112, Fax: +40 (364) 107 112

- The company must provide the shareholders, among others, with: i) the annual financial statements, ii) the annual report of the board of administration, or iii) the reports of the directorate and the supervision council, upon request.
- Shareholders may be represented with the shareholders general assemblies by third parties, upon a power-of-attorney drafted in this regard. Such third parties may not be company shareholders.
- Shareholders must act in good-faith, and in respect of rights and legitimate interests of company and of the other shareholders.

1.3 Shares provisions

- Shares issued in paper form must be signed by 2 members of the board of administrators/directorate, or by the sole administrator/sole general manager (Rom. “director general unic”).
- Administrators, managers, members of directorate or supervision council cannot own shares with priority dividend without vote right.
- A joint stock company can acquire its own shares, provided that: 1) the extraordinary general assembly of the company agreed the acquirement of such shares; 2) nominal value of shares does not exceed 10% of the company subscribed share capital; 3) shares are integrally paid; 4) payment of the shares shall be performed only from profit subject to distribution or available reserves (except legal reserves). Under certain legal circumstances, the above restrictions may be overridden. In case shares were acquired in breach of the aforementioned provisions, such shares are to be sold within 1 year from acquirement date.

1.4 Shareholders General Assemblies

- No decisions can be made in relation to agenda topics which were not duly published. Unless company shares are nominative, the agenda must be published with the Official Gazette, Part IV, and a newspaper from the location where the company is headquartered.
- New quorum and voting conditions as regards the general ordinary and extraordinary assemblies of shareholders are provided:
 - i) Ordinary Assemblies: a) at first call: presence of shareholders representing $\frac{1}{4}$ of voting rights; decisions shall be made by majority of votes; b) at second call: decisions shall be made by majority of votes, regardless of shareholders presence (second call terms cannot be waived by constitutive acts provisions).
 - ii) Extraordinary Assemblies: a) at first call: presence of shareholders representing $\frac{1}{4}$ of voting rights; decisions shall be made by majority of votes; b) at second call: presence of shareholders representing $\frac{1}{5}$ of voting rights; decisions shall be made by majority of votes, regardless of shareholders presence. Higher thresholds may be provided under constitutive acts provisions. However, a majority of $\frac{2}{3}$ of voting rights of present or represented shareholders is required for making decisions related to: i) amendment of company main object of activity; ii) share capital increase or decrease; iii) change of legal form; or iv) company merger, division or winding-up.
- General Ordinary Assembly meets at least once every year, within (five) 5 months from the end of the financial year.

- General Ordinary and Extraordinary Assemblies are called by the board of administrators/directorate whenever necessary.
- Decisions of General Ordinary and Extraordinary Assemblies shall be submitted to the competent Register of Commerce, within (fifteen) 15 days, in order to be registered with such Register of Commerce and published with Official Gazette of Romania, Part IV. Upon request, any shareholder must be informed with regard to assemblies' decisions.
- Members of board of administrators/supervision council cannot challenge decisions of General Ordinary and Extraordinary Assemblies with regard to their revocation.
- General Ordinary Assembly can file court actions for damages against company's founders, administrators, executives or members of "directorate" or "supervision council"; in case such court actions are not filed by General Assembly, shareholders representing at least 5% of the share capital of the company are entitled to file a court action for damages against the aforementioned founders, administrators or executives.

1.5 Voting

- Any agreement related to voting rights or transfer of voting rights is prohibited.
- Upon request, any shareholder may be informed with regard to the shareholders assemblies voting results, including by publication of the results with company website.
- Secret vote is mandatory in case of: 1) election/revocation of members of the board of administrators or supervision council, censors, internal auditors; 2) decisions to be made with regard to liability of members of administration, management and/or control bodies of the company.

1.6 Shareholders withdrawal from the company

- A shareholder may request the company to purchase its shares, and withdraw from the company only in case he/she/it voted against a shareholders resolution having one of the following objects: i) change of company object of activity; ii) headquarters relocation; iii) change of legal form; iv) company merger or division. Shares price shall be assessed by an authorized expert.

