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Legal Bulletin



Commercial Law

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Amendments of certain legal provisions regarding registration with the trade registry, as well as of Companies Law

Law No. 152/2015 amending and supplementing certain enactments regarding registration with the trade registry (“Law No. 152/2015”) was published in Official Journal of Romania, Part I, No. 519 of 13 July 2015¹. Pursuant to Law No. 152/2015 certain amendments have been provided as regards performing registrations with the trade registry and publishing documents in the Official Journal of Romania. Also, important amendments have been brought as regards corporate matters.

1. Amendments of enactments regulating the performance of registrations with the trade registry and publishing documents in the Official Journal of Romania

The amendments comprised within Law No. 152/2015 may be classified in two categories, namely: (i) amendments which entered into force on 16 July 2015 and (ii) amendments that shall become effective at a later date.

1.1. Amendments that became effective on 16 July 2015:

The structure of the trade registry was amended; namely, it is provided that such is composed of:

- The registry for the registration of legal entity companies, national undertakings and companies, autonomous (state) companies, economic interest groups, cooperative organisations, European companies, European economic interest groups, other legal

¹ Law No. 152/2015 amends/supplements certain provisions of the following enactments: Law No. 26/1990 on the trade registry, Law No. 359/2004 on simplifying formalities upon registration with the trade registry of individuals, family associations and legal entities, fiscal registration thereof, and upon authorizing the operation of legal entities, Government Emergency Ordinance No. 116/2009 implementing certain measures on the activity of registration with the trade registry, Companies Law No. 31/1990.

entities expressly provided by law, with registered or secondary headquarters in Romania,

- The registry for the registration of legal entity cooperative companies and European cooperative companies with registered or secondary headquarters in Romania, and
- The registry for the registration of registered self-employed persons, individual undertakings and family undertakings with professional or secondary headquarters in Romania.

Regarding the term for issuance of the certificate for registration of mentions² (which is issued upon registration of the amendments to constitutive acts) it is provided that such shall be of 3 business days as of the registration date of the application³, insofar as no other term is given by the person in charge of settling the applications for registration.

A notable amendment refers to the provision of certain terms with respect to the publication in the Official Journal of the documents which are registered with the trade registry and which are subject to publication in the Official Journal, Part IV and Part VII, specifically:

- On the business day following the initial registration of the legal entity/ performance of subsequent registrations, the trade registry office shall provide an excerpt of the resolution/full resolution, as the case may be, to the Autonomous (State) Company "Monitorul Oficial";
- The publication in the Official Journal of the excerpt resolution or of the full resolution, as the case may be, shall be performed within 21 business days, at the most, as of the registration date of the application with the trade registry office. The Autonomous (State) Company "Monitorul Oficial" shall have 17 business days as of receipt of the excerpt resolution or full resolution, as the case may be, to perform the publication⁴.

1.2. Amendments that will apply as of 12 October 2015:

Romanian legal entities that open branches abroad shall have to mention them at the trade registry office in Romania, subsequent to their registration in the relevant countries.

1.3. Amendments that will apply as of 7 July 2017:

The Central Trade Registry (the "Central Registry"), kept by the National Trade Registry Office (ONRC) and the trade registries kept by the trade registry offices attached to tribunals shall be part

2 In Romanian: *certificat de înregistrare mențiuni*.

3 Prior to the amendments brought by Law No. 152/2015 this term was of 5 days.

4 Naturally, the publication term shall be extended accordingly inasmuch as the persons in charge of settling the applications for registration order an extension of the issuance term for the certificate of registration/recording of mentions, for documentation supplementation purposes.

of the system of interconnection of trade registers in the Member States of the European Union (the “Interconnection System”)⁵.

By the Interconnection System the trade registry office shall perform, free of charge, the exchange of documents and information with the EU trade registries in case of cross-border mergers and branches established by companies with headquarters in the EU Member States.

As such, the Romanian trade registry office and the EU registries shall continuously exchange information on the situation of legal entities in the EU that establish branches on the territory of Romania, and of the Romanian legal entities that establish branches in the EU, respectively. Specifically:

- The trade registry office shall receive the information and documents on the initiation and termination of any proceedings for the dissolution, winding up or insolvency of the EU legal entity, as well as on the deregistration thereof from the register, for the *ex officio* registration thereof, free of charge, in the (Romanian) trade registry in which the branches established by same are registered;
- The trade registry office shall provide, free of charge, the information and documents listed herein above with respect to the legal entities registered in Romania that established branches in other EU Member States, for the registration of said data in the (EU) trade registry;
- Should a legal entity in the EU Member State be deregistered from the register, the trade registry office shall deregister *ex officio*, free of charge, the branches thereof, as soon as it receives the information and documents listed herein above.

In addition, by means of the same system, on the ONRC’s website, as well as on the online service portal thereof, the public shall be made available, free of charge, the following categories of information: (i) the name and legal status of the person registered with the trade registry; (ii) registered headquarters/professional headquarters of the person registered with the trade registry and the Member State in which same is registered; (iii) the registration number of the registered person, the unique identifier at European level (EUID) and the sole tax registration code; (iv) company status.

