

Client Brief

Corporate Law | ROMANIA

July 2022

NEW LAW NO. 265/2022 REPLACING THE TRADE REGISTRY LAW NO. 26/1990 AND AMENDING THE COMPANIES LAW NO. 31/1990

On 26 July 2022, Law No. 265/2022 regarding the trade registry and amending and supplementing other legal instruments applicable to the registration with the trade registry (“**Law No. 265/2022**”), including the Companies Law No. 31/1990 (“**Companies Law**”), was published in the Official Gazette No. 750/2022.

I. Main amendments brought by the Law No. 265/2022 to the registration with the Trade Registry:

- the term “*designated person*” that is currently used to designate the clerks in charge with the registration with the Trade Registry shall be replaced with the term “**registrar with the trade registry**” (in Romanian, “*registrator de registrul comerțului*”)
- the introduction of the electronic Bulletin of the Trade Registry (the “**Electronic Bulletin**”), organized as a central electronic platform via the online services portal of the Trade Registry National Office, wherein shall be published the following documents after their registration with the Trade Registry: (a) the registrar’s resolution (in Romanian, “*încheiere*”) or court decision approving the incorporation of legal persons or the registration of branches; (b) the resolutions issued by the registrars further to any other registrations; (c) other documents registered with the Trade Registry that must be published in the Electronic Bulletin according to the law; (d) other court decisions, which are registered with the Trade Registry; the publication term is of **maximum 3 business days** from the date of registration with the Trade Registry
- the following documents shall be published in the **Official Gazette of Romania** after their registration with the Trade Registry: (a) an excerpt of the registrar’s resolution or court decision approving the incorporation of legal persons or the registration of branches; (b) the courts’ decisions that are expressly required by such courts to be published in the Official Gazette; (c) the resolutions passed by the general shareholders meetings, the addenda of the legal persons subject to registration with the Trade Registry, required by law to be published in the Official Gazette; (d) the decisions passed by the management/direction bodies of the legal persons subject to registration with the Trade Registry, required by law to be published in the Official Gazette; (e) other documents issued by the legal entities subject to registration with the Trade Registry, required by law to be published in the Official Gazette; the aforementioned documents shall be sent electronically by the trade registry office to the Official Gazette for publication within maximum 3 business days from the date of registration with the Trade Registry

- **templates of the articles of association** for each type of company shall be made available on the Trade Registry's website and online portal, in order to be used for the ordinary registration or online registration of companies (the conclusion of the articles of association and the registration with the Trade Registry being fully performed via electronic means)
- the Trade Registry National Office shall ask the public institutions or central public administration bodies to provide it with the electronic copy of the authorizations/licenses, which are required by law to be obtained by the applicant prior to its incorporation [*at present, all such authorizations/licenses must be submitted by the applicant*]
- the applicant shall be **no** longer required to submit the approval of the General Secretariat of the Government or of the prefect, whenever the company's name contains certain words that are specific for the authorities or central/local public institutions (or the word "național", „român", „institut" or derivatives thereof); the Trade Registry shall proceed itself to such verification to ensure that no confusion derives from the use of such names
- if the founders are Romanian legal persons registered with the Trade Registry, the information on their respective status, legal representatives and representation powers shall be obtained by the Trade Registry from its own database; if the founders are companies established in other EU countries, the aforementioned information shall be obtained via the interconnection system of the trade registries [*at present, such latter documents should be submitted by the applicant*]
- upon the incorporation of branches, the following documents regarding the parent company, that used to be required in respect of any foreign parent company, shall be required only if the parent company is originally from a state that is **not** member of EU or part of the EEA: (a) the up-to-date articles of association (*translated in Romanian by an authorized translator*); (b) documents certifying the registered office, business purpose and at least yearly, the value of the subscribed share capital (unless such information is already comprised in the articles of association); (c) a certificate proving its existence that is issued by the registry where it is registered (*and a legalized translation in Romanian*). Any such branch shall also submit for registration the annual financial statements of its parent company, as drafted, audited and published in accordance with the Romanian law or, as the case may be, the law governing such company, provided that the applicable accounting rules are equivalent to the EU ones
- the application for registration and the articles of association (including the template provided by the trade registry) may be signed in wet ink or with a qualified electronic signature
- the **sworn statements** (such as those executed by the shareholder/director/manager confirming the compliance with the legal requirements) may be signed as **private deeds** [*the notarization or other formality shall be no longer required*]

