CORPORATE LAW

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Law no. 31/1990 on trade companies, republished in the Official Gazette no. 33/29th of January 1998, amended and completed by:
- Law no. 161/2003 on certain measures for the provision of transparency in exercising public high positions, public positions and in the business environment, prevention and sanctioning of corruption, published in the Official Gazette no. 279/21st of April 2003
- Law no. 99/1999 on certain measures for the acceleration of the economic reform, published in the Official Gazette no. 236/27th of May 1999
- Law no. 127/2000 for the amendment and completion of Art. 156 from the Law no. 31/1990 on trade companies, published in the Official Gazette no. 345/25th of July 2000
- Government Emergency Ordinance no. 76/2001 on simplification of certain administrative formalities for the registration and authorization of traders' operation, published in the Official Gazette no. 283/31st of May 2001

- Law no. 26/1990 on trade registry, republished in the Official Gazette no. 49/4th of February 1998, as further amended and completed

- Decree-Law no. 122/1990 on authorization and functioning in Romania of the agencies of trade companies and foreign economic organizations, published in the Official Gazette no. 54/25th of April 1990

- Government Emergency Ordinance no. 76/2001 on simplification of certain administrative formalities for traders' registration and authorization, published in the Official Gazette no. 283/31st of May 2001

- Government Decision no. 573/2002 for the approval of the procedures of authorization of traders' operation, published in the Official Gazette no. 414/14th of June 2002

I. Formation of trade companies

Trade companies may be established in one of the following forms: a) partnerships; b) limited partnerships; c) joint stock companies; d) limited partnerships by shares; e) limited liability company.

The following formalities have to be fulfilled in order to establish a trade company:

1. Drawing up of the Articles of incorporation;
2. Registration and authorization of the company.

1. Drawing up of the articles of incorporation

Partners' will is on the basis of the formation of trade companies, developed, as the case may be in the **Partnership contract (**in the case of the partnerships or limited partnerships) or in **Incorporation contract and company Bylaws** (in the case of the joint-stock company, limited partnership by shares and with limited liability). According to the Art.5 from the Law no. 31/1990, republished, the incorporation contract and the bylaws may be concluded in the form of a sole document, named **Articles of Incorporation.** Law no. 31/1990, in articles 7 and 8, expressly provides for the clauses that have to be obligatorily included in the Articles of incorporation, the sanction of failure to comply with them being the refusal of the registration and authorization of the company. These are clauses for the identification of the parties, clauses regarding the identification of the future trade company, clauses regarding the characteristics of the company, clauses regarding the management and administration of the company, clauses regarding the partners' rights and liabilities, clauses regarding the secondary offices of the company, clauses regarding the company dissolution and winding up.

The Articles of Association is concluded under private signature and is signed by all of the partners. The authentic form of the Articles of incorporation is mandatory under the following situations:

- a land is among the goods subscribed as contribution to registered capital;
- a partnership or a limited partnership is formed;
- joint stock company is formed by public subscription.

All the activities registered in the articles of association must be codified according to CAEN code approved by Government Decision no. 656/1997 and updated through the Order no. 601/2002. The object of activity is

expressed by CAEN groups of three figures for the fields and by CAEN classes of four figures for activities.

1.1. Special rules regarding the companies' logo

The logo is the name or, as the case may be, the denomination under which a trader exercises the trade and under which he signs. The right of exclusive use on the firm is granted by its registration with the trade registry. The firm has to be written in Romanian language.

The logo of a *partnership* has to comprise the name of at least one partner, with the mention "societate în nume colectiv" (partnership) written entirely.

The logo of a *limited partnership* has to comprise the name of at least one of the limited partners, with the mention "societate în comandită" (limited partnership) written entirely.

Law also stipulates that if in the logo of a partnership or limited partnership the name of a person outside the company appears, with his or her consent, than he or she becomes liable unlimitedly and jointly of all the companies' obligations. The same rule is applicable to the limited partner whose name appears in the logo of a limited partnership.

The logo of a *joint stock company or limited partnership by shares* is formed from personal name, of nature to distinguish it from the logos of other companies and shall be accompanied by the mention written entirely: "societate pe acțiuni" (joint stock company) or "S.A." or, as the case may be, "societate în comandită pe acțiuni" (limited partnership by shares).

The logo of a *limited liability company* is formed from a personal name, to which the name of one or many partners may be added and shall be accompanied by the mention written entirely "societate cu răspundere limitată" (limited liability company) or „S.R.L.".

1.2. Rules regarding the contribution to establishment of the registered capital of the trade companies

Contribution in cash to the registered capital is compulsory upon establishment of any form of company. *Contributions in kind (in goods)* are allowed in all forms of companies. *Labor* cannot constitute contribution to registered capital.

The partner delaying to file the contribution is liable for the damages caused, and if the contribution has been stipulated in cash is obliged to the payment of the legal interest from the day in which he should have deposited the contribution.

