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Main Changes to Corporate legislation in Moldova

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Moldovan Law on Joint Stock Companies

The amendment of the Law no. 1134/1997 on Joint Stock Companies (JSC) derives from the need to comply with the provisions of the Moldova - EU Association Agreement and the National Action Plan for the implementation of the said Agreement. The purpose of the amending law is to transpose and, implicitly, to make the provisions of the Law on JSC compatible with Euro-Community standards, in particular the connection of national legislation to the following two Directives.

EU Directives transposed into Moldovan Law on Joint Stock Companies

EU Directive 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02017L1132-20200101>

Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02007L0036-20170609>

Main amendments to the Law on JSC

1. Defining the notion of “affiliated person”
2. Extending and ensuring the shareholders’ rights
3. Rules on shareholders’ representation
4. New aspects on exercise of the right of pre-emption of shareholders
5. Update of the list of information required to be included in the Statutory documents
6. Additional requirements concerning the share capital
7. Forms of holding the General Meetings of shareholders
8. Additional requirements on companies’ acquisitions of their own shares
9. Introducing provisions on the issuance of redeemable shares, for a specified outstanding period
10. Introducing new provisions regulating procedures for mergers and divisions

Main amendments to the Law on JSC

Defining the notion of “affiliated person”

Article 10. Affiliated persons of the company

(1) Persons affiliated with the company shall be considered:

- a)** members of the company's board, members of the executive body, members of the audit committee, other persons with positions of responsibility within the company, according to the provisions of this law;
- b)** shareholders who, directly or indirectly, individually or jointly with its affiliates, hold or control at least 25% of the company's share capital;
- c)** any other persons exercising control over the company acting on the basis of a mandate, contract or administrative act;
- d)** any legal person that is under the control of the company or in the name and/or on whose account the company acts on the basis of a mandate, contract or administrative act;
- e)** any legal person which is, together with the company, under the control of a third person;
- f)** the persons affiliated to a natural person specified at the letters a-c.

Main amendments to the Law on JSC

Defining the notion of “affiliated person”

Article 10. Affiliated persons of the company

(2) Persons affiliated to the natural person shall be considered:

- a) the spouses, relatives and the first and the second-degree relatives of the natural person, the spouses of the mentioned relatives and relatives, as well as any other person who, together with the natural person, has a direct and associated interest in a stake in the company;
- b) the legal person over which the natural person, as well as the persons affiliated to it, individually or jointly, exercises significant control or influence by virtue of holding a capital in the amount specified in par. (1) lit. b) or of the quality of member of the management body.

Main amendments to the Law on JSC

Extending and ensuring the shareholders' rights

Article 21. Shareholders' rights

(1) The shareholder has the right:

- a) to participate in the general meetings of shareholders, to elect and be elected in the management bodies of the company;
- h) to ask written questions regarding the items on the agenda of the general meeting of shareholders.

Article 50. Preparation of the agenda of the ordinary annual general meeting of shareholders

(14) The company is required to answer, within a maximum of 15 days from the date of receipt, the questions on the agenda items of the general meeting addressed by the shareholders, unless these questions refer to documents or information which is the object of a state or commercial secret. Placing the answer on the company's official website, in a question-and-answer format, is equivalent to sending the answer to the shareholder, provided that no written answer is expressly requested, and the placement is made within 15 days from the date of receipt of the question. The company is entitled to provide a single answer to questions with the same content received from different shareholders.

Main amendments to the Law on JSC

Extending and ensuring the shareholders' rights

Article 23. Additional rights of shareholders

(1) The shareholders who hold at least 5% of the voting shares of the company, in addition to the rights provided in art. 21, also have the right, in the manner provided by this law, to other legislative acts and the company's statute:

a) to introduce issues in the agenda of the annual general meeting of shareholders, as well as to present draft decisions for the items included or proposed to be included on the agenda of the general meeting of shareholders.

Main amendments to the Law on JSC

Extending and ensuring the shareholders' rights

Article 50. Preparation of the agenda of the ordinary annual general meeting of shareholders

(2) The shareholders specified in paragraph (1) are entitled to submit:

a) by January 20 of the year following the reporting year, the request to include items on the agenda of the annual general meeting.