- the **specimen signatures** that are currently required to be submitted by the company's legal representatives and other representatives that are registered with the Trade Registry, shall be eliminated
- the courts of law shall send to the trade registry office copies of their decisions regarding the documents or operations that are required under such decisions to be registered in the trade registry, within **15 days** as of the date when such decisions become final (in Romanian, "*definitive*"). Such decisions shall expressly provide for the registration with the Trade Registry and, as the case may be, the obligation of the relevant entity/interested person to submit other documents that are required for registration
- upon the incorporation and any subsequent operation, the application for registration shall be settled by the registrar within **1 business day** from the submission of all required documents; the registration with the trade registry shall be made within 24 hours from the issuing of the registrar's resolution approving the registration
- if the settlement of the registration request is postponed and the applicant asks for a change of the settlement term, the settlement shall be scheduled for the **next business day**, excluding the day when such request is registered
- upon the applicant's request, the registrar's resolutions, the registration certificate, the certificates acknowledging the registrations made with the Trade Registry and the certificates acknowledging the activities effectively performed by the company, shall be drafted also electronically and signed with a qualified electronic signature
- the registrar's resolutions may be challenged (in Romanian, "*plângere*") by the applicant within **10 days** [*instead of the current 15-day term*] from (i) the communication or publication of the resolution in the Electronic Bulletin if the latter date is prior to the communication date, provided that the applicant opted for a communication via electronic means or by post/courier or (ii) from the publication of the resolution in the Electronic Bulletin, provided that the applicant opted for the communication of the hardcopy resolution at the address of the trade registry and the resolution was **not** collected from the trade registry within the issuing term
- any interested person, other than the applicant, may challenge (in Romanian, "*plângere*") the registrar's resolutions within **10 days** from the publication in the Electronic Bulletin or the publication of the relevant documents in the Official Gazette, where the law provides so
- if the above claim (in Romanian, "*plângere*") relates to natural persons, it shall be submitted to the trade registry office that will register it and forward to the court for final settlement within 3 business days; if such claim is submitted directly to the court, the latter shall inform the claimant upon the first hearing that it must bring proof, until the date of the next hearing, of the claim's registration with the trade registry. The competent court is the tribunal having jurisdiction over the legal person/branch's registered office; the filing of the claim does **not** trigger the suspension of the enforcement; one judge shall be competent to settle the claim and both the applicant and relevant trade registry shall be summoned for the proceedings. The court's decision is

enforceable and subject to appeal only (the appeal term being of 15 days from the communication of the decision)

- any person who incurs a damage further to an incorporation or registration with the Trade Registry, may ask the tribunal to deregister such operation and, as the case may be, to reinstate the former status, in whole or in part [*at present, such legal action may be initiated only provided that the challenged registration was made based on certain documents that were cancelled in whole or in part or amended pursuant to a final court decision and the registration thereof with the Trade Registry was not ordered by such court decision*]; such claim shall be submitted to the trade registry office that will register it and forward to the court for final settlement within 3 business days. The competent court is the tribunal having jurisdiction over the legal person's registered office (or over the branch's registered office, upon the request of the claimant). Both the applicant and relevant trade registry shall be summoned for the proceedings. The court's decision is subject to appeal only (the appeal term starts to elapse from the issuing date for the attending parties and from the communication date for the absent parties). Upon receipt of the decision sent by the court, the trade registry shall operate the deregistration and publish the final court decision in the Electronic Bulletin
- the office (purely administrative) activities carried out at the registered office or secondary units shall be no longer required to be mentioned as effective activities in the standard statement on effective activities
- the standard statements on effective activities may be signed in wet ink or with a qualified electronic signature

II. Main amendments brought by the Law No. 265/2022 to the Companies Law:

- the term "*judge delegated with the trade registry office*" that is currently used to designate the authority in charge with the registration with the Trade Registry shall be replaced with the term "**registrar with the trade registry**" (in Romanian, "*registrator de registrul comerțului*")
- the sworn statement that is currently required to be executed, as a separate deed, by any founder, acknowledging the compliance with the legal requirements to hold and exercise the position of shareholder [*i.e. the lack of criminal offences set out in art. 6(2) of the Companies Law*] can be replaced with an express clause, conforming such compliance, that is to be inserted into the articles of association signed by the founder
- in the case of the limited liability companies (SRLs), the articles of association shall mention, inter alia: the *subscribed* share capital [*instead of the share capital, as currently required*]; the manner of passing resolutions by the general shareholders meeting, with the vote of all shareholders, provided that no absolute majority can be attained due to the parity of the shareholders' respective quotas in the share capital; the term of the directors' mandates; in case of dissolution without liquidation, the manner in which the debts shall be extinguished or settled with the creditors' agreement, to the extent that the shareholders agree on the allocation and liquidation of the company's patrimony; as the case may be, where required by law, the identification details of the

ultimate beneficial owners and the manner in which they exercise control over the company

