



ROMANIA – TRADE REGISTRY AND COMPANIES LAW UPDATES

1. Overview

On July 26, 2022, Law no. 265/2022 regarding the Trade Registry and for amending and supplementing certain legal enactments impacting the registration in the Trade Registry has been published in the Official Gazette of Romania (“Law 265/2022”).

The new legislation will enter into force on November 26, 2022.

In the sections below, we will present the main novelties and amendments brought by Law 265/2022.

2. Archiving of Trade Registry documents

The National Trade Registry Office (the “NTRO”) or, as the case may be, the county Trade Registry offices, will be required to also archive the files containing the applications for registration in the Trade Registry, the supporting documents, the documents based on which the registrations in the Trade Registry are made and the documents attesting the registration, for each registered professional, in electronic format.

The documents submitted in paper format before December 31, 2006 will be converted into electronic format upon receipt of an application for registration or of a request for issuing copies or certified copies of such documents sent by electronic means.

This requirement will be applicable starting August 1, 2023.

3. Documents issuance

Starting with November 26, 2022, company information excerpts, confirmation of company details certificates and copies of documents to be issued by the NTRO/Trade Registry offices by electronic means will bear the qualified electronic signature of the Trade Registry.

Moreover, when registration requests are submitted by electronic means, using qualified electronic signature, the documents to be issued by the Trade Registry offices following the registration (including company registration certificates in case of incorporation requests submitted by electronic means) will also be issued in electronic format with qualified electronic signature.

Per Law 265/2022, such documents will have the same value as documents authenticated by a notary public.

4. Registrar and NTRO's Commission

Law 265/2022 also regulates conditions to be met by individuals appointed as Trade Registry registrars (*ie* the persons in charge with analysing and deciding on registration requests submitted before the Trade Registry offices). In order to hold such position, one must fulfil the following conditions:

- (i) to be a citizen of Romania, of an European Union Member State, of a state belonging to the European Economic Area or of the Swiss Confederation;
- (ii) to have his/her domicile or residence in Romania;
- (iii) to have knowledge of the Romanian language, both verbally and in writing;
- (iv) to have full legal capacity;
- (v) to be licensed in law and have at least 5 years of experience in the legal field;
- (vi) to have no previous criminal record as a result of committing a crime in the course of or in connection with his or her duties or for committing any other crimes with intent;
- (vii) to not be an operative, including undercover, informant or intelligence collaborator;
- (viii) to be medically and psychologically fit for the performance of his/her duties;
- (ix) to pass an exam for holding the registrar position.

The requirement to be licensed and experienced in law should normally lead to a more uniform practice amongst Trade Registry registrars and Trade Registry offices when analysing requests for registration in the Trade Registry.

Furthermore, in order to ensure a uniform practice of the NTRO and the Trade Registry offices, on the basis of Law 265/2022, the NTRO will establish a commission for analysis and uniform practice, which will be consisted of registrars and legal specialists.

The role of this commission will be drafting points of view on the legal matters arising from the analysis of the activity of registration in the Trade Registry with focus on developing a uniform practice.

5. Company name reservation

Law 265/2022 reduces the validity period of the proof issued after the verification and reservation of the company name, from three months since its issuing to one month.

Thus, this should lead to the company incorporation process (drafting, signing and submitting the incorporation documents) being dealt with more expeditiously, as to avoid the potential expiry of the reservation required to incorporate the company under the desired name.

6. Supporting documents

Law 265/2022 sets rules regarding the language of the documents to be submitted before the NTRO/Trade Registry offices, as follows:

- (i) as a general rule, documents submitted in support of applications for registration must be drawn up in Romanian;
- (ii) documents may also be submitted in the official languages of the European Union Member States or of the European Economic Area corresponding to the citizenship of the applicant, accompanied by Romanian translations issued by an authorised translator;
- (iii) documents drafted also in a foreign language must be drawn up either in two columns, with the text in the Romanian language in the first column and the text in the foreign language in the second column, or successively, firstly the text in the Romanian language and afterwards the text in the foreign language.

While this provision can be viewed as rather formalistic, its likely purpose is to ensure consistency and ease of publishing of the Romanian version of documents submitted before the Trade Registry offices in the Official Gazette of Romania where necessary.

7. Authorisations

Law 265/2022 provides that the public authorities and institutions involved in issuing various authorisations will conclude cooperation protocols with NTRO, for the purpose periodically communicating the NACE codes list requiring special authorisation or notification conditions, as well as of the list of professionals having as main or secondary activity the respective NACE codes, for which the registrar will order, the requirement to obtain these authorisations or to notify, in order to carry out, under legal conditions, the respective activity.

