LEGAL UPDATE

POPOVICI & ASOCIAȚII
Attorneys at Law

239 Calea Dorobanti, 6th Executive Floor
Bucharest, 1st District, Postal Code 010567
Romania

Telephone: (0040) 21 317 79 19
Fax: (0040) 21 317 85 00 / 317 75 05

office@popovici-partners.ro
www.popovici-partners.ro

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CAPITAL MARKETS

Increase of the shareholding threshold in the SIFs' share capital to 1%

The Government Ordinance no. 41/2005 regulating several financial measures (the Official Gazette of Romania no. 677 of July 28th 2005) amends, among other enactments, the Law no. 297/2004 on the capital market, by providing the increase of the shareholding threshold in the SIFs' share capital.

Therefore, according to the new art. 286[1], any person may acquire under any title or may hold shares issued by the SIFs, up to the limit of 1% of the SIFs' share capital.

In case that the mentioned threshold is exceeded, the voting right, attached to the shares held in breach of the legal provisions, is suspended. On the other hand, the shareholders who exceed the legal shareholding threshold have to sell the shares over this shareholding limit.

The new enactment provides for the SIFs the obligation to make all endeavours in order to change the by-laws or articles of association within 60 days as from the Government Ordinnace no. 41/2005 entering into force, by repealing any provisions contrary to the provisions under the new art. 286[1]. The sanction for the failure to observe the above referred provision consists in deeming the by-laws/articles of association as amended complying with the 1% limit of the share capital.

For the implementation of the new provisions, CNVM shall further issue additional regulations.

JUDICIAL REORGANISATION AND BANKRUPTCY

The judicial reorganisation and bankruptcy legislation is subject to amendments due to passing the Law no. 249/2005 on the amendment and completion of the Law no. 64/1995 (the National Gazette of Romania no. 678 of July 28th 2005).

This enactment amends several duties of the receiver judge, as well as the approval conditions for the reorganisation plan. The implementation field of the judicial reorganisation and bankruptcy legislation is extended *to any private legal persons who carry out also economic activities.*

Duties of the receiver judge

In accordance with the Law no. 249/2005, the administrator or liquidator is appointed only temporarily, until the first meeting of creditors who may decide if the administrator or liquidator appointed by the receiver judge is maintained or replaced. The receiver judge has to consider the possible claims of the claimant creditors and is allowed to deny such claims only on grounded reasons.

Moreover, the new enactment restricts the receiver judge's authority to revoke the administrator proposed by the creditors, being settled that the administrator may be revoked (and replaced with the one appointed by receiver judge) only in case that it does not meet the legal provisions for

such appointment or is in a case of incompliance.

Acceleration and efficiency of the bankruptcy procedure

The new enactment settles the procedure related to the debtor's request for entering the bankruptcy procedures, according to which, if the debtor does not contest its insolvency and requires entering the bankruptcy procedures, the receiver judge shall automatically render a bankruptcy judgement. Moreover, the receiver judge may also appoint, at the same time with the appointment of the administrator, the judicial liquidator, and may also settle the remuneration for both of them according to the criteria approved by Government Decision.

Approval of the reorganisation plan

According to the new legal provisions, when one method of implementation of the reorganisation plan is issuance of securities, it is necessary to have the creditor's express approval for taking over the referred securities, before the judge approves the plan.

For now, the approval of the reorganisation plan is subject to new voting conditions, *separately,* on categories of creditors and not on categories of receivables (as provided until the new enactment's entering into force). Therefore, according to the new regulations, the following categories of creditors shall separately vote on the debtor's reorganisation plan: the creditors holding secured receivables; the budget creditors; unsecured creditors. It is also stipulated that a plan shall be deemed as approved by one category of creditors if the holders of the most receivables under the referred category vote in favour of the plan.

Moreover, the law settles a new category of creditors who may vote the reorganisation plan only under restrictive conditions, namely the creditors who, either directly or indirectly *control, are controlled or are under the joint control* as the debtor (in compliance with the capital market legislation). In such case, they may participate to the meeting, but they may vote for the reorganisation plan only if the respective plan grants them less than they would receive in case of bankruptcy.

