

Client Brief

Corporate | ROMANIA

JULY 2015

AMENDMENTS TO THE REGISTRATION PROCEDURE WITH THE TRADE REGISTRY AND THE COMPANIES ACT

On 16 June 2015, the Law No. 152/2015 amending and supplementing the legislation regarding the registration with the trade registry ("**Law No. 152/2015**") has been announced and is pending publication with the Official Gazette.

The Law No. 152/2015 transposes the Directive 2012/17/EU of the European Parliament and of the Council amending Council Directive 89/666/EC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers.

According to the Explanatory Notes to the Law No. 152/2015¹, the amendments contemplated thereunder mainly consist in: acknowledging the interconnection of trade registries of EU Member States, ensuring the communication among such trade registries via an interconnection system and providing free access to information.

Other amendments brought by the Law No. 152/2015 consist in: correlating the provisions of the Companies Act No. 31/1990 ("**Companies Act**") with the new Romanian Civil Code and the new Romanian Civil Procedure Code as regards the mortgage on shares; establishing clear sanctions for the case where the companies fail to publish their annual financial statements, improving the dissolution, liquidation and deregistration legal mechanisms; transferring the power of extending the voluntary liquidation's term from the court to the trade registry; enhancing the business environment via an *ex officio* deregistration from the trade registry of the companies undergoing liquidation for more than seven years under the Law No. 314/2001 regulating the situation of certain companies ("**Law No. 314/2001**"); and the Law No. 359/2004 simplifying the registration formalities with the trade registry ("**Law No. 359/2004**").

¹ Available at: <http://www.cdep.ro/proiecte/2015/200/20/9/em263.pdf>

Main amendments brought by the Law No. 152/2015 to the Trade Registry Act No. 26/1990:

❖ **Trade Registry**

- ✓ the central trade registry kept by the Romanian National Office of the Trade Registry (“**ONRC**”) shall serve as access point to the EU interconnection system of trade registries which is formed of the trade registries from the EU Member States and the central European platform (such system having as electronic access point, at European level, the European portal e-Justice) (*shall apply starting with 7 July 2017*);
- ✓ natural and legal persons registered with the Trade Registry shall be also identified by a unique identifier at European level (EUID) to include the identification item for Romania and the domestic registry, the number of registration with the said registry and, as the case may be, other items aimed at avoiding identification errors (*shall apply starting with 7 July 2017*);
- ✓ certain particulars will be freely available on the ONRC’s webpage or on-line services portal in connection with registered persons/entities, notably the corporate name and legal form, the register office/professional office and the EU Member State wherein it is registered, the registration number, the unique identifier at European level (EUID), the tax registration number and the status (*shall apply starting with 7 July 2017*);
- ✓ documents and particulars will be freely exchanged between ONRC and the trade registries from EU Member States via the interconnection system of trade registries, in case of cross-border mergers and branches established by companies having their registered office in EU Member States (*shall apply starting with 7 July 2017*);
- ✓ ONRC will publish on its webpage, on-line services portal and shall forward for publication on the European portal e-Justice updated information regarding the domestic legislation in connection with the publicity and enforceability against third parties of deeds/facts/registrations regarding the registered persons/entities;

❖ **Branches**

- ✓ Romanian legal persons which set-up branches abroad must register them with the relevant Romanian trade registry further to their registration abroad (*shall apply starting with the 90th day as of the publication of the Law No. 152/2015 with the Official Gazette of Romania*);
- ✓ the termination of a judiciary or extra-judiciary insolvency procedure, as well as the entering into liquidation of the foreign parent company which set-up a branch in Romania shall be also registered with the relevant Romanian trade registry (*shall apply starting with 7 July 2017*);

- ✓ ONRC shall receive via the interconnection system of trade registries documents and particulars with regard to the entering into and cessation of any dissolution, liquidation or insolvency procedure regarding a legal person incorporated in a EU Member State, which set-up a branch in Romania, and with regard to its deregistration from the foreign trade registry, with a view to register the same *ex officio* for free with the trade registries where the relevant branches are registered (ONRC has a similar obligation to send such documents and particulars in connection with Romanian legal persons which set-up branches in EU Member States) (*shall apply starting with 7 July 2017*);
- ✓ branches set-up in Romania by parent companies incorporated in EU Member States shall be deregistered *ex officio*, for free, from the trade registry upon receipt of documents and particulars with regard to the deregistration of their respective parent company (*shall apply starting with 7 July 2017*).

