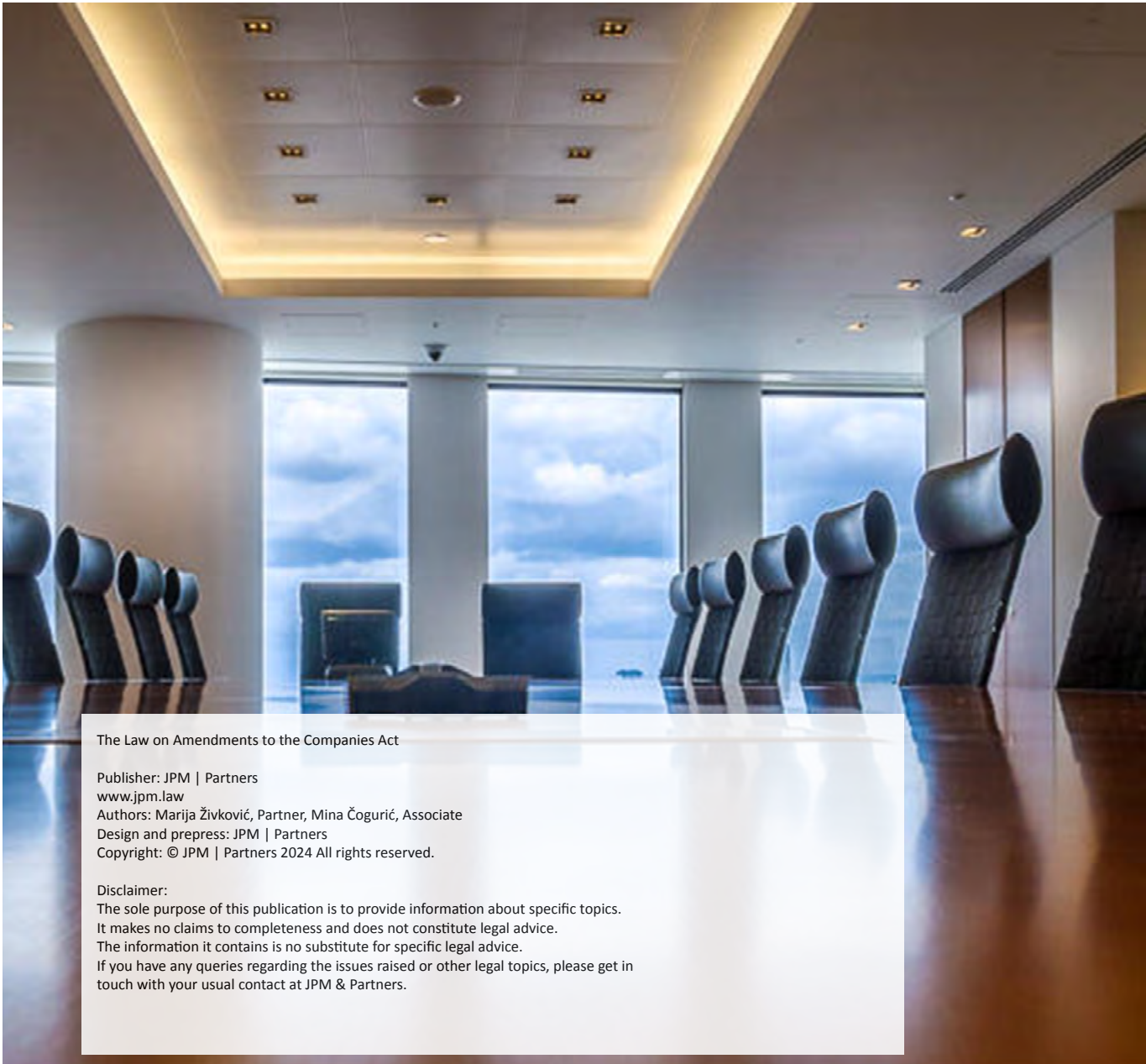




## **The Law on Amendments to the Companies Act**

**JPM**

**PARTNERS**



## The Law on Amendments to the Companies Act

Publisher: JPM | Partners

[www.jpm.law](http://www.jpm.law)

Authors: Marija Živković, Partner, Mina Čogurić, Associate

Design and prepress: JPM | Partners

Copyright: © JPM | Partners 2024 All rights reserved.

### Disclaimer:

The sole purpose of this publication is to provide information about specific topics.

It makes no claims to completeness and does not constitute legal advice.

The information it contains is no substitute for specific legal advice.

If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact at JPM & Partners.

The Parliament of Montenegro has adopted again the Law on Amendments to the Companies Act with 43 votes in favor, at the extraordinary session of the Parliament held on January 19, 2024, and the Amendments entered into force on January 23, 2024.

