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# Legal Bulletin



## Commercial Law

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### Novelties regarding the Commercial Law

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Law No. 265/2022 on the trade register and for amending and supplementing other normative acts with impact on the registration in the trade register (“**Law No. 265/2022**”) was published in the Official Journal of Romania No. 750, Part I, of 26 July 2022. Law No. 265/2022 entered into force on 26 November 2022.

The following normative acts were repealed when Law No. 265/2022 entered into force:

- Law No. 26/1990 regarding the trade register;
- Government Emergency Ordinance No. 116/2009 for implementing measures regarding the registration in the trade register; and
- Law No. 359/2004 regarding the simplification of registration formalities in the trade register of natural persons, family associations and legal persons, their tax registration, as well as the authorization of legal persons for operation.
- Law No. 265/2022 integrates the primary legislation relating to the procedure for registration in the trade register and for the authorization for operation and conduct of the companies’ activity. The normative act amends and supplements Law No. 31/1990 on companies (“**Law No. 31/1990**”) and Government Emergency Ordinance No. 44/2008 regarding the deployment of economic activities by authorized natural persons, by individual and family companies.

The novelties brought by Law No. 265/2022 regard the following aspects that will be detailed below:

- The mandatory content of the new articles of association (2);

- The companies' name (3);
- The simplification of the procedure for registration of companies in the trade register (4);
- Registration of companies by exclusively electronic procedures (5);
- The procedure of registration in the trade register based on the legality control carried out by the trade register's registrar (6);
- The introduction of the Electronic Bulletin of the Trade Register (7);
- The opposability of the registration and changes in the trade register against third parties (8)
- The procedure for intervention in the registration process is removed (9);
- The removal of the requirement to submit a specimen signature (10);
- The removal of the condition to pay up the share capital at the time of the incorporation of the limited liability company (11);
- The decision-making process in limited liability companies (12);
- The rules applicable to limited liability companies in the event of the death of a member (13);
- The transfer of the delegated judge's duties to the registrar of the trade register (14);
- The appointment of directors and managers takes effect only if it is expressly accepted (15);
- The time limit for the implementation of capital increases (16);
- The time limit for opposing mergers and divisions (17);
- The rules on the dissolution of companies (18);
- The procedure for the liquidation of companies (19).

## 2. New mandatory clauses for the articles of incorporation

Regardless of the legal form of the company, the articles of incorporation shall include a clause by which the founders assume responsibility for fulfilment of the conditions provided by Article 6 of Law No. 31/1990 for starting a company (essentially, the lack of convictions for offences related to economic crime), as well as, where appropriate, the identification data of the beneficial owners and of the ways in which control over the company is exercised.

In the case of general partnerships, limited partnerships or limited liability companies, following the amendment of Article 7 of Law No. 31/1990, the articles of incorporation shall also include, *inter alia*, (i) the term of office of the directors and (ii) the method

for adopting the decisions of the general meeting of shareholders (with the vote of all the shareholders if, by reason of parity of the ownership in the share capital, an absolute majority cannot be established).

As regards the joint-stock companies and partnerships limited by shares, the articles of incorporation will also have to include a reference to the type of company, i.e. unlisted or listed.

In addition, clarifications are made regarding the scope of the identification data to be inserted in the articles of incorporation, these being provided by Article 8<sup>1</sup> of Law No. 31/1990.

### **3. New rules regarding the name of companies**

It is not allowed to use terms such as “*scientific*”, “*academy*”, “*university*”, “*school*” or their derivatives. Also, the firm cannot include words such as: “*notary*”, “*executor*”, “*lawyer*”, “*legal counsel*”, “*legal advice*” or words that are associated with professions involving exercise of public authority.

Words such as “*national*”, “*Romanian*”, “*institute*” or their derivatives or words or phrases specific to central public authorities and institutions cannot be used either. The registration of the company will be done only if it is not likely to create confusion with the name of a central or local public authority or institution. The decision on this issue belongs to the trade register registrar, while the requirement of endorsement of the General Secretariat of the Government or of the local authorities is removed. Conversely, the explanatory memorandum of Law No. 265/2022 provides for the intention to establish a Registry for evidence of central and local public authorities and institutions, which will have to be consulted by the registrar.

