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CIVIL PROCEDURE

New legislative amendments required by the supreme court's overload

Although the Civil Procedure Code was amended no earlier than May 2004, exactly for the purpose of relieving the supreme court, these measures proved to be insufficient, and led to the need of further amendments to the procedural rules brought by the Government Emergency Ordinance no. 65/2004 published in the Official Gazette no. 840 of September 14, 2004 whose provisions have entered into force upon the same date.

It is acknowledged through this normative act's recital that its enactment is due to the large number of civil cases that are currently on the roll of the Supreme Court for Cassation and Justice, which is causing a delay in the court process infringing thus the right to a fair hearing in a reasonable time. Therefore, the legislative measures naturally regarded the procedural rules for judging upon civil cases, as follows:

(a) Amending the jurisdiction of the courts

Grounded by the need to "bring the citizens closer to the courts" in view of granting free access to justice, the alterations brought to the jurisdiction of the courts have referred to:

- (i) Establishing the rule based on which all partition cases shall fall under the

jurisdiction of the local courts regardless of the size of their value;

- (ii) District courts shall become competent to try the appeals regarding: divorce suits; partition suits; suits regarding the family relations of parents and their minor children; filiation suits, and other cases provided by law, derogating thus from the rule that appeals are tried by court of appeals;
- (iii) The courts of appeal shall try all the final appeals that shall be brought against the appeal judgments passed by the district courts.

(b) Partition suits procedure

A revision of the procedural rules for partition suits regards the return to the rule based on which all measures imposed by the court with respect to the goods subject to partition, the co-owners and each co-owner's share shall no longer be separately challenged by means of appeal or final appeal, as the case may be, but only, by challenging the judgment on the merits of the case.

(c) Final appeal procedure

Moreover, the same enactment has amended a final appeal procedural provision, final appeals that, as a rule, shall be further tried by the High Court for Cassation and Justice. It has been set that drafting the report on the form, the grounds, the legal issues arisen by final appeal requests, as well as the doctrine and jurisprudence views on such legal issues, is no longer mandatory.

COMMERCIAL LAW

In an attempt of systemizing the procedures for registration with the Trade Registry, the Parliament has adopted the Law no. 359/2004 (Official Gazette no. 839) regarding the simplification of the registration formalities for natural persons, family associations and legal persons, including the fiscal registration, as well as authorisation of operation for legal persons. The enactment is envisaged to come into force as of October 8th 2004.

However, according to our information, in spite of the recent adoption of such enactment, this may suffer several further amendments by the means of a specific emergency Government ordinance, programmed to be implemented in the near future.

Scope of application

By formally repealing the old regulation (Emergency Government Ordinance no. 76/2001), the said law shall become the legal framework applicable to all of the registrations with the Trade Registry. The enactment mainly undertakes the main body assembly of former legislation, but also adds certain elements of novelty, such as: shortening of certain procedural terms, establishment of a new term sd regards the change of the old registration and fiscal certificates, as well as a special case of deregistration (by the operation of law) of the legal persons.

Reduction of terms

Simplification of the registration procedures is illustrated, among others, by shortening of the terms for the issuance of certain certificates or confirmation documents by the Trade Registry. Therefore, as compared to the former delay of 20 days, the certificate for registration and for the registration of addendums must be issued within maximum 10 days since the application date (as a term of recommendation), the confirmation documents within 3 days, and the registry excerpts within 24 hours from the application date.

Moreover, other fixed terms have been established as regards the communication between the court and different public authorities involved into the procedures performed before the Trade Registry.

Change of the old certificates regarding the Trade Registry and fiscal registration

Certain provisions regard the change of the old certificates attesting the Trade Registry and fiscal registration. Thus, the legal persons which, before the coming into force of Law no. 359/2004, have not changed such certificates, must ask for the change so as to be provided with the new certificates for registration containing the sole registration code. The application shall be addressed to the Trade Registry attached to the specific court in which jurisdiction the entity has its headquarters or secondary offices.

The new term, until which the change must be performed is December 30th, 2004, under the penalty of the dissolution of the legal person, by the operation of law.

Ascertaining of the dissolution of the legal persons by the operation of law

One of the elements of novelty provided by Law no. 359/2004 is the right of any interested person to ask the competent court to deregister the legal persons, by the operation of law, under certain conditions.

Thus, in case that after the setting-up of a legal person a subsequent enactment provides for the cessation of its activity, or declares void the deed of authorisation, setting up or acknowledgement of such legal person by the operation of law, any interested person may require the competent court to take note of the respective amendment of the legal person's bylaws in respect of its scope of activity or to ascertain the dissolution by the operation of law of the respective legal person.

Ascertaining of the dissolution shall be performed by the means of the decision to be made by the delegated judge, at the request of the National Office of the Trade Registry. We note that against such decision only higher appeal ("recurs") may be lodged, by any interested person, within 15 days from its publication. In case that no appeal has been lodged or it has been rejected, the respective legal person shall become subject to winding up procedures, according to the applicable legal framework.

Application norms

With a view of implementing of the above-mentioned law, several procedures should be adopted, within 30 days from its

publication, regarding inter alia: (i) activities or objectives requiring prior authorization; (ii) activities or objectives that may be considered to be authorised on the basis of the sole statement on own liability; (iii) authorisation of the functioning, validity period and reauthorisation possibilities.

As concerns the contraventions provided by this law, the wording of art. 41 par. 1 (according to which any activity carried out by legal persons before obtaining the authorisation for operation shall be considered as a contravention), is deficient, as it does not mention if it refers also to the necessary acts which must be, regularly, concluded before the establishment of a legal person with a view of its valid incorporation.

Issuance of the written agreement for the use of the company's names

With a view of implementing the provisions of the Government Ordinance no. 72/2004, the Government has issued the Government Decision no. 1296/2004 (Official Gazette no. 809) for the approval of the Methodological Norms concerning the conditions and the procedure for the issuance of the agreement to use within the companies' names of the following terms: „national”, „Romanian”, „institute”, „academic-scientific”, „academy”, „university”, „school” and/or their derivatives

Although the enactments mentioned above do not expressly refer to the term „Romania”, the competent authorities (the Trade Registry and the General Secretariat of the

Government) have established that these legal texts must be regarded as applying also to commercial companies whose name includes the above term (Romania).

The procedure and related conditions for the issuance of the agreement

As concerns the issuance of the agreement to use such names, the legal persons concerned must submit an application to the unique office of the Trade Registry in whose territorial jurisdiction is their headquarters. As regards the legal persons to be established at the date of entrance into force of GD no. 1296/2004, they shall address to the unique office of the Trade Registry in whose territorial jurisdiction they are establishing their headquarters.

The application for the issuance of the agreement shall be accompanied by the documents attesting that the applicant meets the conditions required by the said enactment and the confirmative certificate issued by the Trade Registry.

Within 24 hours from submitting of these documents, the unique office shall send them ex officio and free of charge to the competent authority in order to issue the approval, respectively to the General Secretariat of the Government or to the prefect, as the case may be. These authorities are obliged to deliver their answer to the unique office within 10 days from the receipt of the documents.