

THE OBLIGATIONS OF COMMERCIAL PROFESSIONALS

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Abstract

Commercial professionals have some obligations under the law, aimed both at defending public interests and the interests of third parties who enter into contracts with traders and commercial credit, and at defending the interests of professionals themselves, by creating an appropriate legal framework for the activities they perform.

The main obligations of traders are the following: fulfilling Trade Register advertising formalities; exercising trade within the limits of legitimate competition; and the organization and bookkeeping of commercial companies.

This paper aims at elaborating on the three listed obligations, mainly referring to commercial professionals, as they carry out professional activities that are centered on obtaining profit.

Keywords: trader, professional, business, economic activities

Fulfilling Trade Register advertising formalities:

At the start of commercial activities, commercial professionals are required to register in the Trade Register, in accordance with legal provisions, and throughout the performance of activities, as well as upon cessation thereof, they are obliged to request the inclusion of mentions regarding the documents and facts provided by law.

It is necessary to create an official record, which is why registration in the Trade Register is important, creating some veritable official data banks on the existence and activity of traders; to ensure the opposability insurance against third parties of mentions registered in the Trade Register, regarding the activity and the person of traders; recording facts, documents or mentions in the Trade Register is also a means for protecting the company, its emblem, certain rights of the trader etc. The Trade Register works as a legal advertising tool for the work of traders.

Regional offices of the Trade Register make registrations in the Trade Register, with the mention that any registration or mention shall be recorded within 15 days after the occurrence of the legal document / fact under registration, and that all registrations in the Trade Register are subject to judicial review by courts of law. Single bureaus are necessarily organized by these offices, and they are in charge with the authorization procedure for the activities of commercial professionals. Consequently, representatives with the right of signature are delegated to these single bureaus, from the public authorities that are competent to authorize the operation of economic agents.

By law, the Trade Registry is public. Thus, the Trade Register Office has the obligation issue the following documents, on request: notarized copies of registrations made in the Trade Register and of documents submitted by the trader for these registrations and ascertaining certificates, attesting whether a particular document or fact relating to the trader or their activity is registered or not in the Trade Register.

Legal-entity professionals can prove the existence and functional status of the legal entity through an extract from the Trade Register.

Before commencing their activity, professionals, whether natural or legal persons, are required to apply for registration in the Trade Register. During the performance of activity, as well as upon its termination, the obligation to apply for registration of documents and facts in the Trade Register, which is required by law, also pertains to the professionals, whether natural or legal persons. This registration of documents acts and facts is made by way of an application for registration of entries.

The persons required to register in the Trade Register are all commercial professionals: both natural persons / family associations and commercial companies, national companies, autonomous administrations, cooperative organizations and economic interest groups.

Some types of registrations in the Trade Register are:

a) Registration, which involves the work of registering and recording the commercial professional before the commencement of activity. Under the current regulation, legal entities' registration and authorization are made by single procedure, carried out via the Trade Register Office.

Applying for registration is made through a standard application request, made by the founder, administrator, their representative, or by any stakeholder within 15 days after the conclusion of the articles of incorporation, to which the applicant attaches all the documents required by law.

Registration of a legal entity in the Trade Register is done within 24 hours after the conclusion is pronounced, and the person whose registration has been requested acquires legal personality and on the date of registration in the Trade Register.

After registration, a Certificate of registration is issued to that person. This certificate will include the both registration number in the Register Trade and the unique registration code assigned by the Ministry of Public Finance, being the Document attesting that the person was recorded by both the Trade Register and the fiscal body. Also immediately after registration, the Official Gazette shall be notified *ex officio* to publish a statement of conclusion, containing all relevant data on the registered legal person.

The procedure for authorizing the operation of the legal entity is performed at the same time as registration, so that, when submitting the application, the applicant shall also submit an a statutory declaration, showing either that the legal person shall not carry out the declared activities for a maximum of three years, or that it meets the requirements provided by law for carrying out that activity.

The requirement for registration in the Trade Register is also incumbent on individual professionals who carry out commercial activities, who, before commencing activity, are obliged to apply for registration in the Trade Register of the form of organization in which they plan to carry out their work.

b) The inclusion of mentions, which entails keeping the records up to date by registering changes in the legal status of the commercial professional registered in the Trade Register;

By law, the following changes are subject to registration in the Trade Register:

- divorce sentence or separation of common goods belonging to the trader;
- incapacitation of the trader or establishment of guardianship;
- legal documents dealing with the trade fund or making changes to prior entries or which put a cease on the company or trading fund;
- mention of industrial property rights available to the trader, rights on the company, emblem or other distinctive signs;
- changes in the particulars of the legal person's registered representative, submission of the representative's signature;
- mention of opening a reorganization or bankruptcy procedure;
- mention of a sentence convicting the trader, manager or auditor for acts that make them undignified or incompatible with their status;
- any other change regarding registered documents, facts or mentions.

Registrations in the Trade Register have an advertising role, opposing registered documents, facts or mentions to third parties. In respect of commercial companies, the registration of the company also produces an effect of incorporation of rights, as the company obtains legal personality upon its registration. This effect does not exist, but in the case of individual professionals (traders), as they acquire professional status by cumulatively meeting the three above-stated requirements: conducting an activity consisting of the production of goods, the management or sale of goods or services, conducting that activity in an organized way and conducting the activity systematically.

