

# Legal Bulletin

April 2009

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### Financial non-banking institutions

Name of the enactment	Law No. 93/2009 on financial non-banking institutions (“ <b>Law 93/2009</b> ”)
Publication	Official Gazette of Romania, Part I, No. 259/21.04.2009
Entry into force	24 April 2009
Connections with other enactments	<ul style="list-style-type: none"><li>• Government Ordinance No. 28/2006 for the regulation of certain financial-fiscal measures, as subsequently completed and amended (“<b>GO 28/2006</b>”);</li><li>• Law No. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, as subsequently amended and completed;</li><li>• Law No. 31/1990 on companies, republished, as subsequently completed and amended.</li></ul>
Main provisions	<p>The amendments brought by Law 93/2009 mainly aim at offering a common and structured legal framework for the various categories of non-banking financial institutions, as previously regulated by specific legal enactments.</p> <p>The main changes brought to such legal regime refer to the following issues:</p> <ul style="list-style-type: none"><li>• The National Bank of Romania (“<b>NBR</b>”) is granted with the power to solely decide on the nature of a credit activity as being exercised on professional basis and entering under the provisions of the <b>Law 93/2009</b>;</li><li>• The purchase of credit portfolios is allowed exclusively to credit institutions, financial institutions and financial non-banking institutions, except for where such credits are qualified as loss or the portfolios are acquired to guarantee bond issues;</li><li>• Certain consumer protection norms are regulated (i.e. regarding the identification and services of financial non-banking institutions as well as the content and wording of the credit agreements used thereby);</li><li>• The financial non-banking institutions are explicitly granted the power to process personal data;</li></ul>

- New specific rules are inserted as regards the professional secrecy in respect of the client's information;
- A new prohibition is introduced in relation with the founders, the shareholders, the managers, the directors, the members of the supervisory board etc. – i.e. in case they have been convicted for crimes under the Law 93/2009 within the previous 5 years;
- New rules have been provided in respect of the share capital of financial non-banking institutions, i.e. it must be fully paid in upon incorporation or share capital increase; the shares of financial non-banking institutions must be nominative;
- The management of a financial non-banking institution must be entrusted to at least 2 persons (in the case of the one-tier management system). These managers must not be entrusted with management powers in other financial non-banking institutions or other companies (except for the cases where the other company is a credit institution or a financial institution pertaining to the same group);
- The financial non-banking institutions registered with the special register are compelled to file in information to the Banking Risks Central, according to the applicable norms;
- A new case of permitted merger has been regulated, i.e. between a financial non-banking institution and a company performing ancillary and connected operations;
- Certain breaches of the provisions of Law 93/2009 have been regulated as crimes (unauthorized performance of credit operations on professional basis, unauthorized use of the name of a financial non-banking institution, etc.).

#### Repealed enactments

The following norms were repealed:

- Government Ordinance No. 200/2002 on mortgage loan companies, as approved by Law 330/2003;
- Law No. 240/2005 on micro-financing companies;
- Art. 28 of Government Ordinance No. 51/1997 on leasing operations and leasing companies, as subsequently amended and supplemented;

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## Commercial Law

Name of the enactment	Government Emergency Ordinance No. 38/2009 for the amendment of Article 39 paragraph (2) and (3) of Government Emergency Ordinance 44/2008 on the performance of economic activities by freelancers, individual enterprises and family enterprises (“ <b>GEO 38/2009</b> ”)
Publication	Official Gazette of Romania, Part I, No. 269/24.04.2009
Entry into force	24 April 2009
Main provisions	<p>GEO 38/2009 amends Government Emergency Ordinance 44/2008 on the performance of economic activities by freelancers, individual enterprises and family enterprises (“<b>GEO 44/2008</b>”), being passed for the protection of the domestic business environment. If GEO 44/2008 had remained unchanged, approximately 75% of the merchants to whom this regulation applies (more than 200,000 entities) would have been deregistered from the trade registry.</p> <p>Thus, GEO 38/2009 extends from 1 to 2 years the period (i) during which merchants authorized and registered in the trade registry based on enactments in force prior to GEO 44/2008 may operate based on the registration certificate, issued by the trade registry office and (ii) by the end of which those merchants have to opt for performance of the activity in one of the forms provided by GEO 44/2008.</p>
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## Corporate Law