For the purpose of facilitating the communication between the trade registry office and the EU trade registries, starting with 7 July 2017 the registration certificate to be issued upon registration shall include (in addition to the number of registration with the trade registry and the sole tax

⁵ The system of interconnection of the trade registers consists of the trade registers in the EU Member States and the European central platform. At a European level, the electronic access point to the Interconnection System is the European e-Justice Portal. At a national level, the access point for interconnection on trade registries shall be the Central Trade Registry kept by ONRC.

registration code) the unique identifier at European level (EUID)⁶, as well as any other data to be established by order of the Ministry of Justice.

The certified copies of the registrations entered in the registry and of the submitted documents, as well as the attesting certificates⁷, in electronic form (and having the extended electronic signature incorporated, attached or logically associated), may be requested and issued electronically, by means of the online service portal of ONRC, as well as by means of the Electronic Point of Single Contact (PCU). In addition, electronic copies of the documents mentioned above, as well as the information on the data registered in the trade registry may be made available to the public by means of the Interconnection System (on the applicant's expense).

2. Amendments regarding Corporate matters

The main amendments brought to the Companies Law No. 31/1990 refer to the following:

- The hypothec over the shares issued by limited liability companies may be created only with the approval of the shareholders representing at least 3/4 of the share capital;
- The hypothec lawfully established over shares may be enforced according to law and, under such circumstances, the directors/members of the board of directors shall have to provide the hypothecary creditor or the enforcement authority, upon request of the latter, with the financial statements and any other instruments or information required to assess the shares, as well as to facilitate the takeover thereof;
- The publicity of the garnishment and seizure over the shares of the shareholders, through the trade registry, shall be performed upon request of the enforcement authority;
- Newly provided cases can trigger the passing by a tribunal of the company's dissolution, namely: (i) the conditions on the registered headquarters are no longer met due to expiry of the duration of the document attesting to the right to use the premises as registered headquarters or to the transfer of the right of use or ownership over the premises used as registered headquarters, (ii) the company failed to submit the annual financial statements and the consolidated annual financial statements, as the case may be, and the accounting reports to the territorial units of the Ministry of Public Finance (MFP), within the term set forth by the law, if the delay exceeds 60 business days, (iii) the company failed to submit the statement according to which the same did not perform activity upon establishment with the territorial units of MFP, within the term set forth by the law, if the delay exceeds 60 business days;

6 EUID shall include Romania's identification element, the identification element of the national registry, number of the person in said registry and other elements intended to avoid identification errors, if necessary.

7 Reference is made to the certificates attesting to the fact that an act or fact is or is not registered.

- The dissolution and deregistration decisions, as well as resolutions appointing the liquidator, published on ONRC's website or online service portal, may be consulted, free of charge;
- As to the liquidation of companies, the law provides that it has to be completed within one year, at the most, as of the date of registration with the trade registry of the dissolution mention; for solid grounds, upon request of the liquidator, the trade registry office may extend such term by one more year, but only twice⁸.

Law No. 152/2015 also provides that, in the case of companies falling under the scope of Law No. 314/2001 *regulating the situation of certain companies* and of Law No. 359/2004 *on simplifying formalities upon registration with the trade registry of individuals, family associations and legal entities, fiscal registration thereof, and upon authorizing the operation of legal entities*, ONRC shall proceed with the ex officio deregistration of the companies undergoing liquidation proceedings for more than 7 years.

Please note that the above amendments became effective on **16 July 2015**.

olga.cobasneanu@tuca.ro

⁸ The former legal provisions stipulated that the company's winding-up had to be completed within one year, at the most, as of the dissolution date, and such term could be extended by periods of 6 months, but not longer than 24 months, on aggregate.

Editors

Țuca Zbârcea & Asociații provides complex services on all the relevant legal issues surrounding **Commercial Law**. Our team comprises lawyers with extensive expertise in the specific regulatory issues of this sector, as well as capital market law, intellectual property law, competition, litigation, tax, advertising, mergers and acquisitions, consumer protection and, more recently, in sectors such as insolvency, restructuring, labour law, debt restructuring. Țuca Zbârcea & Asociații mainly provides advice on the conclusion of national and international corporate transactions - mergers, acquisitions, establishment of joint ventures, transactions involving capital investment and transactions whereby control of large corporations is taken over. Our corporate and commercial practice covers a multitude of related aspects, including banking and finance law, advice on mergers and acquisitions, de-mergers, acquisition of assets, real estate transactions and many others.



Silvana Ivan
Partner
+4 021 204 76 40
silvana.ivan@tuca.ro



Olga Cobăsneanu
Senior Associate
+4 021 204 88 90
olga.cobasneanu@tuca.ro

TUCA ZBARCEA ASOCIATII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro

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