Conditions for the approval of the reorganisation plan

The enactment settles new conditions for the approval of the reorganisation plan by the receiver judge, by the abrogation of the "fair" treatment of the subordinated debts (as a result of their priority of claims) and regulating a new more rigorous framework. The debtors or other creditor category are no longer enabled to approve the plan , as the new regulations provide the judge's *approval* of the reorganisation plan under the conditions voted by the creditors.

Valorisation of the debtor's assets under the bankruptcy procedure

Mention should be made that it was regulated a derogation from the liquidation procedure, therefore, if until now it was admitted the debtor's initial assets alienation initially by direct negotiation and only in case that the negotiation was unsuccessful by public auction, following the lattest amendments, the procedural order has changed, and thus, the debtor's assets shall be first sold in public auction, and only if the

assets are not sold, the direct negotiation begins.

BANKING

Micro-financing companies

The Law no. 240/2005 on micro-financing companies (the National Gazette no. 663 of July 26th) sets the legal framework for the setting up, organisation and functioning of the companies specialised in micro-lending.

Setting up of the micro-financing companies

The micro-financing companies are financial entities set up as joint stock companies having as main object of activity micro-lending from their own funds, funds borrowed or obtained from financial institutions, donor organizations or from public, in compliance with the legal regulations.

The minimum share capital of the micro-financing companies, amounting to at least the equivalent in *lei* of Euro 200,000, has to be entirely paid up in cash. The shares issued by the micro-financing companies may be only nominative shares.

According to the Law no. 240/2005, a micro-financing company has to notify the National Bank of Romania ("NBR") on its setting up, within 30 days as from the company's registration with the Trade Registry, and moreover has to notify the NBR on any amendments to the documents initially submitted.

Types of operations performed by the micro-financing companies

According to the new enactment, the main activity of these companies is micro-lending, "*micro-loan*" meaning the loan in *lei* granted to natural or legal persons, the equivalent of an amount up to EUR 25,000, with a 60 months repayment period. The destination of such loans may be projects development, activities or business, financing the community or economic projects development, or the local communities' projects and social programmes for improving the living standards of the local communities.

The micro-financing companies may carry out the following operations: (i) to borrow or obtain repayable or non-repayable funds from resident or non-resident entities, (ii) to approve as guarantees the deposits set up by beneficiaries, provided that the amounts set up as guarantee are deposited in a credit institution – Romanian legal person or Romanian branches of the foreign credit institutions authorised by the NBR, (iii) to execute legal documents concerning fixed and movable assets acquired as a result of the guarantees enforcement, (iv) administration of public funds granted as funds for micro-loans by the governmental agencies.

According to the Law no. 240/2005, these companies may not take deposits or other reimbursable funds from the public, as per the Law no. 58/1998 on the banking activity. Moreover, the micro-financing companies may not grant mortgage loans.

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Micro-lending activity principles

The micro-lending activity may be carried out exclusively through accounts opened with the credit institutions – Romanian legal persons, as well as Romanian branches of the foreign credit institutions authorised by the NBR to perform their activity in Romania.

In accordance with the Law no. 240/2005, the basic principles of micro-lending mainly refer to: (i) the reason for the inception or development of projects, activities or business, including the community or economic development projects, the local communities' projects and social programmes, (ii) the creation of a transparent framework for the micro-lending activity and fairly treatment of the beneficiaries, by providing all concerned persons with the micro-lending terms and conditions of and by applying the same eligibility criteria to all micro-loans applicants, (iii) the interdiction to conditioning the micro-lending by the beneficiary's acceptance of services not related to the micro-loan; (iv) performance of the publicity and advertising activities in compliance with the competitiveness principles and the economic interests of the beneficiaries.

The micro-financing company shall inform the micro-loans applicants on all the conditions of the agreement, before its conclusion. The beneficiaries are entitled to reimburse the micro-loan in advance. The conditions of the micro-loan advance reimbursement have to be provided by a distinct provision in the agreement.

The micro-loan agreements, as well as the collateral and personal securities set up for guaranteeing the micro-loan are writ of execution.

EMPLOYMENT

With a view to the assimilation of the *acquis communitaire*, the Parliament passed the Law no. 217/2005 (the Official Gazette of Romania no. 628/19.07.2005) on the establishment, structure and functioning of the European Works Council. The new procedure regulated by the Law no. 217/2005 refers to the procedure for informing employees, respectively by setting up the European Works Council or by implementing the procedure for informing and consulting employees.

Mention should be made that the provisions of the Law no. 217/2005 shall apply subsequent to Romania's accession to the European Union.