- in the case of the joint stock companies (**SAs**), the articles of association shall mention, inter alia: the type of company (public or private); as the case may be, the identification details of the ultimate beneficial owners and the manner in which they exercise control over the company
- SRLs shall be bound to pay (i) an amount representing **30% of the subscribed share capital** no later than 3 months from the incorporation date, but prior to commencing any operations on behalf of the company, and (ii) the balance up to the full value of the subscribed share capital, within (a) 12 months from the incorporation date, in the case of cash contributions and (b) maximum 2 years from the incorporation date, in the case of contributions in kind
- the proof of payment of the share capital shall be **no** longer required in view of the company's incorporation, regardless of the type of company
- the following documents shall be **no** longer required to be submitted in view of the company's incorporation: (a) the proof of availability of the company's name [*nonetheless, it is still required to be obtained prior to incorporation*]; (b) the ownership title to the assets brought as contributions in kind (and, in the case of real estates, the certificate proving the lack of encumbrances); (c) the deeds ascertaining the operations concluded pre-incorporation on behalf of the company and approved by the shareholders; (d) the sworn statements that are currently required to be executed, as a separate deed, by the founders, first directors/managers/members of the directorate/members of the supervision council/censors, acknowledging the compliance with the legal requirements to hold such positions [*to the extent that such acknowledgement is included in the articles of association or deemed given via the acceptance of mandate, as applicable*]
- the acquisition by the company within maximum 2 years from the incorporation or the authorization for operation, of an asset from a founder or shareholder, in exchange for an amount or other equivalent representing at least 1/10 of the subscribed share capital, shall be registered with the trade registry *based on the transfer deed concluded in accordance with the law* and shall be published only in the Official Gazette of Romania, Part IV [*the additional publication in a large circulation journal being eliminated*]
- the intervention request that may be currently filed by any persons, under article 46 of the Companies Law, against the applications for incorporation, in the cases where the articles of association do not contain the information required by law or contain clauses that infringe a mandatory legal provision or a condition required by law for the setting-up of the company is not met, shall be eliminated
- an express provision with application to all types of companies shall be introduced, providing that any director, manager, member of the directorate or of the surveillance council, must **expressly accept** such mandate in order for their nomination to be legally valid

- instead of the sworn statements that are currently required to be executed, as a separate deed, by any director, manager, member of the directorate, censor, auditor, whereby they acknowledge the compliance with the legal requirements to exercise and hold such position [*i.e. the lack of criminal offences set out in art. 6(2) of the Companies Law*], these persons shall be deemed to have taken responsibility for the compliance with such requirement via the acceptance of their mandate and, in the case of the auditor, via the conclusion with the company of the audit services agreement that is to provide for a clause in this respect
- the 18-month term during which the company can be authorized by the extraordinary general shareholders meeting to acquire its own shares under art. 103¹ (1) letter a) of the Companies Law shall be calculated from the registration of the resolution with the trade registry [*instead of the publication in the Official Gazette of Romania*]
- the current rule set out in art. 192(2) of the Companies Law, providing that the resolutions approving the amendment to the articles of association of the SRL, are passed with the vote of all shareholders, save for the case where the law or the articles of association provide(s) for otherwise, shall be eliminated
- the current 1-year term during which, in the case of joint stock companies, the resolution of the general shareholders meeting approving the share capital increase must be applied in order to be effective, shall be replaced with an **18-month term**, which is to be calculated from the same date (the date of the resolution)
- the following rule set out in art. 230 (1) of the Companies Law, that is currently applicable to general partnerships (in Romanian, “*societăți în nume colectiv*”), shall apply also to SRLs: in the case of death of a shareholder and absent any contrary agreement, the company must pay such shareholder’s portion to his/her inheritors, according to the latest approved balance sheet, within 3 months from the notice on the decease, unless the remaining shareholders prefer to continue with the inheritors that agree thereto
- the company may be dissolved by court decision, upon the request of any interested person or of the Trade Registry National Office as per art. 237 of the Companies Law, in the following cases, that are fewer than as currently provided: (a) the company has no longer statutory bodies or the latter can no longer meet; (b) its shareholders disappeared or have unknown domicile or residence; (c) the registered office no longer meets the required conditions, *other than* the following situations: the expiry of the term of the title of use or the transfer of the title of use or ownership, over such premises that serve as registered office [*at present, such judiciary dissolution may be ordered in all cases where the registered office does not meet the required conditions, including the above listed cases*]; (d) the company has not supplemented its share capital according to the law
- the procedure that is currently set out for the judiciary dissolution of the company as per art. 237 of the Companies Law shall be amended to eliminate any publication of the relevant documents in the Official Gazette of Romania and provide for the publication thereof in the Electronic Bulletin [*instead of the Trade Registry National Office’s Internet website or online service portal*]. The Trade Registry National Office shall

appoint, upon the request of the company, any interested person or *ex officio* [*at present, any interested person may request such appointment, including the Ministry of Public Finances – the National Agency of Fiscal Administration*], a liquidator with a fixed remuneration in amount of 1,500 lei [*versus 1,000 lei at present*]

