

Legal Bulletin

December 2006

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Legal Bulletin

Banking

1 Important amendments in the credit institutions sector

Name of the enactment	Government Emergency Ordinance No. 99/2006 on credit institutions and on capital adequacy ("GEO 99/2006")
Publication	Official Gazette of Romania, Part I, No. 1027/27.12.2006
Entry into force	1 January 2007
Connections with the Community legislation	<ul style="list-style-type: none">• Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions• Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions• Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions• Council Directive 89/117/EEC of 13 February 1989 on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents
Main provisions	<p>GEO 99/2006 was passed for the compliance by Romania with the obligations undertaken during the negotiations in view of the accession to the EU and is purported to a full harmonization of the relevant legislation with the Community regulations.</p> <p>In this context, GEO 99/2006 is the enactment providing the primary regulation in the field of the activity of credit institutions and which reiterates many of the provisions under the former Law 58/1998, but, in the same time, provides for a number of amendments to it.</p>

Scope of application

The provisions of GEO 99/2006 are applicable to:

- credit institutions defined as:
 - entities whose activity consists in attracting deposits or other reimbursable funds from the public and in granting credits on own account;
 - entities, other than those provided under letter a), that issue payment instruments in the form of electronic money.
- financial investment service companies and investment management companies whose scope of activity comprises the management of individual investment portfolios;
- payment systems, systems of clearing operations involving financial instruments, participants to such systems and administrators of the infrastructure systems and services used in such systems.

Moreover, for the purpose of the prudential supervision of the credit institutions, GEO 99/2006 also applies to (i) holding financial companies and mixed-activity holdings, financial institutions headquartered in other Member States, subject to compliance with certain requirements; (ii) financial institutions headquartered in Romania, subject to compliance with certain requirements; and (iii) financial auditors of the credit institution, financial auditors of holding financial companies.

Activities allowed to credit institutions

Unlike Law 58/1998, the new regulation no longer mentions the discounting among the credit contracting activities. However, the listing of such activities is for reference purposes only.

GEO 99/2006 expands the category of consultancy services allowed to credit institutions expressly provided under the law within certain limits, by the final mention "provision of other consultancy services".

The new enactment does not mention certain activities which were previously provided by Law 58/1998 (such as the depositing of the assets of investment funds and investment companies, the distribution of titles to participations in investment funds and shares in investment companies, activating as an operator of the National Electronic Archive of Secured Transactions, data processing, data base management or other such services towards third parties), but includes in

the category of the activities allowed, in addition to the prior regulation:

- any other activities or services, insofar as they pertain to the financial field, subject to the special legal provisions regulating the respective activities;
- mandate or commission non-financial operations, in particular on account on other entities within the group that the credit institution is part of;
- asset management operations consisting in movable and/or immovable assets owned thereby but not used for the performance of the financial activities;
- provision of services to the company's own clients which, although not ancillary to the activities performed, represent an extension of the bank operations.

In respect of the activities listed under items (iii)-(v), the new enactment requires that the revenues resulting from such activities should not exceed 10% of the aggregate revenues obtained by the respective credit institution.

GEO 99/2006 qualifies the following operations as prohibited:

- pledging of own shares on account of the bank's debts;
- granting of credits secured by shares, other capital titles or bonds issued by the credit institution itself or by another entity in the group that the credit institution is a part of;
- attracting deposits or other reimbursable funds, titles or values, from the public, when the credit institution is insolvent.

Leasing assets to third parties (except for assets resulting from the settlement of debts) is allowed without the limitations provided under Law 58/1998, if required for the performance under adequate conditions of the activities for which the institution was authorized or is purported to the employees' professional improvement or vocational training, to the furnishing of relaxation and leisure spaces or to ensuring homes for the employees and their families.

General aspects on the performance of activities by credit institutions

Requirements related to the share capital

- credit institutions need to have their own distinct funds or an initial capital at least equal to the minimal level established by law, which cannot be lower than the ROL equivalent of EUR 5 million.

