

Amendments regarding the companies and the formalities in front of the Trade Registry

Law no. 265/2022 transposes the Directive (EU) 2019/1.151 of the European Parliament and the Council as of 20 June 2019 amending the Directive (EU) 2017/1.132 regarding the use of digital tools and processes in the context of company law

General Considerations

On November 26, 2022, Law no. 265/2022 regarding the Trade Registry and for amending and supplementing other normative acts affecting registration in the Trade Registry ("**Law no. 265/2022**") will enter into force.

Law no. 265/2022 mainly brings changes to the organization of the Trade Registry's activity by establishing new rules regarding the organization and operation of the Trade Registry, but also establishes some important changes to the Companies Law no. 31/1990, regarding corporate operations such as mergers or spin-off procedures, capital increase or the dissolution and liquidation of companies, with the intention of disciplining and simplifying in an efficient manner the regime related to these operations.

The statute of the Trade Registry's registrar is being reorganized, being defined as legal specialist personnel within the Trade Registry invested to carry out the public service of legality assessment prior to registration in the Trade Registry. Therefore, the notion of "*designated person*" is eliminated. As a novelty, the Trade Registry's registrar will have to be licensed in law and hold at least 5 years of experience in the legal field, the registrar position being obtained by taking an exam. The Law introduces the Electronic Bulletin of the Trade Registry, as a central online platform where a series of registrations made through the Trade Registry are publicly available.

Moreover, the Law 265 regulates the online access to information regarding companies, including information on companies registered in other member states of the European Union through the system of interconnection of registers in the member states of the European Union. Through the interconnection system, the availability of extended and updated information on the establishment and operation of companies, including information on the real beneficiaries, is ensured.

Corporate Amendments

Within 60 days as of the entry into force of the Law no. 265/2022, the Ministry of Justice has the obligation to issue an order for the approval of the Methodological Norms on the way of keeping trade registers, making records and releasing information.

Among the changes brought by Law no. 265/2022 and which impact companies, we mention the following:

- ✓ **Extending the competence of the Trade Registry's registrar also over the merger/spin-off procedure**

Thus, the second phase of the merger/spin-off procedure will no longer take place in front of the court. The mentioning of the article regulating this aspect in the cross-border merger section may create confusion in practice, however from the wording of the legal norm we understand that this rule will apply to all mergers/spin-off.

Given that methodological norms are to be adopted, most likely, this aspect will be clarified through them.

- ✓ **Eliminating the requirement to pay the contribution to the share capital of a limited liability company at the time of incorporation**

The Law no. 265/2022 provides for a phasing of the share capital payment as follows: 30% within 3 months as of incorporation, the remaining 70% within 12 months as of incorporation, with the exception of the contribution in kind which can be made within 2 years as of incorporation.

- ✓ **Increasing the deadline for implementing the resolution of the general meeting regarding the capital increase from 1 year to 18 months**

- ✓ **Eliminating the requirement to obtain and to submit the consent of the General Secretariat of the Government**

Currently, for companies' names containing the words "Romanian", "national" etc., the consent of the General Secretariat of the Government is required, after the entry into force of Law no. 265/2022, such consent will no longer be necessary, the Trade Registry independently carrying out these checks.

- ✓ **Eliminating the requirement to submit a specimen signature.**

- ✓ **Eliminating certain documents that were previously submitted separately; the obligation to include information on the ultimate beneficial owner in the Articles of Association**

It will be mandatory for the Articles of Association to contain data on the ultimate beneficial owner of the company as well as the shareholder's statement regarding the fulfillment of the legal requirements provided to hold the capacity as shareholder and the express acceptance of the mandate by the directors.

Currently these aspects are dealt with by separate statement, but after the entry into force of the Law no. 265/2022, the statements regarding these aspects will no longer be necessary.

There are no provisions regarding compliance with the new requirements by the existing companies, however, for safety reasons, it is advisable that the companies, on the occasion of the first operation by which it is necessary to update/amend the articles of association, also to include clauses for the implementation of the new requirements.

✓ **Establishing a procedure by which the Trade Registry (through the registrar) will be able to order the dissolution and deregistration of the company in cases provided by law**

Such cases are those in which:

- the requirements regarding the registered office are no longer met, as a result of the expiration of the document certifying the right of use over the space intended for the registered office or the transfer of the right of use or ownership over the space intended for the registered office;
- the company's activity ceased or the activity was not resumed after the period of temporary inactivity, notified to the fiscal authorities and entered in the Trade Registry, a period that cannot exceed 3 years as of the date of entry in the Trade Registry;
- the duration of the company was established as determined, at the expiration of the duration mentioned in the articles of association, if the procedure for extending the duration of the company provided for in art. 227 para. (2) is not followed.

The case of dissolution in which any interested person or the Trade Registry could request the court for dissolution of the company in case of failure to submit the financial statements to the Ministry of Finance for more than 60 days after the expiration of the legal submission deadline is eliminated.

The new procedure also assumes that the registrar of the Trade Registry will rule on cases of dissolution and liquidation by ruling, previously this was exclusively the competence of the court. However, the control of the court is not definitively removed, since the ruling issued by the registrar is not enforceable, the company in question as well as the National Agency

for Fiscal Administration can file a complaint within 15 days as of the communication, and any other interested person, within 15 days from the date of publication of the ruling in the electronic Bulletin of the Trade Registry.

Considering the importance of these changes, it is advisable to carefully monitor the aspects that lead to the declaration by the fiscal authority of the company as inactive considering that part of them, after the entry into force of the Law no. 265/2022, will lead to the dissolution and deregistration of the company directly ruled by the Trade Registry ex officio or at the request of interested persons.

✓ **Aggravated obligations for directors**

The sanction is established as a fine from 5,000 lei to 15,000 lei (followed by the dissolution of the company in case of non-compliance within 30 days as of the sanctioning date) for the directors' failure to fulfill the obligation to keep the company's registers (register of shareholders, register of meetings of the shareholders, register of meetings of the board of directors, etc.)

The obligation to keep these registers is not new, but the sanction for its breach was not regulated until now.

✓ **Eliminating the submission of the proof of name reservation and increasing the validity period of the name reservation from 3 months to 1 month.**

Abrogation

Law no. 265/2022 repeals: (i) Law no. 26/1990 regarding the Trade Registry; (ii) Law no. 359/2004 regarding the simplification of formalities for the registration in the Trade Registry of individuals, family associations and legal entities, their fiscal registration, as well as the authorization of the operation of legal entities; (iii) Emergency Government Ordinance no. 116/2009 for establishing the measures regarding the activity of registration in the Trade Registry, with the exception of art. 11.

The lower-level normative acts issued on the basis and/or in application of the provisions of the abrogated normative acts cease to be applicable, including the Methodological Norms on the way of keeping trade registers approved by Order no. 2594/C/2008.

Disclaimer: Please note that this material includes only a brief description of the facts presented and does not represent a legal opinion on the part of Voicu & Filipescu.

For more details and legal advices, please do not hesitate to contact your designated lawyer or at office@vf.ro.