The initial Proposal of the Law on Amendments to the Companies Act was submitted by six members of Parliament on December 13, 2023. The Amendments proposed a change of Articles 135 and 136 of the Companies Act.

These articles pertain to convening shareholder meetings, with the proposed amendments stipulating a deadline of 21 days for holding the general meeting from the date of its convocation, in which case the deadline for sending notice of the meeting would also be 21 days. Committee on Economy, Finance, and Budget of the Parliament of Montenegro made Amendments to this proposal, aiming at “more appropriately locating the proposed solutions within the law itself.” After the Government of Montenegro provided its opinion on December 29, 2023, stating that the Proposal of Law on Amendments to the Companies Act should be accepted, it was adopted at the session held on the same day.

The adopted legislative solution removes Article 151, paragraph 6 of the Companies Act and introduces new Articles 151a and 330b. Article 151a stipulates that the Board of Shareholders or the Supervisory Board is obliged to convene an extraordinary general meeting of shareholders upon the proposal of 95% of voting shareholders, that the extraordinary general meeting shall be convened within eight days from the receipt of the request for convening the meeting, and that the meeting shall be held within 21 days from the date of the decision to convene the meeting.

Furthermore, it is prescribed that shareholders who have submitted a request for convening the general meeting have the right to convene the meeting themselves at the expense of the company if the board of directors or the supervisory board fails to convene the meeting within 8 days of receiving that request.

This meeting shall be held within 15 days of the date when the shareholders make the decision to convene. Additionally, the adopted legislation provides the manner and timing of the announcement of the convening of the general meeting, as well as an exception that an extraordinary general meeting of shareholders may be convened without adhering to the specified deadlines, provided that all voting shareholders or their proxies agree to it.

The rationale of the Proposal is directed towards aligning the operational dynamics of companies with those of the market itself through the proposed amendments. The aim is to enable timely information of shareholders about significant issues and decisions by convening extraordinary general meetings of shareholders more swiftly, thereby improving business operations through more efficient management, adapting to changes, reducing bureaucracy, and enhancing transparency.

The adopted Amendments also include the addition of Article 330b, which stipulates that “procedures for convening and holding a general meeting of shareholders that commenced before the entry into force of this law shall be concluded pursuant to this law unless the deadlines for holding the meeting are shorter than those specified in Article 151a of this law.” The retroactive application of regulations is highly contentious, as highlighted by the President of Montenegro in a letter dated January 3, 2024, wherein the Proposal of the Law on Amendments to the Companies Act was reoccurred to Parliament for reconsideration.

It has been pointed out that the prescription of retroactive application of the amended provisions of the Companies Act is against Article 147, paragraph 1 of the Constitution of Montenegro, which states that legal provisions may only exceptionally have retroactive effect under the condition that the public interest is established in the legislative process.

The existence of public interest has not been established considering that the rationale of the Proposal lacks reasoning in that regard, nor did the Parliament specifically address it, although Article 145, paragraph 2 of the Rules of Procedure of the Parliament of Montenegro stipulates that the Parliament shall specifically address whether there is a public interest for the retroactive effect of the law.

Neither has the determination of the public interest for retroactive application of the Amendments been the subject of the discussion during the session of the Parliament of Montenegro held on January 19, 2024, as the President of the Parliament stated that public interest would not be specifically discussed.

On that occasion, only the Proposal was put to a vote and adopted. Pursuant to Article 94, paragraph 2 of the Constitution of Montenegro, the President of Montenegro was obliged to promulgate the Amendments of the Companies Act, which he did.

The enactment of the Companies Act Amendments has sparked fierce debates among both experts and the wider public. Some political parties believe that it is an ad hoc solution motivated by personnel changes in Elektroprivreda Crne Gore AD Nikšić and they announce the submission of an initiative for the assessment of constitutionality.

In our opinion, there is no dispute that prescribing a deadline for convening and holding a shareholders' meeting and informing them of the meeting contributes to quicker response to the accelerated business dynamics and timely action and that this legislative solution is not contrary to Directive 2007/36/EC.

However, this legislative solution, which was adopted in an exceptionally short time and in the described manner, especially its retroactive application without the previous establishment of public interest for it, indeed raises several uncertainties, both of a formal-legal nature concerning the constitutionality of this law, and regarding the motives for amending the Companies Act.

# Author



Marija Živković

Partner

E: [marija.zivkovic@jpm.law](mailto:marija.zivkovic@jpm.law)



Mina Čogurić

Associate

E: [mina.coguric@jpm.law](mailto:mina.coguric@jpm.law)

JPM | PARTNERS

2 Šeika Zaida Street

81000 Podgorica

Montenegro

email: T:+382 20 672534

E: [office.mne@jpm.law](mailto:office.mne@jpm.law)

[www.jpm.law](http://www.jpm.law)