The registered capital of the joint stock company and of the limited partnership by shares cannot be lower than lei 25,000,000.

The registered capital of a limited liability company cannot be lower than lei 2,000,000 and is divided in equal shares that cannot be lower than lei 100,000.

The law distinguishes between the **subscribed capital** (the total value of the contributions for which the shareholders have undertaken to contribute for the forming of the company) and the **paid-up capital** (the total value of the contributions performed and that entered the company's patrimony).

At the joint stock company, the registered capital paid by each shareholder upon forming could not be lower than 30% from the subscribed one, the rest of the registered capital having to be paid up within 12 months from the incorporation.

At the limited liability company the registered capital has to be entirely paid up upon its formation.

2. Formalities at the trade registry for the registration of trade companies

Within 15 days from the date of the signing of the articles of incorporation, the organizers or administrators of the company or their representative has to request the company registration with the trade registry in the jurisdiction of which the company shall have its headquarter.

For this purpose, a standard registration application form has to be filled in. The application, together with the proof of the payment of the fees and tariffs due for the operations of registration and authorization of the company operation, according to the Government Decision no. 1344/2002 are filed with the Sole Office within the trade registry office.

The issuance of permits, authorizations and licenses are requested by the trade registry office within 5 days from the application registration and the competent authorities have to issue them within 15 days.

Within maximum 20 days from the registration of the dossier, the registration certification of the company is issued, comprising the unique registration code and an annex with permits, authorizations and licenses necessary for the operation.

Registration with the trade registry comprises fiscal registration, as well as the recording with the labor inspectorates, pensions houses, insurances and health houses and labor agencies.

Issuance of the registration certificate and of the annex gives the right for the trade company to begin its activity.

II. Establishment of subsidiaries and branches of trade companies

Subsidiaries are trade companies having legal personality and are established in one of the trade company forms, namely partnerships, limited partnership, joint stock company, limited partnerships by shares and limited liability company.

Branches are secondary offices with no legal personality of the trade companies and are incorporated, before the beginning of their activity, with the trade registry from the county in which they are going to operate.

The other secondary offices – agencies, representatives or other such offices – are only mentioned within the company incorporation with the trade registry of the head office. Secondary offices cannot be established under the name of subsidiary.

III. Formalities with the financial bodies

Within 15 days from the issuance of the registration certificate, the trade company has to file with the general departments of the county public finances, of the Bucharest municipality or of the public finances administrations of the districts of the Bucharest municipality in the territorial range they have their headquarter a "Fiscal registration declaration". The same obligation is incumbent to trade companies with a status of subsidiaries as well as to those having secondary offices type branches regarding these offices.

The other secondary offices, like agencies or other such centers of activity of the trade company have to be fiscally registered only if within them work at least 5 employees having individual labor contract. If the secondary office is situated in the same territorial range as the company that has establish it, the company is allowed not to register fiscally the secondary office.

The failure to file, within due time of the fiscal registration declaration is sanctioned with a fine from lei 1,500,000 to lei 2,000,000.

IV. Trade companies operation

1. Control and management bodies of trade companies

The following ones are the control and management bodies of trade companies: general meeting of shareholders, ordinary meeting;

extraordinary meeting; sole administrator/board of administrators; board of directors; executive manager; censors.

2. Profit

In each year, at joint stock companies, a quota of 5% from the company profit has to be paid up for the reserve fund, until this fund shall reach a minimum of fifth part from the registered capital.

3. Right to dividends

Dividends are the part of the profit that is paid to each shareholder/partner. Dividends are paid from the profit legally established, if it exists. Dividends are paid to shareholders/partners proportional with the participation in paid up capital. Dividends are paid annually, in the moment established by the general meeting of shareholders/partners. Dividends have to be paid within 8 months from the date of the approval of the yearly financial situation for the ended financial year. If the dividends are not paid in this moment at the latest, the company owes to partners/shareholders penalties equal to the legal interest.

V. Managing bodies' liability for possible damages caused to third parties

In the case of the joint stock companies and limited liabilities companies that have reached a state of insolvency, the members of the managing bodies – administrators, directors, censors – may be obliged by the syndic-judge to pay a part of the company's debts. The members of the managing bodies who have contributed to the debtor's reaching such a situation shall be obliged to pay a part of the company's debts, for facts like:

a) they used the company's goods of credits for their own interest or of another company;
b) they performed acts of trade in their personal interest, under the covering of the company;
c) they ordered, for their own interest, continuation of an activity clearly leading the company to cessation of payments;
d) they kept a fictitious accounting, made certain accounting documents disappearing or have not kept accountancy according to law;
e) they embezzled or hidden a part of the company assets or increased fictitiously its liabilities;
f) they used ruinous means in order to acquire funds for the company, for the purpose of delaying the cessation of payments;

g) in the month before the one of the cessation of payments have paid or have made to be paid with preference to one creditor, at the other creditors' cost.

Obligation to payment of certain debts of the company does not eliminate the enforcement of criminal law for facts which are offences.

