

REGISTER OF COMMERCE

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

Applicable legislation in this field

- Law no. 26/1990 on the Trade Registry, republished in the Official Gazette no. 49/4th of February 1998, as further amended and completed:
 - Government Ordinance no. 53/1998 for the completion of the Law no. 26/1990 on Trade Registry, published in the Official Gazette no. 302/18th of August 1998
 - Law no. 161/2003 on certain measures for the provision of transparency in exercising public positions, of public high positions and in the business environment, prevention and sanctioning of corruption, published in the Official Gazette 279/21st of April 2003
 - 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 283/31st of May 2001
 - Law no. 348/2001 for the amendment of the Law no. 26/1990 on Trade Registry, published in the Official Gazette no.. 381/12.07.2001
 - Government Ordinance no. 15/2003 for the completion of the Law no. 26/1990 on Trade Registry, published in the Official Gazette no.. 61/1st of February.2003
- Methodological norms 608/1998 on the way of keeping trade registries and of making the registrations, published in the Official Gazette no. 176/11th of May 1998
- Government Decision no. 1346/2002 on the assistance services performed by the Trade Registry's Offices attached to tribunals for the registration and authorization of traders' functioning, published in the Official Gazette no. 903/12th of December 2002
- Law no. 161/2003 on certain measures for the securing of the transparency in the exercising of public high positions, of public positions and in the business environment, prevention and sanctioning

of the corruption, published in the Official Gazette no. 279/21st of April 2003

I. Organization and functioning

The Trade Registry, established on the basis of the Law no. 26/1990 is an institution specific to the market economy.

Thus, traders, before beginning the trade, as well as other natural or legal persons, expressly stipulated by law, before beginning the activity, have the obligation of requesting the incorporation in the Trade Registry and, during the exercising and at the ceasing of the trade or, as the case may be, of the respective activity, to request the registration, in the same registry of the mentions regarding acts and deeds whose registration is provided by law. The following are traders:

- natural persons and family associations that usually perform deeds of trade;
- trade companies;
- national companies and national societies;
- regies autonomes;
- cooperative organizations.

The Trade Registry is kept by the Trade Registry Office, organized in each county and in the Bucharest municipality.

The central Trade Registry is kept by the National Office of the Trade Registry, a public institution having juridical personality, completely financed from its own incomes, organized under the subordination of the Ministry of Justice.

II. Performance and control of the operations performed in the trade registry

The registrations in the trade registry are made on the basis of a delegated judge's conclusion or, as the case may be, of a final court order, except the cases in which the law provides otherwise.

Delegated judge's conclusions regarding the incorporation or any other registration in the trade registry are enforceable in law and subject only to recourse. The recourse term is of 15 days and starts from the date of the pronouncing of the conclusion for the parties and from the date of the publishing of the conclusion or of the act modifying the constitutive act in the Romanian Official Gazette, 4th part, for any other interested persons.

The recourse is filed and mentioned with the trade registry in which the registration has been made. In case of admission of recourse, the decision of the court of recourse shall be mentioned in the trade registry.

III. Registration and verification of the applications

The applications and the accompanying documents are verified, in the presence of the deponent, by an adviser of a trade registry office, in order to be established if the documents are complete and drawn up according to law; if necessary, it shall request other data or documents.

If the application and certifying documents are complete, the deponent shall receive the proof of the filing of the application, containing the denomination of the trade registry office, the number and the date of the registration in the unique registry for entries, as well as the limit date for the issuing of documents attesting the registration.

If, when verified, the lack of legal requirements is established and the deponent insists for the application to be registered under the presented form, the adviser of the trade registry office shall register the application, shall draw up the report with his objections and shall present the dossier to the delegated judge or/and to the director of the trade registry office. Under this situation, the trader receives the proof previously stipulated, in which the summoning term shall be mentioned.

If material errors or omissions are established that do not affect the requirements of the merits of the application and of the certifying documents, they shall be removed instantly by the deponent, on his own responsibility or, as the case may be, by the adviser of the trade registry office.