Main amendments brought by the Law No. 152/2015 to the Companies Act:

❖ **Mortgage over shares**

- ✓ shares issued by limited liability companies (SRL) may be seized and sold by the creditors of the relevant shareholder;
- ✓ directors/members of directorate are bound to provide the mortgagee or the bailiff, upon the latter's request, with the financial situations and any other written documents or particulars necessary for the assessment of the shares, as well as to facilitate the seizure thereof (*this provision applies only to mortgages which are created over the shares after the entry into force of the Law No. 152/2015*);
- ✓ upon the bailiff's request, the garnishment created over the assets to be distributed to the shareholders further to liquidation, as well as the seizure of the shares, are registered with the trade registry, without being subject to the intervention requests that may be filed pursuant to article 7¹ of the Emergency Government Ordinance No. 116/2009 setting certain measures regarding the registration with the trade registry ("**EGO No. 116/2009**");
- ✓ in case of limited liability companies (SRL), the provisions regarding the approval by the shareholders representing at least $\frac{3}{4}$ of the share capital of the transfer of shares to third parties, only apply to the creation of mortgages over the shares.

❖ **Judiciary dissolution and liquidation (article 237)**

- ✓ the existing dissolution case consisting of the failure to meet the legal requirements in connection with the registered office is further detailed to include the situation where the term of the title over the registered office expires or the ownership/occupancy right over such space is transferred;

- ✓ a new dissolution case is introduced, consisting of the failure to submit with the tax administration the annual financial statements (and consolidated, as the case may be), the accounting reports or, as the case may be, the statement on the lack of activity since incorporation, within more than sixty (60) business days following the due date;
- ✓ the list of companies against which ONRC contemplates to submit requests for dissolution shall be published on the ONRC's website or on-line services portal within at least fifteen (15) calendars days in advance and shall be notified to the tax authority;
- ✓ the court decision acknowledging the dissolution of the company is also notified to the latter and shall be also published on the ONRC's website or on-line services portal;
- ✓ upon the court decision acknowledging the dissolution of the company becoming final, the company enters liquidation and, upon the request of any interested person (including the tax administration), ONRC appoints a liquidator registered in the table of insolvency practitioners, in exchange for a fee of RON 1,000; absent such request within three (3) months as of the said court decision becoming final, ONRC or any interested person may ask the court to deregister the said company;
- ✓ the list of companies against which ONRC contemplates to submit requests for deregistration shall be published on the ONRC's website or on-line services portal within at least fifteen (15) calendars days in advance and shall be notified to the tax authority;
- ✓ the court decision acknowledging the deregistration of the company is notified to the latter, the trade registry in view of deregistration and the tax administration, and shall be published for free on the ONRC's website or on-line services portal;
- ✓ the court decision acknowledging the deregistration of the company is only subject to appeal at the request of any interested person within thirty (30) days as of the publication thereof;
- ✓ the court decisions acknowledging the dissolution/deregistration and the Trade Registry decisions appointing the liquidator are available for free on the ONRC's website or on-line services portal.

❖ **Cross-border merger**

- ✓ ONRC where is registered the absorbing company or the newly set-up company shall immediately notify the completion of the cross-border merger, via the interconnection system of trade registries, at the company's costs, to the similar authorities from the relevant EU Member States where are incorporated the companies involved in the merger in view of their deregistration (*shall apply starting with 7 July 2017*);

- ✓ in case of cross-border merger by absorption performed by a company, acting as absorbing company, which holds at least 90% (but not the entirety of shares) of the absorbed company/companies, the reports of the independent expert(s) and the documents subject to control are mandatory only if required under the law governing the absorbing company or the absorbed company/companies.