1.7 Administration

- Administrators/members of "directorate" or "supervision council" mandate cannot exceed a four years term. They must provide the company with an insurance policy for professional liability.
- The initial mandate of administrators/members of "supervision council" cannot exceed a two years term.
- An individual cannot act as administrator/member of "supervision council" with more than five companies headquartered in Romania. Such prohibition does not refer to administrators which own at least ¼ of the total shares of the company or to administrators which control another company which owns at least ¼ of the total shares of the company.
- Directors, administrators, or members of "directorate" or "supervision council" must attend company shareholders meetings.

1.7.1 The “unitar” system

- Administrators are appointed and revoked by General Ordinary Assembly resolution, except for the first administrators that shall be established by company’s bylaws. When new administrators are appointed, they must inform company internal censors and auditors of any wrongdoings acts of the previous administrators, as of the moment they acknowledged such acts, under joint liability sanction.
- Unless otherwise provided by company’s bylaws, in case of administrators’ vacancy, the board of administrators shall appoint provisory administrators. Their mandate shall be limited until the General Ordinary Assembly shall appoint new administrators.
- In case a sole administrator wishes to renounce at his mandate, he shall call the General Ordinary Assembly to take act of such renouncement and appoint a new administrator.
- Company’s board of administrators may be delegated to one or several managers (Rom. “directori”), administrators or non-administrators; one of such managers shall be appointed as general manager (Rom. “director executiv”). Under Law No. 441/1990, administrators must be individuals. Individuals that cannot be founders of a joint-stock company are not allowed to act as administrators/managers.
- The manager of a joint-stock company cannot act as manager, administrator, member of directorate, member of supervision council, censor, internal auditor or shareholder with unlimited liability in other companies performing an activity similar with its joint-stock company activity, absent a prior approval from such joint-stock company board of administrators. On contrary, the manager is subject to revocation and liability for damages.
- Under company’s bylaws or resolution of General Ordinary Assembly, company administrators may be independent entities. Law No. 441/1990 establishes the cases when an administrator shall not to be deemed as independent, e.g. when such administrator is/was manager or former manager, or employee or former employee of its company or of a legal entity controlled by its company, or is/was a relevant shareholder of its company, or received compensation or benefits from its company, or is/was in a business relationship with its company or a legal entity controlled by its company, or with its auditors, or any of his/her relatives are company executives or are involved in any of the above cases.
- In case company executives, censors and internal auditors are called to a board of administrators meeting, their presence is mandatory.
- Administrators are liable towards the company for damages caused by company’s executives and employees, in case such damage would not have been incurred whether administrators would have exercised the supervision imposed by their legal duties.
- Unless otherwise established by company’s bylaws, for board of administrators’ valid decisions at least ½ of its members must be present, while decisions are made with the positive vote of the majority of the present members.
- The board of administrators shall submit with the competent Register of Commerce, within (fifteen) 15 days from General Ordinary Assembly approval: 1) copies of annual financial statements; 2) board of administrators’ reports; 3) censors’ report; 4) financial auditors’ report.

- Joint stock companies shall be administered by one or several administrators, whose number is always uneven. In case there are several administrators, they form a board of administration from which a president is elected. Board of administrators' members may be represented by other administrators only; an administrator cannot represent more than one administrator.
- Administrators are required to preserve confidentiality over company trade secrets during and after termination of their mandate.
- The administrators cannot be at the same time employees of a joint stock company. If the administrators are elected from the employees of the company, their labor agreement shall be suspended during their administrator mandate.
- Joint stock companies whose annual financial statements are subject to a legal audit obligation shall be administered by at least three administrators.