Company administrators are liable for the failure to observe the obligations stipulated in their burden by the companies law. The administrators are also liable for the violation of obligations incumbent to them on the basis of the concluded administration contract. The administrators are jointly liable (if many) towards the company for:

a) reality of the payments made by the partners;
b) actual existence of the dividends paid;
c) existence of the registers requested by law and their correct keeping;
d) exact fulfillment of the decisions of the general meetings;
e) strict fulfillment of the duties imposed by law, the articles of incorporation.

All administrators, as well as the board of directors are liable to the company for the acts performed by directors or the employed personnel, when the damage would have not occurred if they had exercised the supervision imposed by the duties of their position.

The administrators are jointly liable with the former administrators if, being aware of their irregularities, they do not notify the censors or the financial auditors about those ones.

Executive managers are liable for the failure to comply with the obligations due to them towards the company and other persons like administrators. Action in liability against organizers, administrators, censors or financial auditors and directors belongs to the general meeting.

VI. Cessation of activity of trade companies

1. Dissolution of trade companies

In general, trade companies are dissolved through:

- passing of the term established for the company duration (if the shareholders asked 3 months before the expiration have not decided upon extension);
- impossibility of accomplishment of the company object of activity or its accomplishment;
- declaration of the company nullity;

- decision of the general meeting;
- decision of the court, upon any partner's request, for well grounded reasons, like serious differences between partners, preventing the company's operation;
- bankruptcy of the company;
- other causes stipulated by law or by the articles of incorporation.

Dependent on the company form, the lawmaker has provided also other cases of dissolution of companies, for example:

a) joint-stock company, limited partnership by shares and limited liability company are also dissolved through:

- decrease of the net assets of the company below half of the registered capital value;

- decrease of the registered capital below the legal minimum;

if within 9 months from the establishment of the decrease the company does not re-complete it, does not decrease the registered capital to the remained quantum or up to the limit of the legal threshold, does not transform itself in a form of trade company to which the existing capital corresponds.

b) joint-stock companies are dissolved when the number of shareholders decreases under the legal minimum, if the number of shareholders is not completed within 9 months.

Dissolution of a trade company may occur on the basis of the decision of the general meeting of shareholders/partners or on the basis of the decision of the court.

The court may pronounce the company dissolution under the following circumstances:

- the company no longer has statutory bodies or they can no longer convene;
- the company has not filed, within maximum 6 months from the expiration of the legal terms, the annual financial situations or other acts that, according to law, are filed with the trade registry office;
- the company has ceased its activity, does not have known registered office or does not fulfill the conditions regarding the registered office or the partners have disappeared or do not have a known domicile or known residence;
- the company has not completed its registered capital according to law.

Dissolution of the company has as effect its entering under winding up.

Dissolution of a limited liability company with sole partner brings about the universal transfer of the patrimony of the company to the sole partner, without winding up.

2. Trade companies winding up

Trade companies winding up means the cancellation of its obligations towards creditors, followed by the liquidation and the distribution of the patrimony among shareholders/partners.

Trade company winding up is the consequence of its dissolution. The winding up is performed through the mediation of certain liquidators.

Within 15 days from the ending of winding up, the liquidators shall apply for the striking off the trade registry. The conclusion of the delegated-judge has writ of execution and is subject to recourse. The striking off may be also performed ex officio. The winding up does not discharge the partners and does not prevent the opening of the procedure of bankruptcy of the company.

3. Trade companies bankruptcy

Bankruptcy begins with the entering of the company in a situation of insolvency, consisting of the evident incapacity of the company to cope with its debts with the amounts of money it has.

The syndic-judge shall decide, by conclusion, upon the going in bankruptcy in the following situations:

A. a) the trade company has declared its intention of going bankrupt or has not declared its intention of reorganization; and

b) no other legitimate subjects has proposed a reorganization plan or none of the reorganization plans has been accepted and confirmed;

B. a) the trade company has declared its intention of reorganization, but has not proposed a reorganization plan or the plan proposed by it has not been accepted and confirmed; and

b) no other legitimate subjects has proposed a reorganization plan or none of the reorganization plans has been accepted and confirmed;

C. the payment obligations and other duties undertaken are not fulfilled, subject to conditions stipulated by the confirmed plan, or the performing of activity of the trade company during the reorganization brings about losses to its assets.

4. Consequences of the acts concluded in the periods prior to trade companies cessation

The fraudulent acts concluded by the trade company against its creditors during 3 years before the opening of the procedure of judicial reorganization and bankruptcy against the company shall be cancelled.

For the increase at maximum of the value of the debtor's assets the administrator/liquidator may denounce any contract, non-expired rents or

other long-term contract, as long as these contracts would not have been executed entirely or substantially by all the parties involved.
The acts as a gift as well as the acts which are not performed during the current activity of the company, performed between the date of the confirming of the reorganization plan of the company activity and the date of the going into bankruptcy are cancelled.