For authorized natural persons, individual and family companies, it is regulated the requirement to complete the name of the firm in case of identity of name and surname with another authorized natural person, individual company or family company registered in the trade register or reserved for registration.

### **4. Simplification of the procedure for registration in the trade register**

The most important novelties concern the time limit for the resolution of the application for registration and the removal of certain documents accompanying the application and of the requirement that legal representatives submit the specimen signature when filing the application for registration.

A new time limit of one business day from the registration of the application is introduced for the resolution of the application for registration by the registrar.

Article 36 of Law No. 31/1990 provided that the application for registration had to be accompanied, *inter alia*, by the proof of payment of the share capital (except for limited liability companies) and the proof of reservation of name.

Following the amendments, the application for registration of the company will be accompanied only by the articles of incorporation of the company, the proof of the declared headquarters and other documents or endorsements provided by special laws for the purpose of incorporation. Thus, the requirements for submission of (i) the proof of reservation of name, (ii) the proof of payment of the share capital under the terms of the articles of incorporation and (iii) the deeds of ownership in case of in-kind contributions subscribed and paid at the time of incorporation are eliminated.

Also, the application for registration will no longer be accompanied by the founder's affidavit that they meet the conditions provided by this law. According to Article 6<sup>1</sup> of Law No. 31/1990, newly introduced, this affidavit shall be included, in a simplified form, in the articles of incorporation.

The obligation to submit, together with the application for registration, an affidavit regarding the fulfilment of the conditions for operation/performance of the activity was taken over in the new regulation. The affidavit can also be submitted electronically and will be filled in as per the new model published on the website of the Trade Register National Office.

#### **5. Registration of companies and registration of changes can be made through exclusively electronic procedures**

Up to date, the documents for registration of companies or for registration of changes could be submitted online, but the registration certificate was issued only in printed form.

The new procedure allows, at the request of the applicant, the issuance of the registration certificate and the certificate of registration of changes directly in electronic format, under the conditions stipulated by Article 110 of Law No. 265/2022.

#### **6. The registration of companies is made based on the prior legality control carried out by the registrar**

The registrar of the trade register takes over the competence to analyze and order registration in the trade register.

The registrar is defined by the law as the legal personnel of the Trade Register National Office ("ONRC") invested to perform the public service of the prior legality control for registration in the trade register.

The prior control procedure is carried out on a documentary basis, according to those provided by Article 105 et seq. of Law No. 265/2022.

#### **7. The Electronic Bulletin of the Trade Register is introduced**

The Electronic Bulletin of the Trade Register is organized as a central electronic platform for carrying out the legal publicity of the acts and deeds that are subject to

registration or mentions in the trade register or are filed or endorsed by it (the „Bulletin”).

The documents to be published in the Bulletin are provided by Article 15 of Law No. 265/2022 and among these are the registrar’s resolution or the court decision on the registration of a legal person, the registration of a branch of a legal person or the registration of an economic enterprise, as well as any other acts for which the law provides for publication in the Bulletin.

Some of the acts for which the law provides for publication in the Bulletin were previously published in the Official Journal of Romania, Part IV (e.g., the tribunal’s decisions ordering the dissolution of the companies, the court decisions declaring the nullity, the common draft terms of merger). The decisions of the general meeting of shareholders and those adopted by the administrative bodies, as well as the other acts provided for in Article 16 of Law No. 265/2022, will continue to be published in the Official Journal of Romania, Part IV.

The publication in the Bulletin is made *ex officio*, in compliance with the legislation on the protection of personal data. The publication in the Bulletin and its consultation shall be free of charge.

#### **8. Opposability of registration and changes against third parties**

Article 46 of Law No. 265/2022 provides that the operations carried out by the natural or legal person before the 16<sup>th</sup> day following the date of their registration in the trade register are not enforceable against third parties who prove that they were unable to become aware of them.