Companies should thus have a greater visibility on the necessary authorisations to conduct their business.

Law 265/2022 also provides that, when an authority suspends or prohibits a certain activity of a company following an inspection, this measure will be communicated to the NTRO to be mentioned in the Trade Registry.

Thus, at least in theory, an entity intending to contract services or products which require holding certain authorisations will be able to verify whether the supplier has any authorisation-related issues.

When the relevant activity suspension/prohibition measures are lifted, this will also be published in the Trade Registry.

8. Articles of Association

Law 265/2022 brings amendments concerning the elements which need to be reflected in the Articles of Association, the most important being the following:

- (i) the Articles of Association must contain a clause whereby the shareholders state that they meet the conditions for being shareholders (which generally refers to lack of criminal and tax records);
- (ii) the same must provide the method of adopting shareholders resolutions, by a vote of all shareholders, in case an absolute majority cannot be established because of the parity in the participation to the share capital; this provision should encourage entrepreneurs to avoid establishing companies where no absolute majority can be reached (for example those with two shareholders each holding 50% of the shares) as to avoid blockages;
- (iii) the Articles of Association will need to reflect the identification details of the relevant company's ultimate beneficial owners and the means by which control on the company is exercised.

Perhaps more importantly, as opposed to the current legislation, once Law 265/2022 will be in force, the amendment of the Articles of Association (which is required for taking

important decisions such as change of name, change of registered office, change of legal form, etc.) of Romanian limited liability companies will no longer require the approval of all company shareholders.

This means shareholders will need to carefully negotiate and set the relevant voting requirements for the approval of such amendments. Otherwise, such amendments will be implemented with the vote of the shareholders holding 50% plus one of the shares, unless the amendment deals with a topic where the law requires a qualified majority/unanimity.

9. Payment of the share capital

Shareholders of limited liability companies will no longer be required to pay up the entire share capital on incorporation, and will be able to pay up 30% of the share capital no later than 3 months after the date of incorporation, but before commencing operations in the name of the company, with the difference to be paid up as follows:

- (i) cash contribution, within 12 months of registration;
- (ii) in kind contribution, within 2 years of registration.

10. Ex officio dissolution

Per Law 265/2022, the NTRO will be able to ascertain that certain conditions for the dissolution of a company have been met, at the request of any interested person or *ex officio*, as follows:

- (i) the conditions related to the registered office are no longer fulfilled, following the expiration of the period of validity of the document attesting the right of use of the premises used as registered office or the transfer of the right of use or ownership over the premises used as registered office;
- (ii) the company has ceased its activity or has not resumed its activity after a period of temporary inactivity, notified to the tax authorities and registered in the Trade Registry (this period may not exceed three years from the date of registration in the Trade Registry);
- (iii) in case of fixed-term companies, on expiration of the period mentioned in the Articles of Association, if the extension procedure is not completed.

In such scenario, the NTRO can dissolve the relevant company *ex officio*. However, prior to this, the same will publish the list of companies that meet the condition for *ex officio* dissolution and thus the same will normally have the opportunity to correct the relevant issues and avoid dissolution.

Companies will also be able to appeal against *ex officio* dissolution decisions.

11. Sanctions

Law 265/2022 introduces new sanctions, namely fines ranging from RON 5,000 (approximately EUR 1,000) to RON 15,000 (approximately EUR 3,000) for the following breaches of corporate law:

- (i) failure of directors of joint-stock companies to hold the company's shareholders registry;
- (ii) refusal of directors of joint-stock companies to provide the shareholders with information from the company's registers.

12. Conclusions

One could argue that Law 265/2022 will bring the Trade Registry registration process into the digital era along with additional positive changes that ensure more flexibility and a uniform registration process amongst Trade Registry registrars and offices.

At the same time, Law 265/2022 also aims to make entrepreneurs more responsible (for example by keeping the validity of the company's registered office under constant observation) as to avoid the *ex officio* dissolution of the companies.

All in all, it remains to be seen how the novelties brought by Law 265/2022 will be implemented in practice, particularly seen that Ministry of Justice is required to issue implementing regulations for keeping the Trade Registry within 60 days as of the entry into force of Law 265/2022.

This article contains general information and cannot be considered qualified legal advice.



Daniel Alexie

Partner

daniel.alexie@mprpartners.com



Carmen Bănică

Associate

carmen.banica@mprpartners.com

WE TRANSLATE LEGAL
TO BUSINESS