

Legal Bulletin

April 2007

Capital Markets	1
Company Law	2
Fiscal Law	2
Labour Law	4
Public Services	5
Real Estate	8

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Capital Markets

Name of the enactment	National Securities Commission (NSC) Order no. 45/2007 approving Regulation no. 2/2007 amending Regulation no. 13/2005 on the authorization and operation of the central depository, clearing houses and central counterparties, as further amended and completed
Publication	Official Gazette of Romania, Part I, No. 249/13.04.2007
Entry into force	13 April 2007
Connections with other enactments	It amends Regulation no. 13/2005 on the authorization and operation of the central depository, clearing houses and central counterparties, as further amended and completed
Main provisions	<p>NSC Regulation no. 2/2007 brings some amendments to NSC Regulation no. 13/2005, namely:</p> <ul style="list-style-type: none">• it completes the procedure for the amendment of the organization and operation of the Central Depository. Thus, the Central Depository is compelled to submit a simple notification to the NSC in respect of the amendments that are less important, within 15 days as of the occurrence of such amendments;• it completes the provisions on direct transfers of ownership over securities. <i>Inter alia</i>, the Central Depository shall operate the following cases of direct ownership transfers:<ul style="list-style-type: none">- transfers of listed shares by contribution to the share capital of unlisted companies (either upon formation or increase of the share capital);- intra-group transfers, with the NSC endorsement;- transfers in the cases of squeeze-out and sell-out provided under Articles 206 and 207 of Law 297/2004.• it completes the requirements for becoming a shareholder in the clearing house/central counterparty. Thus, individuals and entities

compliant with the conditions for being shareholders of the Central Depository may be shareholders of the clearing house/central counterparty (*inter alia* transparency and operation conditions, existence of an administrative supervision in the cases of foreign entities, non-existence of administrative sanctions, etc.)

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Company Law

Name of the enactment

Law No. 91/2007 for the amendment and completion of Government Ordinance No. 75/2001 on the organization and operation of the fiscal record

Publication

Official Gazette of Romania, Part I, No. 264/19.04.2007

Entry into force

22 April 2007

Connections with other enactments

Company Law No. 31/1990, as further amended and completed
Trade Registry Law No. 26/1990, as further amended and completed

Main provisions

The changes brought by this enactment are:

- upon a share assignment, it is incumbent on the assignee to provide the fiscal record, which will be obtained directly by the trade registry. The Ministry of Public Finance will communicate all the data required, within 8 hours as of the filing of the application by the Trade Registry. Despite such amendment, no fiscal record is required upon the appointment of directors within existing companies;
- the Trade Registry will fulfill the formalities for obtaining the fiscal record in the case of incorporating companies as well, with the data being communicated by the fiscal authorities within the same term as mentioned at the foregoing item;
- for any other circumstance requiring the fiscal record, such record can be obtained under an emergency regime, i.e. at most 2 business days, for an emergency tax of RON 100.

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Fiscal Law

- 1 **Procedure for compliance with the applications for reimbursement of the value added tax to non-registered taxable persons who do not have the obligation to register in Romania for VAT purposes, established outside the Community**

Name of the enactment	Order No. 530/2007 of the Minister of Finance for the approval of the Procedure for compliance with the applications for reimbursement of the value added tax to non-registered taxable persons who do not have the obligation to register in Romania for VAT purposes, established outside the Community
Publication	Official Gazette of Romania, Part I, No. 267/20.04.2007
Entry into force	20 April 2007
Connections with other enactments	Law No. 571/2003 on the Fiscal Code; Government Ordinance No. 92/2003 on the Code of Fiscal Procedure; Government Decision No. 44/2004 on the approval of the norms for the application of the Fiscal Code
Main provisions	<p>This order approves the following:</p> <ul style="list-style-type: none">• the procedure for compliance with the applications filed for the reimbursement of the value added tax to non-registered taxable persons who do not have the obligation to register in Romania for VAT purposes, established outside the Community;• form and content of the reimbursement application form;• instructions for filling in the form provided at the foregoing paragraph;• form and content of the reimbursement decision. <p>2 Procedure for granting the certificate for delaying the payment of the value added tax to the customs authorities and for the release of the guarantee for import goods</p>
Name of the enactment	Order No. 500/2007 of the Ministry of Finance for the approval of the Norms on the procedure for granting the certificate for delaying the payment of the value added tax to the customs authorities and for the release of the guarantee for import goods
Publication	Official Gazette of Romania, Part I, No. 244/11.04.2007
Entry into force	11 April 2007
Connections with other enactments	Law No. 571/2003 on the Fiscal Code
Main provisions	According to the provisions of Article 157 para. (4) of the Fiscal Code, during 15 April 2007 – 31 December 2008, no actual payment of the value added tax shall be made at the customs bodies for imports of goods from third territories and states by taxable persons registered for VAT purposes who have obtained a certificate

for the delay of payment.