(3) The issues proposed to be included in the agenda of the annual general meeting of shareholders shall be formulated in writing, indicating the name and surname (s) of the shareholders proposing the matter, as well as the classes and number of shares belonging to them. Each item submitted must be accompanied by a justification and a draft decision proposed for adoption by the general assembly.

(12) The company's board may decide on the refusal to include the matter on the agenda of the annual general meeting of shareholders or candidates in the list of candidates to be put to the vote at the election of the company's governing bodies, expressly stating the reason for refusal, only in the following cases: [...]

Main amendments to the Law on JSC

Rules on shareholders' representation

Article 22. Representation of shareholders

- (1) A person may represent one or more shareholders, the number of which may not be limited, being obliged to vote at the general meeting of shareholders in accordance with the instructions given by each shareholder who has appointed him.
- (2) The instructions of the shareholders regarding the expression of the vote may be formulated in writing, on the shareholder's own responsibility, and may be included in the power of attorney, mandate, contract or in another separate document, presented simultaneously with the act of representation. The acts of representation and the documents containing the instructions issued for the representatives shall be annexed to the list of shareholders participating in the general meeting.
- (3) The shareholders may be represented at the general meeting of shareholders by the persons indicated in par. (4) only if they:
- a) have informed the shareholder they represent of all relevant circumstances that could give rise to a potential conflict of interest, including whether they pursue an interest other than that of the shareholder;
 - b) have written instructions on how to vote at the general meeting of shareholders for each item on the agenda.

Main amendments to the Law on JSC

Rules on shareholders' representation

Article 22. Representation of shareholders

(4) The requirements provided in par. 3. shall apply if the representative of the shareholder is:

- a) the shareholder who holds, directly or indirectly, alone or together with the persons with whom he acts in concert, more than 50% of the voting shares of the company. In the case of the shareholder legal person - the persons with positions of responsibility and its employees, unless these persons hold, directly or indirectly, alone or together with the persons with whom they act in concert, 100% of the share capital of the shareholder they represent;
- b) the person with a position of responsibility or an employee of the company or of the legal person in whose share capital the persons indicated at let. a) hold, directly or indirectly, alone or together with the persons with whom they act in concert, at least 50% of the share capital of the legal person;
- c) the employee of the audit entity with which the companies indicated at letters a) –b) have concluded an audit contract;
- d) the husband, relative and brother-in-law up to and including the second degree of the natural persons specified at letters a) –c).

Article 26. Protection of the rights and legitimate interests of shareholders

(2) In order to protect their legitimate rights and interests, the shareholders are entitled, in the manner established by the legislation, to notify the management bodies of the company and/or the National Commission of the Financial Market, and / or the court, including: [...]

- e) to submit to the court a claim for damages caused by the shareholder's representative in case of non-compliance with the instructions set out by the shareholder in the documents of representation and/or in separate documents for participation in the general meeting of shareholders.

Main amendments to the Law on JSC

The pre-emption right of shareholders

Article 25. Preemption right of shareholders

(2) The right of pre-emption may not be limited or withdrawn. The right of pre-emption is exercised within a period that cannot be less than 14 working days from the date of publication of the subscription offer or from the date of sending the letters to the shareholders, [...]

(6) The price of shares remaining unsubscribed after the expiry of the period of exercise of the right of pre-emption may not be less than the price at which the holders of the pre-emptive rights subscribed to the shares.

Main amendments to the Law on JSC

Information to be included in the Statutory documents

Article 31. The Statutory Agreement

(2) The statutory agreement will include:

- d) the size of the share capital, the nominal value of a share, and in its absence - the fixed value of a share;
- k) the amount or an estimate of all expenses for the establishment and registration of the company;
- l) data regarding any special advantage granted to the company at the time of incorporation or to any person who participated in the incorporation of the company.

Article 33. The Company Charter

(1) The charter of the company will include:

- d) the classes, the nominal or fixed value and the number of shares placed;
- i) the form and terms of holding the general meeting of shareholders, as well as the manner of informing the shareholders about the holding of the general meeting of shareholders;
- r) the value of the non-monetary contributions included in the share capital, the nature of the contribution and the name of the person making the contribution in question.