- a new art. 237² shall be introduced, providing for the acknowledgement by the Trade Registry National Office, upon the request of any interested person or *ex officio*, of the following dissolution conditions being met by a company: (a) the latter no longer complies with the requirements regarding its registered office, due to the expiry of the term of the title of use or the transfer of the title of use or ownership, over such premises that serve as registered office; (b) the company's activity ceased or was not resumed after the temporary inactivity period, notified to the tax authority and registered with the trade registry, provided that such period may not exceed 3 years from its registration with the trade registry; (c) in the case of companies set-up for a limited term, upon the expiry of the term set out in the articles of association (unless the renewal procedure as per art. 227 (2) was followed). A specific procedure similar to the one set out in art. 237 of the Companies Law, shall be introduced
- if the company opted for the publication of the merger/spin-off project on its own webpage, the opposition against such document may be filed within 30 days from the publication of the merger/spin-off project in the Electronic Bulletin
- the publicity formalities in connection with the approval of the merger at the level of the absorbed company can be performed, in all cases, by the absorbing company [*at present, the absorbing company can perform such formalities on behalf of the absorbed company only provided that the latter has not performed itself these formalities within 15 days as of the registration of the merger*]
- **the mergers/spin-offs shall be approved by the trade registry, being no longer subject to court proceedings**
- the liquidator shall be no longer required to submit its specimen signature to the trade registry
- the current maximum term required for the completion of the company's liquidation shall be increased so that the initial 1-year term calculated from the registration of the dissolution with the trade registry may be extended for **maximum three times**, each such renewal being granted for 1 year [*instead of the current two times renewals, each granted for 1 year*]
- if no deregistration request is submitted to the trade registry office within 3 months as of the expiry of the above-mentioned maximum liquidation term (renewed, as the case may be), the registrar shall acknowledge *ex officio* or upon the request of any interested person, the expiry of such term and order the company's deregistration. A specific procedure similar to the one set out in art. 237 and 237¹ of the Companies Law, shall be introduced
- the limits of the fine set out in art. 260 (5) of the Companies Law for the liquidator's failure to submit for registration to the trade registry the report on the economic status

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of the company or, as the case may be, to file a claim for the opening of the bankruptcy procedure within 15 days from the submission of such report, as per art. 260 (4), shall be increased to an amount comprised between 500 lei and 1,000 lei

- in the case of SAs, the company's failure to keep a shareholders' registry or the failure of the Board members (or the Directorate members, as the case may be) or of the entities in charge with keeping the shareholding as required by law, to make available to the shareholders and any other applicants information on the company's shareholding structure and issue, upon request, certificates on this information or to make available to the shareholders and bondholders, under the same terms, the registry of meetings and resolutions of the general shareholders' meetings and the bonds registry, shall be qualified minor offences and punished by fines ranging from 5,000 lei up to 15,000 lei. The minutes ascertaining the application of the fine shall specify that the failure to comply with such obligations triggers the dissolution of the company as per art. 237 of the Companies Law. If the representative of the company fails to fulfil such obligations within 30 days from the application of the fine, the tribunal shall order the dissolution of the company upon the request of the Ministry of Finances - the National Agency of Fiscal Administration

III. Transitory provisions - Entry into force

- the procedures commenced prior to the entry into force of the Law No. 265/2022 shall continue to be governed by the law in force at that time
- within 60 days from the entry into force of the Law No. 265/2022, the Minister of Justice shall issue (i) the order approving the Methodological Norms on the keeping of trade registries, the performance of registrations and delivery of information and (ii) the order approving the templates of articles of association, registration application, registration certificate and security features of the registration certificate issued electronically
- upon the entry into force of the Law No. 265/2022, the following legal instruments shall be repealed: **Trade Registry Law no. 26/1990**, **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 in order to operate, **EGO no. 116/2009** for implementing measures regarding the registration in the trade register (save for article 11 dealing with the status of the personnel in charge with the registration with the Trade Registry), as well as the **secondary legislation** issued based on or for the application of the aforementioned repealed instruments
- the Law No. 265/2022 shall enter into force within 4 months as of the publication thereof in the Official Gazette of Romania, meaning on **26 November 2022** (save for art. 133, 134, 137 and 138, dealing with certain administrative matters, which enter into force within 3 days as of the publication date, and for article 8(2) dealing with the electronic archiving of the documents submitted to and the registrations made with, the Trade Registry, which shall enter into force on 1 August 2023).

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If you are interested in receiving further information on the above, please do not hesitate to contact us.

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