1.7.2 The “dualist” system

- The “directorate” members are subject to revocation by “supervision council”. Company’s bylaws may provide that “directorate” members shall be subject to revocation by General Ordinary Assembly. In case “directorate” members are revoked without reasonable cause, they are entitled to compensation.
- “Directorate” represents the company towards third parties. Unless otherwise provided with company’s articles of incorporation, members of “directorate” jointly represent the company. “Directorate” members shall always be uneven. It is mandatory that members of “directorate” to be individuals.
- “Directorate” shall register with the competent Register of Commerce the names of the individuals authorized to represent the company; such individuals shall submit also with the Register of Commerce their signature specimens.
- “Directorate” shall present to “supervision council” the annual financial statements, together with an annual report and a detailed proposal with regard to profit distribution.
- “Directorate” shall submit a written report to “supervision council” once every three months.
- The members of “supervision council” are appointed or revoked by General Ordinary Assembly, except for the first members, who are appointed under company’s bylaws. A legal entity may be appointed in its capacity as member of a “supervision council”; such legal entity shall appoint an individual, as representative. In case of vacancy for one member of the “supervision council”, such council can appoint a provisory member, until a new member shall be appointed by the General Ordinary Assembly.
- “Supervision council” is called by its president and meets at least once every 3 months. The “supervision council” members (not less than 3 but not more than 11) cannot be at the same time members of the “directorate” and they cannot act as employees of the company.
- “Supervision council” can be called at anytime based on motivated request of at least two of its members/ two members of “directorate”. If called to a “supervision council” meeting, members of “directorate” are not allowed to vote.

- Individuals that cannot be founders of a joint-stock company are not allowed to be members of a “directorate” or of a “supervision council”.
- A member of “directorate” of a joint-stock company cannot act as manager, administrator, member of “directorate”, member of “supervision council”, censor, internal auditor or shareholder with unlimited liability in other companies performing similar activity, without approval from the “supervision council”; if not, such member of “directorate” is subject to revocation and liability for damages.
- Unless otherwise provide under company’s bylaws, for decisions of “directorate” and “supervision council” to be valid, at least ½ of its members must be present; decisions are made with the positive vote of the majority of present members.
- “Directorate” shall submit with the competent Register of Commerce, within (fifteen) 15 days from General Ordinary Assembly approval, copies of: 1) annual financial statements; 2) “directorate” reports; 3) censors reports; or 4) financial auditors’ reports.
- Company documents must mention the fact that the company is administered under such “dualist” system.
- In case of the joint stock companies whose annual financial statements are subject to a legal audit obligation, the “directorate” shall include at least three members.

II. Limited liability companies (Rom. “SRL”)

- Minimum share capital value remains of RON 200.
- The sole shareholder of a limited liability company may act as an employee of the company it controls.
- The share capital must be integrally paid in when a limited liability company is incorporated.
- In case of limited liability companies with sole shareholder, such sole shareholder shall perform the attributions of General Assembly of Shareholders.
- In case the limited liability company has no censor or financial auditor, each of the shareholders, which is not an administrator, shall have the same right of control that the shareholders in partnership companies enjoy.
- The bylaws of the limited liability company can be amended based on the resolution of the General Assembly of Shareholders or based on a court resolution.
- Upon each amendment of the bylaws of a limited liability company, the administrators shall file with the competent register of commerce the amending act and the by-laws of the company of the company including all such amendments.
- It should be noted that Law No. 441/2006 and Law No. 31/1990 provisions related to joint stock companies applies to limited liability companies only in case such provisions were specifically included with such limited liability companies constitutive acts.

III. Provisions applicable to joint-stock or limited liability companies

- Individual shareholders convicted of criminal offences related to forgery, embezzlement, racketeering, or offences related to economic or insolvency aspects cannot act as shareholders and founders of a joint-stock or limited liability company.
- An act amending the company constitutive act must be submitted for registration with the competent register of commerce no later than 15 days as of the amendment date. A consolidated version of company constitutive act must be submitted accordingly.
- Under Law No. 441/2006, new definitions of “merger” and “division” are provided.
- Contribution is kind is permitted; contributed assets must be in a “good to use” condition (Rom. “stare de utilizare”).
- A pledge over company shares must be drafted in written and must be registered with the shareholders register. The pledge is enforceable towards third parties upon registration with the Electronic Archive for Security in Real Property.
- Companies are allowed to function at the same headquarters, provided that at least one of the following conditions is met:
 - 1) the structure of the building allows operation of more companies in different rooms;
 - 2) at least one entity has the capacity of shareholder in each of such companies;
 - 3) at least one of such companies shareholders is owner of the building where the headquarters are located.