In order to obtain the certificate for delaying the payment of the value added tax to the customs authorities, applicants shall comply with the following requirements:

- they do not have any outstanding liabilities to the state budget, except for scheduled and/or rescheduled debts, as well as those suspended under the law;
- they do not have any debts to the customs authority;
- during the preceding calendar year, they made imports from third territories and states, the cumulated value of which is of at least RON 15,000 (exclusive of the imports of products subject to harmonized excises);
- they have been registered for VAT purposes for at least one calendar year before the filing of the application for the release of the certificate for delaying the payment of the value added tax to the customs authorities;
- they are not in a state of insolvency, nor are they undergoing a reorganization or wind-off procedure, nor are they registered in the special records and/or in the inactive tax-payers' list.

The certificate for delaying the payment is released for the period indicated by the applicant, which will not exceed the term of 31 December 2008.

The guarantee for importing goods in Romania free of tax is deposited at the customs office where the customs statement for putting on the market was filed. The amount of the guarantee has to cover the value added tax which would have been due upon putting the goods on the free market. The guarantee is released by the customs office upon the importer's request based on a decision of the customs office, based on the documents supporting the exemption from the value added tax for the delivery of the imported goods within the community.

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Labour Law

Name of the enactment

Law No. 94/2007 on the approval of Government Emergency Ordinance No. 55/2006 for the amendment and completion of Law No. 53/2003 – the Labor Code (“Law 94/2007”)

Publication

Official Gazette of Romania, Part I, No. 264/19.04.2007

Entry into force	22 April 2007
Connections with other enactments	Government Emergency Ordinance No. 55/2006 for the amendment and completion of Law No. 53/2003 – the Labor Code (“ GEO 55/2006 ”)
Main provisions	<p>Law 94/2007 enshrines the amendments and completions brought to the Labor Code by GEO 55/2006.</p> <p>Also, Law 94/2007 brings two amendments to GEO 55/2006 and therefore to the Labor Code.</p> <p>The first amendment is meant to clarify an inconsistency contained at Article 74 letter c), referring to Article 70 para. (2) letter d) in respect of the order for establishing the priorities in the case of collective redundancy, although such an order of priorities was regulated by Article 69 para. (2) letter d).</p> <p>The second amendment refers to the fact that, as of the enforcement of Law 94/2007, the structure, the specific prerogatives and the operation of the work security and health committee are regulated by a Government Decision, not by an order of the Ministry of Labor and Social Solidarity, as currently provided.</p>

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Public Services

Name of the enactment	Law No. 92/2007 on local public transportation services (“ Law 92/2007 ”)
Publication	Official Gazette of Romania, Part I, No. 262/19.04.2007
Entry into force	22 April 2007
Connections with other enactments	<p>Law No. 51/2006 on public utilities community services</p> <p>Government Emergency Ordinance No. 109/2005 on road transportation, as further amended and completed by Law 102/2006</p> <p>Government Ordinance No. 97/1999 on guaranteeing the supply of subsidized public services of domestic road transportation and inshore transportation, as further amended</p> <p>Government Emergency Ordinance No. 34/2006 on the award of public procurement agreements, of public works concession agreements and of service concession agreements, as further amended and completed by Law 337/2006</p>
Main provisions	Law 92/2007 regulates the legal framework on the establishment, authorization, organization, administration, financing and control of the operation of public

transportation services in communes, towns, cities, counties and in the areas of the community development associations.

Local public transportation services are public utility community services, according to Law 51/2006, the general law in this field, applicable for the completion of the special norms of Law 92/2007.

Local public transportation services are divided into several categories:

- public transportation of persons:
 - regular trips;
 - special regular trips;
 - taxi services;
 - lease of vehicles;
- public transportation of goods:
 - under an agreement;
 - taxi services;
- other local public transportation services:
 - cable transportation of persons;
 - transportation of goods by means of tractors or trailers;
 - inshore transportation of persons and goods;
 - transportation services carried out by special vehicles designed for funeral services.

