

Categories of shares with different voting rights under discussion

By Vlad-Teodor Bratu, Avocat (Attorney at Law RO)

On 8.12.2021 a draft law¹ aimed at significantly amending and completing Company Law No. 31/1990 (hereinafter referred to as “**the Law**”) was submitted to the Romanian Senate. According to this draft law, a new type of shares is introduced, which could result in shareholders of Romanian joint stock companies and LLCs being granted different rights. This basically signifies a change from the previous principle according to which shares basically grant their owners the same rights.

According to the initiators, this project aims at making so-called “Venture Capital” transactions easier in Romania, especially since Romania is trying to support and speed up the development of the IT industry.

Current legal situation

According to the situation regulated by law, the share capital of a Romanian limited liability company („S.R.L.“) is divided into equal shares which are all „common“ (Ro: *ordinare*). In principle, each such share grants its holder a voting right.

In case of joint stock companies, the law already distinguishes among the following categories of nominal shares:

- ordinary shares (Ro: *acțiuni ordinare*),
- preferred shares (rum: *acțiuni preferențiale*), which grant the respective holder, besides the rights corresponding to the ordinary shares, also priority over dividends.

New category of shares

The abovementioned draft law introduces for both Romanian corporate forms the category of executive shares (Ro: *părți sociale / acțiuni executive*).

Owners of executive shares within Romanian LLCs should be granted especially the following rights:

- multiple voting right, granting them more rights to vote per share according to the provisions regulated in the articles of association (Ro: *act constitutiv*);
- all rights granted to common shares, including the right to participate in the General Assemblies.

Moreover, the draft law grants shareholders owning executive shares within a Romanian joint stock company the following rights:

- Multiple voting right, based on which the owner of the executive share has more rights to vote per share;

¹ Draft Law No. B563-2021.

- all rights granted to the owners of ordinary shares, including the right to participate in the Shareholder Meeting.

Amendment of the articles of association

According to the draft law, the categories of shares, as well as the number of voting rights granted to the owner by executive shares, must be recorded in the articles of association of the company. Thus, according to the draft, members have the power to decide upon the classification of shares and their effects.

Converting the categories of shares

Based on the draft law, LLCs have the option to change the category of shares, i.e. common shares into executive shares and also to change the category again. This happens by way of a Shareholder's Resolution which has to be passed by absolute majority of the members and shares.

In the case of joint stock companies, according to the draft law, it should also be permitted to change the three abovementioned categories. This requires a resolution of the Shareholder's Meeting passed by the majority of the votes of present or represented shareholders.

Conclusion

The law in its currently applicable version provides with regard to voting rights that each owner of shares has only one right to vote per share. The current legal status allows for no variations.

The draft law departs from this principle, as it grants shareholders the right to attach more value to certain shares. This means an important change. Should the draft law come into force, this could not only achieve the purpose of making "Venture-Capital" transactions easier in Romania, but also bring along a new degree of flexibility regarding the establishment of companies and Joint Ventures as well as M&A transactions.

Whether and in what form the draft may turn into an actual law remains to be seen. Its existence proves, however, that the legislator is active in this field.

Contact and further information:



STALFORT Legal. Tax. Audit.
Bucharest – Bistrița – Sibiu

Office Bucharest:

T.: +40 – 21 – 301 03 53

F: +40 – 21 – 315 78 36

M: bukarest@stalfort.ro

www.stalfort.ro