- credit institutions cannot be set up through public subscription.

Shareholding

- a shareholder who intends to decrease his/her participation or share in the voting rights to less than 10% of the share capital or of the aggregate voting rights of a Romanian credit institution no longer need to notify this intention to NBR;
- unlike the previous enactment, GEO 99/2006 does not expressly provide for the cancellation of the authorization if the shareholding no longer meets the requirements provided by the law and by norms for ensuring a prudential and healthy management of the bank or no longer allows the performance of an efficient supervision.

Organization and management

- the operational management of the credit institution's activity is delegated, as per the legislation applicable to companies, by the board of directors to at least 2 managers who must hold only the position for which they are appointed;
- GEO 99/2006 repeals the requirements provided by Law 58/1998 for the persons appointed to exercise the administration and operational management responsibilities of a credit institution and only provides that such need to have a good reputation and the expertise required for the nature, scope and complexity of the credit institution's activity and for the responsibilities entrusted;
- unlike the previous enactment, GEO 99/2006 does not expressly provide for the obligation to bind the bank by the signature of at least 2 leaders;
- moreover, there are no more special provisions on the conflict of interests. Such cases are governed by the provisions of Company Law No. 31/1990;
- except for the requirements provided by the legislation in force in respect of the directors of a company, a person cannot be elected in the board of directors of a credit institution and, if already elected, his/her mandate is repealed, in the following cases:
 - the persons holds another position in the credit institution concerned, except if he/she is a manager thereof;
 - GEO 99/2006 does not maintain the interdiction for a member in the

board of directors to be an employee, director or financial auditor in a different Romanian credit institution;

- during the last 5 years, the supervision authority cancelled the authorization to administrate or manage a credit institution, a financial institution or an insurance/reinsurance company or a different company operating in the financial sector or he/she was replaced from the position held in such entities due to his/her fault;
- a legal disposition, a legal decision or a decision issued by another authority prohibits his/her administrating or managing an entity like those provided under letter ii) or to operate in one of the specific fields of such entities.

Professional secrecy

Information such as bank secrecy can be provided, to the extent justified by the purpose for which it is required or provided upon the request of the court of law, in view of settling the various causes subject to trial.

Credit institutions are bound to provide information such as bank secrecy, after the start of the criminal pursuit against a client, upon the written request of the prosecutor or of the court of law or, as the case may be, of the criminal investigation bodies, subject to the authorization by the prosecutor.

Qualified participations

Romanian credit institutions can hold participations in a credit institution, financial institution, insurance institution, reinsurance institution or in a company performing activities which are a direct extension of the bank activity, such as leasing, factoring, investment fund management, or which provide services ancillary to the bank activity, such as data processing services, or carry out other similar activities within the scope of 50% of their own funds.

Unlike the previous regulation, which prohibited credit institutions from participating in such an entity by over 20% of the entity's share capital / the overall value of the issued titles to the capital, GEO 99/2006 only prohibits the acquisition of qualified participations whereby credit institutions can control that entity.

The limits provided by GEO 99/2006 can only be exceeded in exceptional cases, when the NBR orders the credit institution to increase their own funds or to take other similar measures. The provision on the need to obtain prior approval from

the NBR is replaced by the provision on the subsequent notification.

Repealed enactments

- Banking Law No. 58/1998 ("Law 58/1998");
- GEO No. 97/2000 on cooperative credit organizations;
- Law No. 541/2002 on the collective saving and crediting for real estates;
- Law No. 33/2006 on mortgage credit banks

2 Circuit of debt payment instruments

Name of the enactment

NBR Regulation No. 11/2006 on the circuit of debt payment instruments ("NBRR 11/2006")

Publication

Official Gazette of Romania, Part I, No. 1032/ 27.12.2006

Entry into force

27 December 2006

Main provisions

This regulation is particularly technical. It sets forth the circuit of debt payment instruments (i.e. bills of exchange, promissory notes and cheques) when they are to be settled through an electronic payment system, the obligations and liabilities of the beneficiaries, of the credit institutions participating in the system and of the system manager who ensures the electronic setoff of such instruments.