Scope of applicability

The European Works Council or the procedure for informing and consulting the employees are implemented in the *Community-scale undertakings*, namely units with at least 1000 employees within the member states, and within at least two different member states, at least 150 employees in each of them. This body may be also established within the Community-scale group of undertakings.

With a view to the implementation of this law, there shall be considered as Community-scale undertakings and Community-scale groups of undertakings, the entities which: (a) have the central management in Romania, or (b) the central management is not located in a member state, but have one representative appointed in Romania, or (c) the central management is neither located in one member state, nor

does it have a representative appointed in one member state, but the subsidiary, branch or any other secondary offices of such undertaking or, as the case may be, the undertaking member of the group hiring the largest number of employees in a member state, is located in Romania.

By exception, the provisions of the Law no. 217/2005 are not effective, if, on its entering into force, there is already an agreement applicable to all employees, agreement that stipulates trans-national information and consultation of the employees.

Establishment of the Special Negotiating Body

In order to set up the European Works Council or to implement the information and consultation procedure, it shall be established one *Special Negotiating Body*, with the role to settle together with the central management in Romania, by a written agreement, the scope of application, the members, competence and the mandate period for the European Works Council or Councils or the arrangements of implementation of one or several information and consultation procedures for the employees.

The Negotiating Body is made up of minimum 3 members (employees of the respective undertakings), and the maximum number may not exceed the number of member states. The members shall be appointed in accordance with representation criteria, depending on the number of employees within Community-scale undertakings.

Within 30 days as from the notification on the setting up of the Negotiating Body, the central management has to convene this body, in order to conclude an *Agreement*, having as object either (1) setting up the European Works Council, or (2) implementing the information and consultation procedure for the employees.

European Works Council

In case such a Council is established, the Law no. 217/2005 provides that its competence shall be limited to information and consultation for the employees on issues concerning the Community-scale undertaking or the Community-scale groups of undertakings as a whole or at least two subsidiaries, branches or other secondary offices or group of undertakings, located in different member states.

The employees shall be informed at least once a year, when the European Works Council is convened by the central management, in order to be informed and consulted on the progress of the Community-scale undertakings or Community-scale groups of undertakings activity, and on its perspectives, based on a detailed report drafted by the central management.

The meeting shall mainly concern matters such as: the structure and prospective progress of the undertaking's or group's activity, the economic and financial statements, employment, production and sale, investments, introduction of new working or production methods, production transfers, mergers, resizing or winding up of enterprises or parts of enterprises, collective lay-offs, etc.

In exceptional cases, considerably affecting the employees' interests, particularly in the

event of relocation, of closure, of collective redundancy, the European Works Council has the right to be informed.

The members of the European Works Council have to inform the employees of the Community-scale undertaking or Community-scale groups of undertakings, on the content and the outcome of the information and consultation procedures.

The central management may restrict the disclosure of certain information, which based on objective criteria, by nature, may significantly harm or damage the enterprise operation. Nevertheless, the employees may challenge in front of courts the refusal to disclose certain information.

Implementation of the information and consultation procedures for employees

In accordance with the law, the central management and the Special Negotiating Body, instead of resolving upon the setting up of the European Works Council, may agree on the implementation of one or several information and consultation procedures for employees.

In this respect, a written agreement shall be concluded settling the modalities under which the employees' representatives have the right to meet in order to be informed and to consult with the central management on the information communicated. Such information mainly concerns the trans-national issues, affecting the interests of the employees in Community-scale undertakings or Community-scale groups of undertakings.

Protection and offence liability of employees

In order to protect the employees against any abuses, the Law no. 217/2005 provides that the members of the Special Negotiating Body, of the European Works Council, as well as the employees' representatives may not be discriminated or sanctioned and may not be dismissed, for fulfilling the duties assigned to them by this enactment.

The Ministry of Labour, Social Solidarity and Family has the authority to establish and sanction the offences hindering the setting up of the European Works Council or the implementation of the information procedures, as well as the actions discriminating the members of the European Works Council or of the Special Negotiating Body.

Note: The amendments to the Code of civil procedure, Labour Code and the Code of fiscal procedure, together with the set of amendments promoted by the Law no. 247/2005 on the reform in property and justice, as well as several additional measures, shall be presented in a special edition of the Legal Update.