❖ **Voluntary liquidation**

- ✓ ONRC may, upon the liquidator's request and for justified reasons, extend the maximum liquidation term of one year with an additional one year, but no more than twice;
- ✓ the liquidators are appointed pursuant to article 262 or article 264, as the case may be, within sixty (60) days as of the registration of the dissolution with the trade registry;
- ✓ within fifteen (15) days after the end of liquidation, the liquidators shall submit the request for the deregistration of the company with the trade registry, on the basis of the final liquidation report and the liquidation financial statements, under the sanction of fines in amount of RON 20 (i.e. about EUR 4.5) per day of delay, to be applied by the trade registry *ex office* or upon the request of any interested person;
- ✓ absent any deregistration requests filed within three (3) months as of the expiry of the liquidation term (extended, as the case may be), ONRC or any interested person will ask the court to deregister the company;
- ✓ the list of companies against which ONRC contemplates to submit requests for deregistration shall be published on the ONRC's website or on-line services portal within at least fifteen (15) calendars days in advance and shall be notified to the tax authority;
- ✓ the court decision acknowledging the deregistration of the company is notified to the latter, the trade registry in view of deregistration and the tax administration, and shall be published on the ONRC's website and on-line services portal;
- ✓ the court decision acknowledging the deregistration of the company is only subject to appeal at the request of any interested person within thirty (30) days as of the publication thereof;
- ✓ where the company undergoing liquidation meets the criteria required to be made subject to the simplified procedure provided by article 38 (2) of the Law No. 85/2014 on insolvency prevention and insolvency procedure, but the receivable held against it does not exceed the threshold mentioned in article 5 point 72 of the said Law, the trade registry will operate the deregistration of the said company on the basis of the liquidator's report.

Main amendments brought by the Law No. 152/2015 to the Law No. 359/2004:

- ✓ the term for the delivery of the incorporation certificate (“*certificat de înregistrare*”) and of the certificate on the registrations made with the trade registry (“*certificat de înscriere mențiuni*”) is of **three (3) business days** from the registration of the application, unless the trade registry officer sets a different term in order for the related documentation to be duly supplemented;
- ✓ the decision (“*rezoluție*”) issued by the trade registry and all deeds which are subject to registration with the trade registry and publication in the Official Gazette Part IV/VII, shall be published in the Official Gazette of Romania within **maximum twenty-one (21) business days** as of the registration of the application with the trade registry (such publication term shall be accordingly extended in case of extension of the term for the delivery of the certificate on the registrations made with the trade registry (“*certificat de înscriere mențiuni*”)).

Main amendments brought by the Law No. 152/2015 to the EGO No. 116/2009:

- ✓ the manager of the trade registry or the officer appointed by the latter is competent to appoint the liquidator and fix his remuneration in the cases of judiciary liquidation provided by article 237 (6) of the Companies Act and by article 31 (4) of the Law No. 359/2004;
- ✓ the decisions (“*rezoluții*”) rejecting the applications for registration with the trade registry and the registrations, which do not trigger the amendment to the articles of association, are subject to claim (“*plângere*”) by the parties within fifteen (15) days as of the issuing of the relevant decision and by any person within fifteen (15) days as of the publication thereof on the trade registry’s website or on-line services portal;

Other amendments brought by the Law No. 152/2015:

- ✓ ONRC shall deregister *ex officio* the companies that are subject to the Law No. 314/2001 (i.e. which have not increased their respective share capital up to the minimum legal level) and the Law No. 359/2004 (i.e. which were dissolved by law due to the failure of changing their incorporation and tax registration certificate) for more than seven years.

Date of entry into force:

- ✓ the Law No. 152/2015 will enter into force within three (3) days as of its publication in the Official Gazette of Romania (save as expressly provided above).

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