

## Summary

The Romanian Parliament issued on July 13th 2015 Law no. 152 for amending and supplementing the national legislation regarding the registration procedure with the Trade Registry. These provisions entered into force on July 16th 2015.

Law no. 152/2015 transposes at a national level the objectives of EU Directive 2012/17/UE of 13 June 2012, amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council, regarding the interconnection of central, trade and companies registers, and brings to the forefront several major amendments to three internal laws:

- Law no. 26/1990 regarding the trade registry;
- Companies Law no. 31/ 1990; and
- Law no. 359/2004 on the simplification of registration formalities with the trade registry.



### 1. Amendments to Law no. 26/1990

#### *A. Implementation of an interconnection system between the trade registers of all EU Member States*

The system aims to ensure the communication between companies/trade registers in the event of an EU Member State based company setting-up a branch in another Member State. Pursuant to the amendments of Law no.152/2015, a Romanian legal entity setting-up a branch within another Member State is obliged to register the branch with the Trade Registry of the host state, and subsequently notify the relevant Romanian Trade Registry. (This obligation shall become enforceable starting with the 90th day as of the publication of the Law No. 152/2015 in the Romanian Official Gazette)

The communication between the trade registers within the EU implies the free exchange of information and documents on cross-border mergers and setting-up of branches by companies having their registered office within the EU.

Moreover, the interconnection system is seen as a mutual exchange platform for the trade registries of EU Member States. In practice, the relevant Romanian Trade Registry will be provided, without any cost, with information and documents on any liquidation procedure or deregistration

of any EU legal entity which has a branch in Romania, in order to perform an ex officio deregistration from the Trade Registry of the Romanian branch. In the same way, the relevant office of the Romanian Trade Registry will have the obligation to send information and documents related to any registered liquidation procedure, without any charge, to the trade registry of the EU member state hosting branches of the liquidated Romanian company.

## **B. The European portal – E-justice**

Law no. 152/2015 provides that the interconnection system is comprised of the companies' trade registers of EU Member States, the central European Platform and the E-justice portal. The E-justice portal is an electronic service making available to the public information and documents about legal entities and natural persons registered in the European Union. At a national level, the National Office of the Trade Registry ("ONRC") will be the access point to the European Interconnection system and will provide the public, upon request, with information on the registered persons, including the following:

- The name and the legal form of the registered person;
- The address of the headquarters and the EU Member State where the person in question is registered;
- The number of registration, the sole registration code and the unique identifier at European level (EUID);
- The Company's status.

## **C. The unique identifier at European level**

The natural persons and legal entities registered with an EU Trade Registry will be identifiable by a unique identifier at European level (EUID). This EUID is composed of the following elements: the identifier of Romania, the identifier of the national registrar, the identification number of the legal entity or the individual with the respective trade registry, and, if the case, other elements in order to avoid identification errors.

## **2. Amendments to the Companies Law no. 31/ 1990**

### **A. Enforcement of mortgage over shares**

An aspect of novelty of Law no. 152/2015 is that it allows the shareholder's creditors to seize and sell the shares owned by their debtors in a company (both in the case of limited liability companies and joint stock companies).

Also, Directors/Members of the Board of Directors are obliged to provide the creditor or the bailiff, at their request, with the financial statements and any other written documents or information necessary for the assessment of the shares, as well as to facilitate the seizure thereof (this provision applies only to mortgages applied over the shares after the entry into force of the Law No. 152/2015).

In case of limited liability companies, the constitution of a mortgage over shares in favor of a person outside the company must be approved by  $\frac{3}{4}$  of the shareholders – similarly to the existent provisions for the approval of assignment of shares to persons outside the company.

### **B. Cases of dissolution**

Law no. 152/2015 introduces 2 (two) new cases in which the Court may declare the dissolution of the company:

- the company did not submit the annual financial statements as well as the accounting reports to the competent authorities within the term provided by law, if the delay exceeds 60 (sixty) working days;
- the company did not submit with the competent authorities, within the period provided by law, the statement that it has not performed any economic activities since its registration, if the delay exceeds 60 (sixty) working days.

Another element of novelty is the communication of the dissolution decision to the company, the Trade Registry and the Tax Authorities. The decision is also published in the Romanian Official gazette, Part IV, on the website of the Trade Registry and via the on-line services portal. The dissolution decision is only subject to appeal.

# Clients & Friends Alert

July 2015

It is important to notice the transfer of competence from the Court to the Trade Registry for the extension of the liquidation period leading to a simplification of the dissolution procedure.

Moreover, if within 3 months of the definitive dissolution decision no request for the appointment of a liquidator is submitted, any interested person may request the Tribunal the deregistration of the company from the Trade Registry.

The term for finalizing the liquidation process was changed from 3 (three) years to 1 (one) year, with the possibility of a one year extension upon the liquidator's request. The liquidator can request such extension only twice.

If no deregistration request is filled within a 3 months term after the expiry of the liquidation term, The Trade Registry or any interested person is entitled to request the deregistration of the company to the Tribunal.

## **C. Cross-border merger**

In case of a cross-border merger, the Trade Registry where the absorbing company is registered or that where the resulting company is set-up, shall immediately notify, via the interconnection system, the completion of the cross-border merger to trade registers of the Member States where the merging companies are registered, for the purpose of the deregistration thereof (This provision shall apply starting with July 7th 2017).

Should you require additional information do not hesitate to contact our colleagues here at Biriş Goran.

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