Name of the enactment	Law No. 88/2009 on the approval of Government Emergency Ordinance No. 82/2007 for the amendment and supplementation of Company Law No. 31/1990 and other applicable enactments (“ <b>Law 88/2009</b> ”)
Publication	Official Gazette of Romania, Part I, No. 246/14.04.2009
Entry into force	17 April 2009
Connection with other enactments	Companies Law No. 31/1990, republished, as further amended and supplemented (“ <b>Companies Law</b> ”)
Main provisions	<p>The Law 88/2009 approves, with amendments and supplementations, the Government Emergency Ordinance 82/2007 (“<b>GEO 82/2007</b>”), which, in its turn, brought major amendments and supplementations to the Companies Law.</p> <p>The most important amendment brought by Law 88/2009 is the removal of the obligation to create an audit committee within the supervisory board of a joint</p>

stock company whose annual financial statements are subject to financial auditing as a legal requirement. This amendment mirrors the one concerning the elimination of the same obligation in respect of the board of directors.

In addition, Law 88/2009 rectifies some inconsistencies of GEO 82/2007.

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## Fiscal Law

Name of the enactment

Government Emergency Ordinance No. 34/2009 on the rectification of the budget for 2009 and regulating certain financial-fiscal measures (“**GEO 34/2009**”)

Publication

Official Gazette of Romania, Part I, No. 249/14.04.2009

Entry into force

14 April 2009

Connections with other enactments

- Law No. 571/2003 on the Fiscal code;
- Government Emergency Ordinance No. 92/2003 on the Fiscal procedure code.

Main provisions

The main provisions of GEO 34/2009 refer to the following aspects:

- Establishment of a minimal tax of 5% from the revenues for tax payers which perform the following activities: night bars, night clubs, discos, casinos and sports bets, including where such activities are carried out in association;
- Introducing of a minimal annual composition tax, broken down in revenue installments; the tax is applied by taking into consideration the total annual revenues of the tax payer earned the year before the taxation; revenue installments are between 0 and more than RON 129,000,001, and the composition tax quotas are between RON 2,200 and RON 43,000;
- Establishment of the tax on enterprises as follows: 2% from the revenues for 2007, 2.5% from the revenues for 2008, and, respectively, 3% from the revenues for 2009; if the tax calculated based on the percentage quota is less than the composition tax quota corresponding to the revenue category broken down in installments (please see above) the corresponding composition tax quota will be applied, not the percentage quota (e.g. 3% of the revenue).

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## Administrative Law

Name of the enactment	Emergency Ordinance No. 35/2009 regulating certain financial measures in the field of personnel expenses in the budgetary sector (“GEO 35/2009”)
Publication	Official Gazette of Romania, Part I, No. 249/14.04.2009
Entry into force	14 April 2009
Connections with other enactments	GEO 35/2009 is connected with the majority of the legal enactments relevant in the field of personnel expenses in the budgetary sector.
Main provisions	<p>GEO 35/2009 was passed as part of the measures for reducing budgetary expenses due to “<i>the pressures and risks determined by the domestic and foreign economic developments</i>”. Thus, GEO 35/2009 amends the amount of the benefits of various categories of state-employed personnel, regulated by specific legal enactments, reducing or eliminating certain benefits or additional allowances.</p> <p>In cases of decrease in benefits, GEO 35/2009 introduces a maximal limit thereof, often equal to the previously provided amount, in accordance to which the establishment of the benefit would depend on the fulfillment of certain criteria to be set forth in a Government Decision within 15 days from the entry into force of GEO 35/2009.</p> <p>Similarly, the management allowances amended by GEO 35/2009 constitute maximal limits below which the managers of public authorities or institutions may establish individual levels.</p> <p>Another important brought by GEO 35/2009 amendment concerns the meeting allowance in the case of members in the Committee for Internal Public Audit (regulated by the Law 672/2002), which was seriously decreased from 20% to 1%.</p>
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