IV. Solving of the applications

The application and the certifying documents, together with the report of verification, are presented at the trade registry office headquarter, by the delegated judge, or, as the case may be, to the director of the trade registry office, for solving.

After the performance of the registrations in the trade registry, the following documents are issued, as the case may be, for the trader or its representative:

- the conclusion of the delegated judge and the registration certificate if the authorization and/or registration is requested;

- the conclusion of the delegated judge or, as the case may be, the resolution of the director of the trade registry office and the certificate of mentions' registration, if the registration of mentions regarding the amendment of constitutive documents is requested;
- the registration certificate or, as the case may be, the certificate of mentions' registration, accompanied by the listing of the registry file, if the registration in the trade registry of the consume cooperatives or of the credit cooperatives is requested.
- the conclusion for the registration of the branch, accompanied by the registration certificate;
- one counterpart of the applications in which the certificate is included on their last page.

V. Performing of the registrations in the trade registry

1. Registration and authorization of the traders' functioning

At present, for the obtaining of the registration and authorization of the traders' functioning, a Unique Bureau is formed in each office of the trade registry next to the tribunal.

The request of the registration, or, as the case may be, of the authorization of the trader's functioning at the unique bureau from the trade registry office is made by the partner, shareholder, administrator, trader or by their representatives.

The applicant shall fill in the standard registration application, shall supply all necessary data and shall pay the fees and tariffs afferent to the operations for the registration and authorization of the trader's functioning.

Within 20 days from the registration of the application, **a certificate of the trader's registration** shall be issued, comprising the unique registration code attributed by the Ministry of Public Finances.

According to law, at the request and on the expense of the holder of the application, the unique bureau has the obligation to perform the following *services*, regarding the application for the registration and authorization of traders:

- a) reserving of the firm and performing, on behalf of the owner of the application, of the payments representing the contribution in cash to the registered capital;
- b) drawing up of the constitutive document and the obtaining of the authentication or, as the case may be, of the giving it a sure date;

- c) drawing up and obtaining of the declaration of founders' administrators' and censors' own responsibility, that they fulfill the conditions stipulated by law;
- d) the sustaining of the trader's registration application before the delegated judge.

The registration at the trade registry is operated within 24 hours from the date of the pronouncing of the delegated judge's conclusion for the authorization of the incorporation.

Specification

The trader is obliged to mention on invoices, offers, orders, tariffs, prospects and on any other documents used in commerce the name/denomination, registered office, unique registration code and, if necessary, the personal numeric code. Fiscal receipts issued by the electronic marking apparatus are an exception and they will comprise the elements stipulated by the legislation in this field.

2. Mentions' registration

Mentions that bring about modifications to the traders' constitutive documents stipulated by the Law no. 26/1990 are subject to legality control by the delegated judge, except the mentions registered at the trade registry on the basis of the resolution of the director of the trade registry office, as well as of those registered on the basis of a final court decision.

Specification

Applications for mentions' registration, whose solving is under the competence of the delegated judge, are subject to the judicial stamp fees and of the judicial stamp.

At any mentions' registration application or for the performance of any operations at the trade registry, the proof of the payment of the fee to the trade registry office shall be annexed.

3. Applications for erasure

Any natural or legal person, prejudiced because of incorporation or of a mention in the trade registry may lodge erasure application.

The application is filed and is mentioned in the trade registry where the trader's incorporation was made. Within 3 days from the date of the filing, the trade registry office forwards the application to the tribunal under whose jurisdiction the trader's headquarter is, and in the case of the branches established in another county, to the tribunal from that county.

The court order for the solving of the application may only be attacked with recourse and the term of recourse starts from the pronouncing for the present parties and from the communication, for the missing parties.

Trade registry office shall perform the erasure and shall publish the final court order in the Romanian Official Gazette, 4th Section, on the expense of the party introducing the application. For this purpose, the court shall transmit the court order, in certified copy, to the trade registry office, with the mention of remaining final.