Local public transportation services for persons and goods are organized by local and county public administration authorities (local councils, county councils, the General Council of Bucharest) considering the need to observe certain principles, such as: promoting the competition among operators and guaranteeing their equal and non-discriminated access to the local public transportation market, using the public funds in an efficient manner, providing local public transportation services with practicable fees for users, full recovery of the expenses and ensuring a reasonable profit for operators, observing the rights and interests of the user of local public transportation service.

Law 92/2007 regulates the prerogatives of the public authorities involved in regulating, organizing, supervising and controlling the public services of local

transportation, i.e. the local and county public administration authorities, on one hand, and the central regulators on the other hand, the Romanian Road Authority, the Romanian Naval Authority and the National Authority Regulating Public Utilities Community Services, on the other hand.

According to Law 92/2007, like the general provisions of Law 51/2006, the local public administration authorities can organize the local public transportation services in two ways:

- direct management, in the process of which local public administration authorities undertake to provide the local public transportation services directly, and which is performed through transportation operators pertaining to the local public administration authorities' own structures;
- the commissioned management, in the process of which local public administration authorities transfer the tasks and responsibilities regarding the provision of the services to one or more road transportation operators which can be state-owned, private companies or joint ventures.

The type of management is established by a decision of the local public administration authorities responsible for deliberations. The specific activities related to the local public transportation are carried out according to the regulations issued in this respect by local transportation authorities and approved by a decision of the local public administration authorities responsible for deliberations, based on the framework regulation for the local public transportation service, drafted by the central regulators.

Local public transportation services are commissioned based on a management commissioning agreement (concession agreement) under the conditions provided by the general laws regulating public utilities community services, Law 51/2006. Also, considering that Law 51/2006 refers to the delegation of management according to the procedures regulated by the legal provisions applicable to the type of agreement chosen for the delegation of management, the provisions of Government Emergency Ordinance 34/2006 are applicable as well.

The duration for which the local public transportation services are commissioned is established under management commissioning agreements, correlated with the average depreciation duration of the conveyances owned or held under a leasing agreement, but it cannot exceed:

- 6 years for bus transportation;

- 10 years for tramways, trolley-buses and cable conveyance transportation;
- 5 years for inshore transportation;
- 5 years for transportation by taxi and under lease conditions

Public transportation operators providing services without valid agreements for the award of management can provide such services by 31 December 2007. Local public administration authorities have the obligation to conclude the required agreements after this date.

Also, this enactment regulates the obligation of the operators providing local public transportation services without holding a transportation license to request and obtain the release of such license by 31 December 2007.

Repealed enactments

Government Ordinance No. 86/2001 on the regulated passenger local public transportation services, as further amended and completed by Law 284/2002

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Real Estate

Name of the enactment

Government Decision No. 250/2007 for the approval of the Methodological Norms for the uniform application of Law No. 10/2001 on the legal regime of immovables taken over abusively during 6 March 1945 – 22 December 1989 (“**Decision 250/2007**”)

Publication

Official Gazette of Romania, Part I, No. 227/03.04.2007

Entry into force

3 April 2007

Connections with other enactments

Law No. 10/2001 on the legal regime of immovables taken over abusively during 6 March 1945 – 22 December 1989 (“**Law 10/2001**”)

Main provisions

The methodological norms for the uniform application of Law 10/2001 regulate the legal regime of the immovables taken over abusively during 6 March 1945 – 22 December 1989 and establish the following principles:

- prevalence of the restitution in kind;
- celerity in settling the notifications for which all the supporting documents have been filed;
- ensuring that the stability of ownership relations is observed;
- the entities which have to enforce the restitution have full competence in settling the notifications that make the object of the administrative procedure;

- the obligations to provide evidence for the ownership title, to have held the ownership title legally upon the abusive dispossession and to be a person entitled to the restitution are incumbent on the person who pretends such right;
- the legal provisions under this enactment come to complete the previous other special enactments meant to repair the abusive takeovers, and if such enactments provide for other measures, the legal provisions of this enactment will be applied.

The methodological norms expressly provide that Law 10/2001 is applicable only to those abusive takeovers which occurred during the reference period, i.e. 6 March 1945 – 22 December 1989, the only exception provided to this effect by Law 10/2001 being that of the requisitions operated under Law 139/1940.