Furthermore, third parties are always in a position to invoke acts or facts in respect of which publicity has not been carried out, unless the omission of publicity deprives them of their effects.

In the case of documents and information published in the Bulletin or, as the case may be, in the Official Journal of Romania, if there is any discrepancy between them and the data and documents recorded in the register, the latter shall prevail against third parties.

#### **9. It is no longer possible to intervene in the procedure for registration of the company**

Article 46 of Law No. 31/1990 provided a procedure for the intervention of third parties in the procedure initiated by the application for registration in the Trade Register.

The procedure for intervention in the process for review of the applications for registration is completely eliminated. The new regulation therefore retains only the procedure for *ex post* challenge of the registrar’s resolution.

#### **10. Legal representatives no longer submit a specimen signature**

Article 45 of Law No. 31/1990 provided that the companies' legal representatives were obliged to submit to the trade register office their signatures, at the date of submission of the application for registration, if they were appointed in the articles of incorporation, and those elected during operation of the company within 15 days of their election.

The obligation of the company's representatives to submit a specimen signature to the trade register has been removed.

Also, Law No. 265/2022 provides in Article 12 that information regarding the legal representatives of the legal person (and whether they are empowered to act together or separately) will be available free of charge on the ONRC's website or on its online services portal.

#### **11. The share capital is no longer paid up in full at the time of incorporation of the limited liability companies**

General partnerships, limited partnerships or limited liability companies were required to pay in full, at the date of incorporation, the subscribed share capital.

Art. 9<sup>1</sup> of Law No. 31/1990 no longer provides for the condition that the subscribed share capital is fully paid by limited liability companies. The obligation to pay in full the subscribed share capital at the date of incorporation is maintained with regard to the general partnerships and limited partnerships.

Limited liability companies are obliged to pay the subscribed share capital in stages, after the date of incorporation, respectively (i) 30% of the amount of the subscribed share capital no later than 3 months from the date of registration, but before commencing operations on behalf of the company and (ii) the remaining subscribed share capital will be paid up: a) for the cash contribution, within 12 months as from the date of registration; and b) for the in-kind contribution, no later than 2 years as from the date of registration.

#### **12. Unanimity is no longer required for amending the articles of incorporation of limited liability companies**

In the previous version, Law No. 31/1990 provided that, for the decisions having as object the amendment of the articles of incorporation of limited liability companies, the vote of all the members was necessary, unless the law or the articles of incorporation provided otherwise.

This means that the rule of principle for adopting the decisions of the general meetings of limited liability companies (namely the double absolute majority of the members and shares) will also apply with respect to the amendments to the articles of incorporation.

### **13. New rules applicable to limited liability companies in the event of the death of a member**

The rule provided by Article 230 of Law No. 31/1990 with respect to general partnerships in the event of the death of a partner will also apply, more recently, to limited liability companies.

On the death of a member, the company must pay the share to which the heirs are entitled, after the last approved balance sheet, within 3 months as from the notification of the death of the member. The remaining members have the option to continue the business with the heirs who consent to it.

### **14. The duties of the delegated judge shall be transferred to the registrar of the trade register**

The previous version of Law No. 31/1990 provided in Article 37 that the delegated judge exercises the legality control of the acts or deeds which, according to the law, are subject to registration in the trade register.

The legality control will be carried out by the registrar of the trade register, and a series of the duties previously falling within the responsibility of the delegated judge will be transferred to the registrar, such as (i) to review the applications for registration and to order the registration in the trade register, (ii) to appoint the experts to assess the in-kind contributions at the incorporation of joint-stock companies or in case of an increase in share capital and (iv) to verify the legality of cross-border mergers and to endorse the common draft terms of the cross-border merger, etc.

### **15. The appointment of directors and managers takes effect only if it is expressly accepted**

The appointment of a director, manager or member of the directorate or of the supervisory board will be legally valid only if it is expressly accepted by the person appointed.