(6) The report of the valuation company that performed the estimation of the market value of the non-monetary contribution will be annexed to the company's statute and will become an integral part of it, including for registration with the state registration body.

Main amendments to the Law on JSC

Additional requirements concerning the share capital

Article 37. Net assets

(6) If, at the expiration of 3 consecutive financial years, except the first financial year, the value of the company's net assets, according to the latest financial statements of the company, will be less than the size of the share capital, any shareholder of the company is entitled to claim the annual general meeting of shareholders to adopt one of the following decisions:

- a) regarding the reduction of the share capital;
- b) regarding the increase of the value of the net assets by making additional contributions by the company's shareholders in the manner provided by the company's statute;
- c) regarding the dissolution of the company;
- d) regarding the transformation of the company into another legal form of organization.

(8) If, at the end of 3 consecutive financial years, except for the first financial year, the value of net assets has decreased by more than half of the share capital according to the latest financial statements, the competent management body of the company is obliged to include the matter in the agenda of the general meeting of shareholders in order to adopt one of the decisions mentioned in par. (6).

Main amendments to the Law on JSC

Additional requirements concerning the share capital

Article 38. Share capital

(2) The share capital of the company may not be less than 600,000 lei.

Article 39. Contributions to the share capital

(7) The company, within 2 months from the date of state registration in the company's statute of the amendments related to the increase of the share capital, is obliged to register, in accordance with the legislation, the property rights over movable and immovable property transferred by subscribers.

(8) The market value of the non-monetary contribution shall be approved on the basis of the report of the valuation undertaking, drawn up in accordance with the provisions of the legislation in force, which is not a person affiliated to the company, the founders or shareholders of the company. The date of preparation of the evaluation report may not precede by more than 6 months the date of adoption by the general meeting or the board of the company, according to the provisions of the statute, of the market value of the non-monetary contributions.

(9) The report indicated in par. (8) shall contain at least a description of each of the assets forming the contribution, the valuation method used, shall state whether the amount of the contribution, obtained as a result of the evaluation, covers at least the value of the shares subscribed for this contribution and, if applicable, the amount of additional capital obtained for the shares subscribed with this contribution.

(13) Contributions to the share capital may not be:

a) the monetary evaluation of the activity of the founders for the establishment of the company, as well as any commitment to provide the work or services activity by the shareholders or other persons;

Main amendments to the Law on JSC

Additional requirements concerning the share capital

Article 46. Dividends

(2) The company has the right to pay interim(quarterly, half-yearly) and annual dividends on the outstanding shares. The payment of interim dividends shall be made on the basis of the interim financial statements (quarterly, half-yearly) prepared for this purpose, showing that the funds available for distribution are sufficient.

(6) The amount of annual / interim dividends paid to shareholders may not exceed the amount of net profit at the end of the management period plus undistributed profit of previous years, minus any loss of previous years and minus amounts deposited in reserves under this law and the company's articles of association.

Article 47. Payment of dividends

(15) Dividends paid in breach of art. 46 para. (2), (5) and (6) shall be returned to the company.

Main amendments to the Law on JSC

Forms of holding the General Meetings of shareholders

Article 49. Forms and terms for holding the general meeting of shareholders

2. The general meeting of shareholders shall be held in one of the following forms:

- a) with the presence of shareholders;
- b) by correspondence;
- c) by electronic means;
- d) mixed, by combining the forms established at letters a-c.

Article 54. Particularities of holding of the general assembly by electronic means

(1) The decision to hold the general meeting by electronic means shall be taken by the general meeting of shareholders only in relation to subsequent meetings and for a period covering at most the next annual ordinary general meeting.

(2) Participation in the general meeting by electronic means will be ensured by the company by applying one or more of the following modalities:

- a) real-time transmission of the general assembly;
- b) two-way communication in real time, which allows shareholders to address remotely during the general meeting;
- c) the application of a voting system, other than voting by mail, before or during the general meeting, which does not require the appointment by the shareholder of a representative who is physically present at the meeting.

(3) The company which, according to the statute, provides for the form of holding the general meeting by electronic means shall also stipulate the requirements regarding the electronic means used for shareholders' participation in the general meeting insofar as they are necessary to ensure identification of shareholders and shareholders' representatives, as well as for the security of electronic communication.