The methodological norms provide details on the assessment of the “abusive takeovers” governed by the provisions of Law 10/2001:

- the “abusive takeover” will be assessed on a case-to-case basis by the entity which has to settle the notification;
- the takeovers of immovables against debts other than fiscal debts are not classified in the category of “abusive takeovers”;
- the confiscation of assets by the state based on court decisions, as well as the confiscation of assets further to crimes against humanity or war crimes perpetrated during 6 September 1940 – 9 May 1945 are not considered to be “abusive takeovers” according to the provisions of Law 10/2001.

The methodological norms contain certain provisions related to the following special laws: Law No. 4/1973 on the development of the dwelling building and sale of dwellings from the state fund to the people; Decree No. 223/1974 regulating the situation of certain assets and Law No. 58/1974 on the systematization of the urban and rural territory and towns.

If the entity vested with the settlement of the notifications considers that the takeover was not abusive or that the person is not entitled to the asset, such entity has the obligation to issue a grounded decision rejecting the notification, which decision can be challenged before the civil division of the tribunal within the territorial jurisdiction of which the headquarters of the unit lies.

For the case when several persons invoking the ownership title request the restitution of the immovable and there is a title attesting the co-ownership, the entity vested with the settlement of the notifications will issue a decision

providing for the ideal quotas provided by the ownership title.

If the restitution of the immovable is requested by several persons entitled to it as successors of the title-holder and which are relatives of the same degree, and the commission cannot establish the quota of each of them, a decision for restitution will be issued in the name of all such persons and the quotas will be established according to the general law.

The current legal regime of the immovables is irrelevant for the process of the administrative procedures for the settlement of the notifications for retrocession.

This enactment expressly enshrines the principle of restitution in kind and it provides for the possibility, only when this is impossible, to grant remedy measures. If the restitution in kind is not applicable, the enactment provides for the possibility of compensation by goods or services provided by the entity holding the asset, in equivalent; however, such compensation needs to be accepted by the entitled person.

In the case of lands located in the *extra muros* area of towns, claimed by two entitled persons, from which one is the former owner abusively dispossessed of the land, and the other one is the person who was been granted a piece of land from the land taken over from its former owner, the restitution in kind will benefit the former owner.

The lands located in the *extra muros* areas of towns, irrespective of the fact that they were so upon the abusive takeover or upon the notification, or the lands governed by Real Estate Law 18/1991 do not form the object of Law 10/2001 or of the Methodological Norms and the notifications for such lands will be filed to the commissions set up according to Law 18/1991.

For the case of non-demolished or partially demolished buildings as well as non-built-up lands, the principle of the restitution in kind is limited to the land surfaces which are not occupied by new buildings or affected by legal easements or other territorial arrangements for public utility. In the case of lands encumbered by such buildings, remedy measures will apply.

In order to determine the value of immovable assets taken over abusively for which the restitution in kind is not possible, the international assessment standards will be used.

If the person entitled to the land holds, under a lease agreement, a dwelling of the state fund in the same town as the restituted dwelling, a notarized copy of

the lease agreement will be submitted and the restitution decision will provide for the date when that land will be released to the lessor. On the date established for the restitution, the lease agreement will be terminated.

The Methodological Norms provide that the one-year term provided by Law 10/2001 for the prescription of the right to legal action is a special term for prescription which eliminates the subjective right to action for the cancellation or ascertainment of the nullity of transfer legal deeds after 14 August 2002.

By speeding up the application of Law 10/2001, the Methodological Norms provide that, besides the management bodies of each entity involved in settling the notifications, internal commissions will be set up and will operate for the purpose of analyzing each notification and the supporting documents that were filed.

If the restitution in kind is not possible, in addition to the internal commissions, there will be internal assessment commissions which will determine the estimated value of the immovables and of the other claims that will make up the object of the negotiation between the parties. Such internal commissions will be made up of 3-5 persons.

The internal commissions will make up, for each notification, a report containing the proposals for settlement filed by each commission member, which will be signed by the commission members.

The internal assessment commission will make up, upon the request of the internal commission, an internal assessment report.

Complex issues will be filed to the National Authority for Recovery of Land Ownership, for assessment purposes.

Repealed enactments

Government Decision No. 614/2001 for the approval of the Methodological Norms for the application of Law No. 10/2001 on the legal regime of certain immovables taken over abusively during 6 March 1945 – 22 December 1989

Government Decision No. 498/2003 for the approval of the Methodological Norms for uniform application of Law No. 10/2001 on the legal regime of certain immovables taken over abusively during 6 March 1945 – 22 December 1989

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