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## Piata Financiara

### *Companies Law*

#### **Managers Exit the Salary Schemes**

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As of the 1<sup>st</sup> December 2006, when Law No. 441/2006 entered into force, the regulations existing in the field of commercial companies were subject to the most significant amendments since 1997 and until present time. One of the most controversial amendments, both in the Romanian business environment and at the doctrinaire level and among the law practitioners, relates to the interdiction expressly provided for the directors and managers (within the one-tier system), and for the members of the Directorate and of the Supervisory Board respectively (within the two-tier system), to be employees of the joint stock company they manage, during their mandate. Only three days have been granted by the amending law to commercial companies in order to comply with the new provisions.

#### **Contracts of Commercial Mandate**

Further to the new regulations, the contracts that the directors and the managers will conclude with the companies they manage will be commercial mandate contracts (management or administration contracts). As regards the directors and the managers who were already in office on the effective date of the amending law and who were also employees of the joint stock companies they managed, their labour agreements have been suspended by operation of law as of 1<sup>st</sup> December 2006.

While for the directors the solution was foreshadowed under the preceding legislation as well, the new feature was the extension upon the managers of the obligation to conclude such contracts. As opposed to the old regulations, managers are no longer allowed to conclude a labour agreement with the company, being required to fulfil their duties based on a management contract.

#### **The Notion of Manager**

Along with this interdiction, Law no. 441/2006 also provides a legal definition for the manager of a joint stock company. The provisions are nonetheless rather general, resulting in confusions and interpretations.

According to the new regulations, a "manager" will be only that person to whom directors have delegated their duties to manage the company. In the absence of legal criteria, we might deem as being defining for a manager the decisional power and his decisional independence and independence to act, at the company or a department's level. It could also be taken into account the general mandate granted by the directors to the manager (and not just a special mandate for certain operations or types of operations only, expressly set forth and limited). We could also consider other criteria, related to the assignment in favour of the managers of the authority and responsibility to manage a department or the company (for the general manager), as well as the subordination of the persons appointed as managers to the board of directors of the company.

#### **Effects of the New Approach**

First of all, the relations between the directors/managers and the companies they manage are no longer regulated by the Labour Code provisions, being included in the mandate relations area. Thus, the directors and managers have been granted a higher flexibility and the freedom to negotiate the terms of their mandate.

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On the other hand, the directors and managers who were also employees of the company, are no longer benefiting from the protection provided by the labour law to the employees and they may be dismissed anytime by the general meeting or the board of directors respectively, regardless the term for which they have been originally appointed and without being necessary to observe the difficult procedure of dismissal. The directors and the managers will however be entitled to receive compensations in case they are dismissed from their mandate without a well-grounded cause.

As regards the owed social securities contributions, if for the employers the new legal provisions mean the elimination of the obligation to pay salary-related contributions, for the directors and the managers these brought the obligation to pay solely and entirely the social security contributions owed for their revenues.

Directors and managers which have concluded an administration or a management contract, are compulsory insured by operation of law in the public pension and social security system, and owe the entire contribution of 29% of their monthly declared revenue. The application of the new legal regime for their position does not limit nor affect their right to receive a pension, the contribution being computed according to the term during which the social securities contributions have been paid. Moreover, the directors and the managers mandatorily owe the monthly contribution of 6.5% for the health insurances and the contribution of 0.75% for the annual leaves and the health insurance allowances.

The directors and the managers no longer benefit, based on the law, of the rights granted to the employees within the unemployment insurance system, but they may nonetheless conclude an optional insurance within such system, paying the related contribution of 3.25% of the monthly revenue declared in the unemployment insurance contract.

#### **A New Amendment is Envisaged**

The short term granted to companies in order to comply with the new legal requirements took by surprise the directors and the managers, as well as the joint stock companies that had to negotiate and conclude new management contracts with them. In practical terms, there are currently two options for joint stock companies: either the company will be managed exclusively by the directors, without the delegation of the managerial competencies to other persons appointed as directors, who will be thus able to continue their existent labour relations; or the company's management will be delegated by the directors to the managers, but, under such circumstance, the directors and the managers will act independently based on a management (administration) contract.

The controversies resulted from the new regulations made the Ministry of Justice to initiate a new project for the amendment of the Companies Law, meant to eliminate the inconsistencies contained by the new legal provisions and to grant the joint stock companies a transitory period for implementing the reforming provisions of Law No. 441/2006. The project, already submitted to public debate, remains however a draft, being difficult for the time being to estimate a timeframe when it will be adopted under the form currently proposed.

The new project allows a director/manager to cumulate this position with the position of an employee of the joint stock company, provided that the person concerned is going to exercise in fact attributions specific both to a director/manager of a joint-stock company, as well as to an employee. Otherwise, the labour contracts of the said employees will be suspended by operation of law as of the date they accept the director/manager position.

Reacting to the signals of the business environment as regards the difficulties to implement the new regulations, the amending project intends to offer the companies a seven months transitory period in order to comply with the new provisions. As soon as this term expires, the labour contracts, if concluded for fulfilling the director or manager mandate, will be terminated by operation of law.