NOTE: A full version of Law No. 441/2006 was posted with our web site Publications section at <http://www.lp-legal.com/publication.htm> under Issue No. 72 (i.e. Law No. 441/2006 edition as published with the Official Gazette No. 955/ November 28, 2006).

CIVIL PROCEDURE

- *Law No. 459/2006 on amendment of Civil Procedural Code (“Law No. 459/2006”)*

Law No. 459/2006 was published with Official Gazette No. 994 of December 13, 2006. Law No. 459/2006 shall enter into force as of January 12, 2007. The law provides for strengthening the enforcement of court decisions by court marshals.

LABOR LAW

- *Law No. 467/2006 on general framework for informing and consulting company employees (“Law No. 467/2006”)*

Law No. 467/2006 was published with Official Gazette No. 1006 of December 18, 2006. Under the law, company management must inform its employees of company activities and business plans, provided that disclosure of such information is not likely to seriously harm company business interests. Law shall enter into force as of January 1, 2007.

CONSUMERS LAW

- *Law No. 476/2006 on amendment of Government Ordinance No. 21/1992 on consumers protection (“Law No. 476/2006”)*

Law No. 476/2006 was published with Official Gazette No. 1018 of December 21, 2006, and entered into force on December 24, 2006. The law defines the term of “abusive and/or incorrect commercial

practices” and expands sanctions for breach of the law to apply not only to individuals but also to legal entities.

TAX LAW

- *Law No. 505/2006 on approval of Government Ordinance No. 35/2006 on amendment of Government Ordinance No. 92/2003 on Fiscal Procedural Code (“**Law No. 505/2006**”)*

Law No. 505/2006 was published with Official Gazette No. 1054 of December 30, 2006, and entered into force on January 1, 2007. The law provides with details with regard to the taxation procedure applicable to taxpayers non-resident in Romania, but enjoying operational activities in Romania through one or more permanent establishments. The law also offers details as to the applicable order in terms of enforcement of debts payment.

- *Government Emergency Ordinance No. 110/2006 on amendment of Law No. 571/2003 on Fiscal Code (“**GEO No. 110/2006**”)*

GEO No. 110/2006 was published with Official Gazette No. 1028 of December 27, 2006, and entered into force on January 1, 2007. GEO No. 110/2006 refers to: i) the procedure for calculation and withholding of tax related to incomes resulted from transfer of real estate from personal patrimony, ii) taxation of micro-enterprises during the fiscal year in case of exceeding the EUR 100,000 annual incomes threshold or in case their incomes derive for more than 50% from consulting or management activities (taxation shall start as of the trimester when any of such cases occurred), and iii) taxes applicable to commercial vehicles.

NOTE: In connection to this newsletter, readers may address questions to its authors at maris.petroiu@lp-legal.com, or crisrina.voevodski@lp-legal.com, on behalf of Pachiu&Associates.

Pachiu&Associates is a Romanian registered law firm. All attorneys are members of the Bucharest Bar and National Union of Lawyers. This legislation review is an update of recent legal developments in Romania and is designed solely for the purpose of information. No part of this newsletter may be reproduced without prior written approval of its authors. It is a breach of law to proceed otherwise and might lead to civil, criminal and administrative liability. Readers are advised to seek legal advice from a Pachiu&Associates attorney, directing requests by fax, mail, or email at office@lp-legal.com. Pachiu&Associates law firm undertakes no liability regarding the business or legal decisions based on the content of this newsletter.