

Tax & Legal Alert

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Amendments to Company Law no. 31/1990

Contacts:

Sorin David

Partner

E-mail: sorin.david@david-baias.ro

Tel: + 40212028770

Dan Dascalu

Partner

E-mail: dan.dascalu@david-baias.ro

Tel: + 40212028770

D&B David si Baias

1-5 Costache Negri Street, 5th District
Bucharest

PricewaterhouseCoopers România
Opera Center, Str Costache Negri,
nr 1-5, sector 5, București

Tel: + 40212028500

www.pwc.com/ro

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with D&B David si Baias SCA, a Law Firm associated
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Emergency Governmental Ordinance no. 82 amending and supplementing Company Law no. 31/1990 and other applicable legislation.

We set out below some of the major changes to the Company Law:

I. JOINT STOCK COMPANIES

1. Convening the general meeting

The 5 day term for submitting the call notice to the Official Gazette after the board of directors has passed the resolution to convene the meeting it is no longer required.

2. Directors' independence

A limited number of criteria governing the directors' independence is prescribed, different from the previous version of Company Law.

3. Audit committee

It is no longer compulsory for joint stock companies whose financial statements are required under the law to be audited, to set up an audit committee.

4. The obligation of prudence and diligence

The board of directors' members are required to exercise the prudence and diligence of a good administrator in carrying out their mandate. The business decision, as grounds for relief from liability, is provided only in relation to this obligation.

5. Directors' remuneration

The directors' remuneration earned on the basis of the mandate agreement is treated as salaried income for tax, public pension system, and unemployment and health insurance law purposes.

6. Professional liability insurance

It is clarified for the director's liability insurance to be concluded by other persons as well, for the benefit of the respective director.

7. Censors

A joint stock company having censors is required to appoint one alternate censor, unless a higher number is laid down in the articles of association.

8. Internal auditors

It is no longer required for the general meeting to appoint the internal auditors.
It is no longer a requirement to register internal auditor's replacement with the trade registry.

II. LIMITED LIABILITY COMPANY

1. Sole shareholder also acting as an employee

The sole shareholder may also be an employee of the limited liability company whose sole shareholder he/she is. It is no longer forbidden to act in the dual capacity as employee and director

2. LLC administration

Ordinance no. 82 expressly prescribes that the legal provisions governing the management of joint stock companies do not apply to LLCs, whether or not subject to the auditing obligation.

3. **Increasing the LLC's share capital**
A limited liability company may increase its share capital in the manners and from the sources provided for joint stock companies.

4. **Internal auditors**
It is no longer required for the general meeting to appoint internal auditors if the LLC contracts external audit services

III. OTHER PROVISIONS

Misdemeanours and offences

- Failure by joint stock companies to file the general meeting's resolution with the trade registry within 15 days constitutes misdemeanour;
- Directors/founders no longer incur liability for using company credit or taking company loans in specific cases, as regards group operations.

IV. TRANSITIONAL PROVISIONS

1. Status of employment agreements in respect of the director position

The employment agreements of directors/managers carrying out a director/manager mandate, concluded before the entry into force of this Ordinance are terminated by virtue of law on the effective date of Ordinance no. 82.

2. Grace period for adjustment

- The Ordinance grants joint stock companies 6 months to ensure compliance with Law no. 31/1990, as amended by Law no. 441/2006 and by this Ordinance;
- The same grace period is granted for directors under employment agreements with the company to bring their status in line with the legal requirements, except for the case set out under point IV.1 above.

For further information regarding the amendment to Company Law no. 31/1990, contact Sorin David or Dan Dascalu.

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