

CMS | Romania changes Romanian Companies Law on dissolution and liquidation procedures



The Romanian Parliament has passed Law No. 265/2022 on the Trade Registry, and which amends and supplements other legal instruments applicable to Trade Register registration.

Entering into force on 26 November 2022, this law will also bring the following main key changes to Law 31/1990 on companies (also known as the Romanian Companies Law) on dissolution and liquidation procedures:

Fewer cases where interested persons can ask for a company's dissolution in court

The cases in which a company can be dissolved through court decision, upon the request of any interested person or of the Trade Registry National Office, have been limited to the following:

- ▢ the company no longer has statutory bodies or its statutory bodies can no longer meet;
- ▢ the company's shareholders have disappeared or their domicile or residence is unknown;
- ▢ the company's registered office no longer meets the required conditions (other than the ones provided in the case of dissolution by the acknowledgment of the Trade Registry through the registrar); and
- ▢ the company has not supplemented its share capital according to the law.

One of the most important cases of judicial dissolution that the law abolishes is where any interested party or the Trade Registry can ask in court for the company's dissolution for its failure to submit annual financial statements with the Ministry of Public Finance within the period prescribed by law if the delay exceeds 60 working days.

Also, any publication that is relevant regarding the dissolution of a company will be made in the Electronic Bulletin of the Trade Register, thus removing the publication in the Official Gazette of Romania and on the Trade Registry National Office's Internet website or online service portal.

New method to dissolve a company by the acknowledgment of the Trade Registry

Law no. 265/2022 introduces the possibility for a company to be dissolved upon the request of any interested person or ex officio through the simple acknowledgment of the Trade Registry through the registrar when the dissolution conditions are met. The cases in which the Trade Registry through the registrar can acknowledge the dissolution of the company (without court intervention) include:

- ▢ the company no longer complies with the requirements regarding its registered office, due to the expiry of the term of the title to use these premises, or the transfer of the title of use or the premises' ownership title;

□ the company's activity ceased or was not resumed after a temporary inactivity period, which was reported to the tax authority and registered with the Trade Registry, provided that this period does not exceed three years from the company's registration with the Trade Registry;

□ in the case of companies incorporated for limited terms, upon the expiry of the term set out in the articles of association (unless the renewal procedure was followed).

This procedure for company dissolution requires that the registrar give a resolution, stating that one of the above-mentioned conditions of dissolution was met.

This register's resolution is not enforceable by law and can be challenged in court by any interested person (including the dissolved company or the National Fiscal Administration Agency) by filing a complaint to the Trade Registry within 15 days from communication or publication. The complaint must be communicated to the competent court within three business days from the date of its submission to the Trade Registry.

Once the court's decision has become final, it will be sent to the Trade Registry for registration. After this date, the company goes into liquidation and the registrar will appoint a liquidator from the Insolvency Practitioners' Register.

Changes in the liquidation process of companies

A liquidator appointed by the Trade Registry, upon request of any interested person or *ex officio*, will receive a fixed remuneration of RON 1,500 (approximately EUR 300) instead of RON 1,000 (approximately EUR 200). Also, the liquidator will no longer be required to submit its specimen signature with the Trade Registry.

Interestingly, Law no. 265/2022 also refers to the fact that the finalisation of the company's liquidation, if not completed within one year as of the start of a company's dissolution, can now be extended three times, each extension being equal to one year (instead of the previous extension of two years). In practice, this means that the proceedings for the liquidation of companies may take longer than currently the case, the companies and liquidators having more time to finalise liquidation procedures.

Simplification of company de-registration process

Company de-registration can now be decided directly by the registrar, at the request of any interested person or *ex officio*, if no de-registration request is submitted to the Trade Registry within three months from the expiration of the maximum liquidation term.

Similar to the procedure for company dissolution, in case of a company de-registration, the registrar gives a resolution, which is not enforceable by law. Also, any interested person can challenge this resolution in court by filing a complaint within 15 days from the communication or publication with the Trade Registry (the challengers can include the dissolved company or the National Fiscal Administration Agency).

Specific provisions regarding the transfer of ownership title in case of liquidation

Currently, the Companies Law contains specific provisions regarding the transfer of the ownership title of the company's assets in case of simultaneous voluntary dissolution and liquidation without the appointment of a liquidator for general partnerships, limited partnerships and limited liability companies.

Now, however, Law no. 265/2022 specifically introduces rules regarding the transfer of ownership title in case of liquidation for all type of companies, specifying that in case of a company's liquidation, the transfer to the shareholders of the ownership title of the remaining assets after the payment of creditors takes place on the date of

the company's Trade Registry deregistration.

The Trade Registry will issue to each shareholder an ownership certificate over the distributed assets, on the basis of which the respective shareholder may proceed with the registration of the real estate in the Land Book, if this is the case.

For more information on this new legislation in Romania and how it could affect your business, contact your CMS client partner or local CMS experts: **Rodica Manea** and **Elena Andrei**.