Main amendments to the Law on JSC

Company's acquisitions of its own shares

Article 77. Acquisition by the company of its own shares

(2) The company is entitled to acquire the shares placed by it in the following cases:

- a) in order to reduce the share capital;
- b) for the transfer to employees and / or shareholders of a number of shares;
- c) as an effect of a judicial act pronounced in a forced execution procedure against a debtor of the company;
- d) as an effect of reorganization by division;
- e) in order to regulate its own shares' exchange ratio on the regulated market, only with the approval of the National Commission of the Financial Market.

(3) The pledge of its own shares by the company, either directly or through a person acting in its own name, but on behalf of the company, is considered an acquisition that falls under the provisions of this article, as well as the provisions of art. 85 para. (9) and (11). This provision does not apply to the current operations of banks.

(8) The company shall compulsorily acquire the shares placed by it, without the need to take a decision to that effect in accordance with the provisions of this Article, provided that it results from a written request from the minority shareholders of protection of their rights in connection with the occurrence of at least one of the following events:

- e) modification of the main type of activity of the company;
- f) the introduction in the company's statute of the provisions regarding the closed transfer of shares according to art. 12 para. (9);
- g) in case the statute provides for the acquisition of its own shares for consideration from minority shareholders or their legal successors, who have obtained the shares against government bonds.

Main amendments to the Law on JSC

Company's acquisitions of its own shares

Article 77. Acquisition by the company of its own shares

(14) Shares acquired for the purpose of transfer to the company's employees and / or shareholders must be disposed of within a period of up to 12 months from the date of expiry of their acquisition period. Otherwise, the treasury shares thus acquired, regardless of their number, are to be canceled, the company being obliged to approve at the next general meeting of shareholders the corresponding reduction of the share capital.

(15) The company will ensure the preparation of the annual report on the acquired shares, which will be integrated in the annual report of the company's board or executive body, and in the case of public interest entities, in the management report. The report will contain at least the following information:

- a) the reasons for the acquisitions made during the financial year;
- b) the number and nominal value (fixed) of the shares acquired and disposed of during the financial year and the share they represent in the share capital;
- c) in case of acquisition for consideration, their equivalent value;
- d) the number and nominal value (fixed) of all the shares acquired and held by the company and the share of the share capital they represent.

Main amendments to the Law on JSC

Company's redeemable shares AQ

Article 78. Redeemable shares

(1) Redeemable shares are the preferred shares issued by the company for a specified period.

(2) Companies issuing redeemable shares must meet the following requirements:

- a) the statute of the company establishes the conditions and the manner of issuing and redeeming the shares;
- b) the redemption of the shares does not affect the minimum capital prescribed in art. 38 para. (2);
- c) the redemption can be made only using funds available for distribution in accordance with art. 45 para. (3) lit. c) or amounts obtained from a new issue made in order to carry out the redemption in question;
- d) if the payment of a premium (in relation to the nominal or fixed value of the shares) to the shareholders as a result of the redemption is foreseen, it can be paid only from the amounts available for distribution in accordance with art. 45 para. (3) lit. c) or from other statutory reserves;
- e) the redemption notice is published in the manner provided in the company's statute, within 7 working days from the date of approval of the respective decision.

Main amendments to the Law on JSC

New provisions on mergers and dismemberments

Article 93. Merger of companies

(2) The merger contract may provide, along with the issuance and distribution of shares to the shareholders of the newly established company (in case of merger) or the absorbing (in case of absorption), and the payment of a cash payment whose value may not exceed 10 % of the nominal (fixed) value of the shares thus issued. [...]

(7) The draft merger contract is published according to the provisions of art. 118 para. (2) lit. a) or c), or d) of Law no. 171/2012 on the capital market. Any of the merging companies is exempted from the obligation to publish if, for a continuous period starting at least one month before the date set for the general meeting of shareholders to decide on the proposed merger and ending no earlier than one month after that meeting, it shall make the draft of that merger available to the public free of charge on its official website.

(8) An opinion on the draft merger contract, indicating the place where it may be consulted, shall be published in the Official Journal of the Republic of Moldova by at least one joint stock company involved in the merger, according to the agreement between them. Publication must take place at least 30 days before the date of the general meeting to decide on the merger.