Any person who considers themselves as injured as a result of a registration or a mention registered in the Trade Register has the right to request the entire or partial deletion of the damaging registration, if by final judicial decision the underlying documents of that registration were wholly or partly abolished and if the judicial decision did not order the mention of that decision in the Trade Register.

There are some requirements that must be fulfilled in order to be able to request the deletion of a registration from the Trade Register, namely:

- the existence of a final judicial decision wholly or partly abolishing the underlying documents of that registration;
- the judicial decision did not order the mention of that decision in Trade Register;

- the person requesting deletion must provide proof of injury caused by the relevant entry.

Deletion requests shall be solved by the courts, by summoning the Trade Registry Office and the trader involved. The decision thus pronounced is subject only to an appeal, which can be exercised within 15 days of delivery or communication.

Penalties for failure to comply with requirements regarding Trade Register advertising may include fines, applied either to the legal entity or its representatives, by a delegate judge, contraventional sanctions, applied by the bodies of the Ministry of Public Finance or other ascertaining bodies for contraventions provided by law, or the criminal sanctions, for acts regulated as offenses.

The obligation to conduct the trade within the limits of legitimate competition:

Free market competition, i.e. free confrontation of all economic agents, is an indispensable component of market economy, this being a right of each economic agent.

The right to competition must be exercised in good faith, that is, without infringing the rights and freedoms of other economic agents and in compliance with the law and morality, as with any individual right.

Protection against anti-competitive (monopoly) practices and mergers/acquisitions is done according to Law no. 21/1996 by: prohibiting anticompetitive agreements and the abuse of dominant position; limiting mergers and acquisitions.

Anticompetitive practices are punished according to Law no. 21/1990 by: civil liability, contraventional liability and criminal liability for acts that are regulated by law as offenses.

Protection against unfair competition, which occurs when a professional commits acts that are contrary to the law, morals or professional loyalty, in order to attract customers.

According to Law no. 11/1991 the following acts or facts are considered as manifestations of unfair competition: confusion; denigration; disorganization; seizing customers by offering benefits etc.

As in the case of the first category of competitive practices, penalties for acts of unfair competition may consist of civil liability for the guilty trader, contraventional liability or criminal liability.

Organization and bookkeeping of commercial activities:

The organization and bookkeeping of commercial activities have importance and interest for the commercial professional, as they are the main tool of knowledge, management and control of their economic situation and of the results obtained from commercial activities; for third parties, accounting registers

are a means of evidence in disputes between traders regarding trade relations; for society at large, they are a means for controlling the fairness of activities carried out by traders, for establishing the taxes owed by traders and a means for supplying the necessary information to determine national property, individual balances and the national economy balance.

As a general rule, commercial professionals are obliged to conduct double-entry bookkeeping and prepare annual financial statements. Notwithstanding this rule, the Ministry of Finance establishes the categories of people who can conduct single-entry bookkeeping (e.g., non-commercial professionals pursuing various liberal professions such as lawyers, notaries public, bailiffs etc). Bookkeeping is conducted in Romanian and in national currency, the accounting records being made systematically and chronologically, according to charts of accounts and regulations issued under the law:

Within bookkeeping activities, one can distinguish: organization of asset bookkeeping, accounting records and annual financial statement.

a) The organization of asset bookkeeping is a monetary reflection of movable and immovable property, of monetary availability and securities held by the trader, of the rights and obligations of the trader and of the movements occurring as a result of patrimonial operations performed by the trader.

In general, recording movable and immovable assets is done at their value of acquisition and recording receivables and debts is done at their face value.

b) Accounting records required under the Accounting Law no. 82/1991 are ledgers, inventory registers and general ledgers.

A ledger is the register where the commercial professional daily records all of their commercial operations. The inventory register is a register where the commercial professional records the entire inventory of their assets. The general ledger is a register kept by traders who conduct large, highly complex activities and which is essentially a register of personalized accounts that is specific to double-entry bookkeeping.

Accounting records and the underlying documents of accounting records must be kept in the trader's archives for 10 years after the expiry of the financial year in which the records were made.

c) The annual financial statement is drawn up based on accounting records, in order to establish the results of activities carried out in that financial year.

The annual financial statement is aimed at the activity carried out by the trader throughout a financial year and must be a complete and faithful picture of the assets, of the financial situation and of the results obtained by the trader in that financial year. This includes:

- for legal persons that apply accounting regulations in accordance with international financial reporting standards: balance, profit and loss account, situation of changes in equity, situation of cash flows, accounting policies and explanatory notes;

- for legal persons that do not meet the requirements for applying the above-mentioned regulations: balance, profit and loss account, accounting policies and explanatory notes;

The annual financial statement must be accompanied by the administrator's report; for those required to conduct double-entry bookkeeping, it is subject to publication with competent authorities and shall be kept for 50 years.

Penalties for failure to comply with the requirements regarding organization and bookkeeping may consist, depending on the seriousness of the offense and its regulation, of contraventional sanctions or criminal penalties.

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Trade Register advertising is regulated by the Law no. 26/1990 on the Trade Register and Law no. 359/2004 on simplifying the Trade Register registration formalities for individuals, family associations and legal persons.

Law no. 26/1990, the Trade Register is kept by *the Trade Register Office*, organized at central, county, and Bucharest city level.

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The persons in charge with organization and bookkeeping and are, according to the Accounting Law no. 82/1991, all traders, whether individuals or legal entities.