Also, Article 73<sup>1</sup> of Law No. 31/1990 is supplemented by a new paragraph, which provides that, by accepting the mandate, the directors, the members of the board of directors, the managers, the members of the directorate, the censors and, by concluding the services contract, the financial auditor assume responsibility for the fulfillment of the conditions set out in article 6 for holding and exercising the respective position, a clause to that effect being included in the contract.

### **16. Extension of the time limit for the implementation of capital increases**

In the previous form of Law No. 31/1990, in the event that there was an increase in the share capital, the decision of the general meeting ordering the increase was to take effects provided that it has been carried out within one year as from the date it was adopted. In the current version of the law, this time limit has been increased to 18 months.

### 17. Time limit for opposing mergers and divisions

The 30 days' time limit for opposition was previously calculated from the date of publication of the merger or division project in the Official Journal of Romania, Part IV.

Following the amendments to Article 243 of Law No. 31/1990, the 30 days opposition time limit may also start to run from the date of publication of the draft terms of merger or division in the Bulletin, if the company has opted for publicity on its own website.

### 18. Simplification of the procedure for the dissolution of companies

The provisions of Law No. 31/1990 are supplemented by the introduction of the possibility for ONRC to ascertain, upon request or *ex officio*, through the registrar and without seizing the court, the dissolution of certain companies, under certain conditions provided by the new Article 237<sup>1</sup> of Law No. 31/1990.

Such ascertainment may operate if (i) the conditions relating to the registered office are no longer fulfilled (ii) the company has ceased or has not resumed activity after the period of temporary inactivity and (ii) in the case of fixed-term companies, on expiry of the period referred to in the articles of incorporation, if the duration of the company has not been extended.

The registrar's resolution by which it was found that the conditions for the dissolution of the company have been met may be subject to a complaint, under the conditions laid down in Article 237<sup>1</sup> para. (4) of Law No. 31/1990. The court's decision for the resolution of the complaint may be challenged only with appeal, within 30 days of communication.

Article 237 of Law No. 31/1990 is also amended, in the sense of a reduction of the cases where the court may order the dissolution of the company. *Inter alia*, the tribunal can no longer order dissolution in the event of inactivity of the company or where it has not submitted its annual financial statements and accounting reports to the territorial units of the Ministry of Public Finance. As of 26 November 2022, the tribunal's decisions ordering the dissolution will no longer be published in the Official Journal and on the ONRC website, but in the Bulletin.

At the request of the Ministry of Finance - the National Agency for Fiscal Administration, the court may order the dissolution of the joint-stock company, if this is subject to an administrative sanction as a result of a breach of the obligation to keep a register of shareholders or the obligation to make available to the shareholders or other applicants information on the shareholding structure and to issue them certificates on these data, and the company does not remedy the situation within 30 days as from when the contravention sanction was applied.



### 19. Amendments to the procedures for liquidation of companies

According to the previous form of Law No. 31/1990, the time limit for finalizing the liquidation of the company was of one year from the date of registration in the trade register of the change regarding the dissolution. This period could be extended, for good reasons, by another year, but not more than twice.

Also, if the period within which the company could be liquidated was exceeded by more than 3 (three) months, without a request for deregistration being filed with the trade register office, the trade register office or any interested person could request the court to order the deregistration.

The one-year period for completion of the company's liquidation remains unchanged in the current regulation, but it may be extended, also for good reasons, three times maximum, by one year.

As regards the time limit for liquidation, the current legislation provides that the registrar of the trade register will be able to ascertain, *ex officio* or at the request of any interested person, that the legal period within which the liquidation could be carried out has expired and will be able to order the deregistration of the company from the trade register.

At the same time, Article 260 of Law No. 31/1990 was supplemented with provisions regarding the assets remaining after liquidation and the transfer of the ownership right over these assets to the members or shareholders. The registration of real estate in the land book will be made based on the certificate ascertaining the ownership right over the assets distributed following the liquidation and deregistration of the company from the trade register, issued by the trade register.

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## Editors

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