Main amendments to the Law on JSC

New provisions on mergers and dismemberments

Article 93. Merger of companies

(10) One or more valuation specialists within the valuation company, acting on behalf of the merging companies but independently of them, shall review the merger agreement and draw up a written report for the shareholders.

(11) In each case, the report will contain the evaluators' opinion on the correctness and reasonableness of the conversion ratio. The report shall indicate the method (s) used to obtain the proposed proportion for the conversion of the shares, state whether the method (s) are appropriate for the case, state the values obtained by using each of these methods and contain an opinion on the relative importance given to the methods concerned for obtaining the value of the decided conversion ratio. The report will also describe any special evaluation difficulties that have arisen.

(12) Merging companies shall provide the evaluator with all relevant information and documents for the purpose of carrying out the assessment.

(13) The evaluator is liable, in accordance with the legislation in force, for the damage caused to the shareholders of the merged company or the merged companies by falsifying the results of the evaluation, non-compliance with the principles of independence, conscientiousness and confidentiality of the information obtained during the evaluation.

(14) Examination of the draft terms of merger and preparation of the report provided for in para. (10) will not be required if all shareholders or associates with voting rights in each of the merging companies so decide.

Main amendments to the Law on JSC

New provisions on mergers and dismemberments

Article 94. Merger materials

(1) At least one month before the date of the general meeting following the adoption of the merger decision, shareholders shall have the right to consult at the company's headquarters at least the following documents:

- a) the draft merger contract;
- b) the financial statements for the previous 3 financial years of the merging companies;
- c) the financial statements prepared no earlier than the first day of the third month preceding the date of the draft merger agreement, if the most recent financial statements have been prepared for the financial year ended more than 6 months before the date of the general meeting approve the merger;
- d) the reports of the executive bodies of the merging companies, provided in art. 92 para. (6);
- e) the report mentioned in art. 93 para. (10).

(2) It is not necessary to prepare the financial statements according to par. (1) letter c) if:

- a) all the holders of voting securities or associates of each of the companies involved in the merger have agreed to do so, or
- b) half-yearly financial statements have been prepared and published - in the case of public interest entities.

(3) The financial statements provided in par. (1) letter c) are prepared in accordance with the methods and structure used to prepare the latest annual financial statements.

However:

- a) it is not necessary to carry out a new physical inventory;
- b) the valuations recorded in the last financial statements are modified only to reflect the entries in the accounting records, taking into account interim depreciation and provisions and significant changes in the real value not recorded in the records.

(4) Each shareholder has the right to obtain, upon request and free of charge, copies of the documents provided in par. (1), unless the official website of the company offers shareholders the opportunity to download and / or print those documents. The company will keep the information on its official website for a period of at least one month after the general meeting. If a shareholder has agreed that the company will use electronic means to communicate information, such copies may be sent by e-mail.

Main amendments to the Law on JSC

New provisions on mergers and dismemberments

Article 96. Dismemberment of the company

(4) The dismemberment project may provide, as the case may be, for the issuance by the beneficiary companies of shares / participations for the purpose of their distribution to the shareholders of the divided company, and the payment of a cash payment whose value may not exceed 10% of the nominal value (fixed) of the shares / participations allocated in the beneficiary companies.

(6) The establishment of the companies formed by dismemberment is carried out on the basis of the decision of the general meeting of the shareholders of the reorganizing company, at which the division project was approved. If the companies involved in the reorganization process by dismemberment have placed shares of several classes, the reorganization decision will be taken by the holders of shares of each class whose rights have been affected. The rights of shareholders represented by shares of each class may not be changed as a result of the reorganization, unless their decision provides otherwise.

(7) The dismembering project, in addition to the provisions established in the Civil Code, must contain:

- a) the precise description and distribution of the assets and liabilities to be transferred to each of the beneficiary companies, and for the dismemberment by separation, the assets and liabilities remaining in the company are specified;
- b) the distribution and precise specification of the number of shares / participations that, as the case may be, are to be allocated by the beneficiary companies to the shareholders of the dismembered company and of the criterion on the basis of which the distribution is made.

THANK YOU!



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