

CMS | Romania passes changes to Romanian Companies Law



Law No. 265/2022 regarding the Trade Registry and amending and supplementing other legal instruments applicable to the registration with the Trade Registry that will enter into force on 26 November 2022 will also bring the following key changes to Law 31/1990 on companies, also known as the Romanian Companies Law:

▮ **Payment of share capital of limited liability companies (SRL) in tranches**

A change brought by Law no. 265/2022 is that shareholders of a limited liability company will no longer be required to pay the entire amount of share capital upon incorporation. Shareholders will have the options to pay:

- (i) 30% of the subscribed share capital no later than three months as of the incorporation date, but prior to commencing any operations on behalf of the company; and
- (ii) the difference to the full value of the share capital (a) in cash – within 12 months as of the incorporation date, and (b) in kind – within a maximum of two years of the incorporation date.

Also, irrespective of the type of the company, the proof of payment of the share capital will no longer be required for the company's incorporation.

▮ **Express acceptance of the mandate by directors and managers**

For all types of companies, any director, manager, member of the management board or of the supervisory board must expressly accept such a mandate for their nomination to be legally valid.

By accepting this mandate, the directors, managers and members of the management board take responsibility for observing the legal conditions required by the Romanian Companies Law for holding the concerned position.

▮ **New deadline for the implementation of share capital increases**

The term for the implementation of the resolution of the general meeting of the shareholders approving the increase of share capital will be 18 months from the date the resolution is passed, instead of the current applicable one year-term.

□ Simplification of documentation required for a company's incorporation

The following documents will no longer be required to be submitted with the Trade Registry for a company's incorporation:

→ sworn statements that are currently required to be executed as a separate deed, by any founder, acknowledging compliance with the legal requirements, provided that this acknowledgement is included as an express clause in the articles of association;

→ proof of availability of the company's name (this is still required to be obtained prior to incorporation);

→ ownership title to the assets brought as a contribution in kind.

□ New mandatory clauses to be included in the articles of association

For limited liability companies (SRLs), the articles of association must also contain:

→ the subscribed share capital (instead of the share capital, as currently required);

→ the procedure of passing resolutions by the general meeting of shareholders for which the vote of all shareholders is required, if absolute majority cannot be obtained due to the parity of the shareholdings;

→ the duration of the directors' mandate;

→ the means of ensuring the extinction of liabilities or their regularisation in agreement with creditors, in case of dissolution without liquidation, where the shareholders agree on the allocation and liquidation of the company's patrimony; and

→ the identification details of the ultimate beneficial owners and the way they exercise control over the company, where required by law.

For joint stock companies (SAs), the articles of association shall also contain:

→ the type of company (public or private); and

→ the identification details of the ultimate beneficial owners, together with the way they exercise control over the company.

□ Merger/Spin-off approvals and publicity formalities

An important change regarding the procedure for mergers and spin-offs is that these operations must be approved by the registrars of the Romanian Trade Registry, and are no longer subject to court proceedings. This change should significantly speed-up the timeline for approving a merger or spin-off. The new provisions also apply to cross-border mergers.

Law no. 265/2022 also brings changes with respect to the publicity formalities regarding the approval of the merger at the level of the absorbed company, which can be performed, in all cases, by the absorbing company (while currently the absorbing company may perform such publicity formalities on behalf of the absorbed company only provided that the latter has not performed these formalities within 15 days as of the registration of

the merger).

If the company opted for the publication of the merger/spin-off project on its own webpage, opposition to such a document may be filed within 30 days as of the publication of the merger/spin-off project in the Electronic Bulletin (instead of 30 days as of the publication in the Official Gazette, as currently required).

In case of cross-border mergers, the common draft terms of the merger, approved by the registrar of the Trade Registry, must be published in the Electronic Bulletin of the Trade Registry or, as the case may be, in the Official Gazette of Romania, Part IV, at the expense of the parties, in full or in extracts, at least 30 days before the date of the meetings at which the general meetings are to decide on the merger.

□ Amendments to the decision-making process in a limited liability company

The current rule has been repealed by which amendments to the articles of association of a limited liability company (SRL) must be approved with the vote of all shareholders, except for the case where the law provides otherwise, or the articles of association provide otherwise.

□ New rules applicable to limited liability companies in case of death of a shareholder

The current rule applicable to general partnerships, based on which, in the case of the death of a shareholder and unless otherwise provided, the company must pay the share due to the heirs according to the latest approved balance sheet, within three months as of notification of the shareholder's death, unless the remaining shareholders prefer to continue the partnership with the consenting heirs, must also be applicable to limited liability companies.

New / increased sanctions

Law no. 265/2022 introduces the following new or increased fines :

→ RON 500 to RON 1,000 (approximately EUR 100 to EUR 200) – for the failure of a liquidator to submit to the Romanian Trade Registry the report on the economic situation of the company within 60 days of the liquidator's appointment;

→ RON 5,000 to RON 15,000 (approximately EUR 1,000 to EUR 3,000) – for failure (a) to keep a shareholders' registry, and (b) to make available to the shareholders or any other applicants information on the shareholding structure of that company and to issue, on their request and at their own expense, certificates relating to this information.

Transitory provisions

Most of the provisions of Law no. 265/2022 will enter into force within four months from its publication in the Official Gazette of Romania (i.e. by 26 November 2022).

Any procedures initiated prior to the entry into force of this Law will continue to be governed by the previous provisions.

Watch for the upcoming Law-Now article on the changes that Law no. 265/2022 is expected to bring to the procedure of dissolution and liquidation of companies in Romania.

For more information on this new piece of legislation in Romania, contact your CMS client partner or local CMS experts: **Rodica Manea** and **Elena Andrei**.