4. Registration ex officio

The registrations on mentions, ex officio, in the trade registry are made on the basis of a final court order or, as the case may be, on the basis of certain administrative documents published in the Romanian Official Gazette. If the trader or any other interested party does not request as a preliminary the registration of the mentions, they shall be registered at the trade registry ex officio.

The documents subject to the obligation of registration ex officio are stipulated by the Methodological Norms no. 608/1998.

We exemplify:

- a) final court orders as well as the trader's divorce order, as well as that of distribution of common goods pronounced during the exercising of the commerce; decision of conviction of the trader for criminal facts that make him unworthy of exercising of such a profession;
- b) mentioning of the registration of the branch at the trade registry office from the main headquarter, on the basis of a copy of the conclusion of registration of the delegated judge, transmitted by the trade registry office under the jurisdiction of which the secondary headquarter is;
- c) erasure from the trade registry in whose territorial range the initial headquarter of the firm changing its registered office in another county is, on the basis of the transmission of the copy of the registration conclusion, transmitted by the trade registry office from its new headquarter;

- d) Erasure from the trade registry of the trader, legal person that ceases its existence as a result of a reorganization through merger or through total division, if this was not ordered by a court order;
- e) Sanctions ordered by the relevant bodies for the facts performed in relation with the exercising of trade, published in the Romanian Official Gazette.

5. Rectification of material errors

If material errors are observed in the documents from the trader's dossier, an application for their rectification shall be drawn up.

The rectification shall be made without any fee if the observed material errors in the documents issued by the trade registry office were produced from the fault of the personnel of the trade registry office.

If material errors were observed in the documents, other than those issued by the trade registry office (constitutive document, modifying additional document, conclusion of the delegated judge, final court order, etc.), the trader has the obligation to request, as a preliminary, the rectification of errors to the issuing bodies and than to request the rectification of errors at the trade registry office.

VI. Fees levied by the trade registry office

For the performed operations, the trade registry office levies fees and tariffs established by government decision, at the proposal of the Ministry of Justice and of the Ministry of Public Finances.

At present, fees and tariffs levied by the trade registry office for the performed operations are those stipulated by the Government Decision no. 1345/2002 for the establishing of the pattern and content of the registration application and of the registration certificate of the trader.

The quantum of the fees and tariffs for the certification or giving of sure date to the constitutive documents and the declaration on the founder's, administrators' and censors' own responsibility regarding the fulfillment of the conditions stipulated by law, as well as of those for their modification were established in fixed amount by the Government Decision no. 600/2001, initiated by the Ministry of Justice on the basis of the proposals coming from the National Union of Notaries Public, with the approval of the Ministry of Public Finances.

VII. Sanctioning regime

Violation by the traders of the obligations stipulated by the legal regulations on the trade registry is sanctioned according to the provisions of the Law 26/1990 on the trade registry, as amended.

Thus, the failure to comply with the legal provisions with the legal dispositions and the terms stipulated by the traders that have to request the incorporation or registration of a mention or to file specimens of signatures or certain documents, if the deed is not an offence, shall be sanctioned with a judicial fine from lei 5 million to lei 20 million.

If the incorporation, mention, filing of the specimen of signature or of the document are in the burden of a legal person, the judicial fine is from lei 5 million to lei 20 million, if the deed is not an offence. If many persons are obliged to fulfillment, the fine is applied for each of them.

The sanction shall be applied through the conclusion pronounced by the delegated judge.

The person who, ill-meaning made inaccurate declarations, on the basis of which an incorporation was operated, or a mention was made in the trade registry, is punished with imprisonment from 3 months to 2 years or with a fine from lei 1 million to lei 5 million, if, according to the law, the fact is not a more serious offence. By the decision pronounced, the court shall order also the rectification or the erasure of the incorporation or of the inaccurate mention.