

NEW MEASURES REGARDING THE REGISTRATION IN THE TRADE REGISTER



The Law No. 84 for the approval of the Government Emergency Ordinance No. 116/2009 regarding the implementation of certain measures concerning the registration in the Trade Register entered into force on 17.05.2010.

Thus, the solving of the applications/claims has been taken over from the judges by the director of the Trade Register office or by other authorized delegated persons, for a period of maximum 4 months since the law has entered into force. After the 4 months period these powers will be subsequently taken over by the trade registrars as new authorized persons. The bill of law regarding the set up, organisation and functioning of the new profession of trade registrars will be adopted within 4 months since the law has entered into force.

Currently, these applications are solved based on the written proofs enclosed to the respective claims. Upon the express request of the parties or their representatives, a public hearing is organised for supporting and solving the claim.

By way of exception, the following claims will be solved directly by the court of law (commercial court of law or the commercial section of the court of law, under whose jurisdiction the registered office of the company is):

- ✓ the claims of the National Trade Register Office through the Trade Register offices are solved by resolution;
- ✓ the claims of the National Trade Register Office or of any interested party as regards the disso-

Dear Readers,

The Law No. 84/2010 for the approval of the Government Emergency Ordinance No. 116/2009 upon the implementation of certain measures concerning the registration in the Trade Register entered into force on 17.05.2010.

Due to the unfavourable economic background, the Government Emergency Ordinance No. 116/2009 has implemented a series of necessary measures for overcoming the blockage existing at the Trade Register offices, with negative consequences for the commercial transactions.

Thus, due to the courts' overload as regards the proceedings in front of the Trade Register such measures were very much awaited and finally implemented. Hence, the Government Emergency Ordinance No. 116-2009 as well as the law for its approval aim, mainly, at amendments regarding the competent body for solving the applications /claims submitted to the Trade Register.



By this newsletter, you will find a short description of the main provisions in the aforementioned matters.

Yours Cristina Stamboli

lution of the legal entity by virtue of art. 227 par. 1 letter a) und par. 3 of the Law No. 31/1990, as republished;

- ✓ the claims of the National Trade Register Office for the deletion of the legal entity from the Trade Register are solved by the court of law;
- ✓ the trade companies governed by the Law No. 314/2001 and which are under dissolution or liquidation process, are deleted from the Trade Register by a sentence issued by the court of law;
- ✓ the commercial section of the competent court is authorized to judge the appointment of the liquidator in the circumstances stipulated under art. 237 par. (7) of the Law No. 31/1990 and under art. 31 par. (4) of the Law No. 359/2004.

All the claims mentioned above must be solved with priority in the council room, by summoning the parties. The Court Ruling is enforceable and can be appealed. Such appeal is final and irrevocable.

It is also important to be highlighted that, in merger cases, including the cross border mergers, and spin-off, the competence for the examination of the legality of the merger/spin-off decision and, as the case may be, of the articles of incorporation, as well as the competence for solving the application for registration in the Trade Register of the merger, the cross border merger, the spin-off belong to the court of law. That application is submitted to the Trade Register which forwards it to the competent court within 3 days since its receipt. The application is solved with priority in the council room, by summoning the parties. The Court Ruling is enforceable and can be appealed (final appeal).

The complaint as modality for challenging the resolution of the director of the National Trade Register Office is another novelty of this piece of legislation. Thus, the resolution may be challenged by the parties by filling a complaint within 15 days from the hearing or it may be challenged by any interested party within 15 days from the date of its publication.

The complaint is submitted to the Trade Register, which on its turn forwards it to the court within 3 days.

The complaint is solved by one judge, in the council room, without summoning the parties involved. The resolution of the court is enforceable and can be appealed. Such appeal is final and irrevocable.

According to the new amendments brought by the Ordinance No. 116/2009 the Trade Register must solve the cases within maximum 2 hearings.

Furthermore, due to the fact that the files that are submitted to the Trade Register are no longer analysed by judges, the applicant is liable for the legality, authenticity, exactness of the data contained in the registration applications and the relevant documents submitted for their support. (Art. 10 par. 2 of the Government Emergency Ordinance No. 116/2009)

Moreover, the National Trade Register Office does not collect anymore the judicial stamp fee and, as the case may be, the counter value of the judicial stamp.

This Emergency Ordinance is applicable until the set up of the trade registrars.

For further information please contact:

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