The regulation sets forth each step that needs to be covered for the purpose of the electronic setoff of such instruments. The rules of the system will be issued by the system manager and need to be authorized by the National Bank of Romania.

The purpose of NBRR 11/2006 is to provide an incentive for traders in using an electronic payment system for the purpose of capitalizing such instruments.

3 Notification of the opening in Romania of representative offices by foreign banks

Name of the enactment

Norm No. 25/2006 of the National Bank of Romania for the amendment of Norm No. 6/1998 of the National Bank of Romania on the notification of the opening in Romania of representative offices by foreign banks ("NBRN 25/2006")

Publication

Official Gazette of Romania, Part I, No. 1015/20.12.2006

Entry into force

20 December 2006

Connections with other enactments

Norm No. 6/1998 of the National Bank of Romania on the notification of the opening in Romania of representative offices by foreign banks ("NBRN 6/1998")

Main provisions

NBRN 25/2006 does not provide substantive amendments in terms of the procedure for notifying the opening of foreign representative offices in Romania

provided under Norm 6/1998, but its provisions extend the scope of application of the norm, which will be applicable not only to banks (as previously provided), but also to *credit institutions* incorporating representative offices in Romania.

Moreover, in order to allow the National Bank of Romania to keep a record to date of the Romanian representatives offices of foreign credit institutions, such offices have the obligation to communicate to the Department of Regulation and Authorization any amendment of their main features or of the features of the foreign credit institutions that they represent as well as, if applicable, their closure within 15 days as of the occurrence of that amendment or as of the closure.

4 Accounting regulations applicable to credit institutions

Name of the enactment	Order No. 24/2006 of the governor of the National Bank of Romania on the amendment and completion of Order No. 5/2005 of the governor of the National Bank of Romania for the approval of the Accounting Regulations conforming to the European Directives, applicable to credit institutions (" Order 24/2006 ")
Publication	Official Gazette of Romania, Part I, No. 1042/28.12.2006
Entry into force	1 January 2007
Connections with other enactments	Order No. 5/2005 for the approval of the Accounting Regulations conforming to the European Directives, applicable to credit institutions (" Order 5/2005 ")
Main provisions	<p>Order 24/2006 was passed for the purpose of expanding the scope of credit institutions subject to the accounting regulations provided under the appendix integral to Order 5/2005. Thus, except for the credit institutions referred to by the previous legal provisions, such accounting regulations are also applicable to: (i) mortgage credit banks; (ii) non-banking financial institutions registered with the General Registry as per the provisions under Title I of Government Ordinance No. 28/2006 regulating certain financial-fiscal measures; (iii) entities lacking legal personality (branches and other secondary offices) headquartered in Romania and incorporated by credit institutions headquartered abroad, and to (iv) entities (branches and other secondary offices) headquartered abroad and incorporated by credit institutions headquartered in Romania.</p> <p>According to Order 24/2006, the annual financial statements made by credit institutions having the obligation to observe the accounting Regulations shall be audited only by financial auditors (the previous regulation allowed, under certain</p>

circumstances, the performance of the audit by censors).

5 Notification of branches of credit institutions and of the direct service provision

Name of the enactment	Regulation No. 10/2006 of the National Bank of Romania on the notification of branches of credit institutions and of the direct service provision (" NBRR 10/2006 ")
Publication	Official Gazette of Romania, Part I, No. 1044/29.12.2006
Entry into force	1 January 2007
Connections with other enactments	Government Emergency Ordinance No. 99/2006 on credit institutions and the adequacy of the capital (" GEO 99/2006 ")
Main provisions	<p>NBRR 10/2006 regulates the circumstances for setting up branches and for providing services directly by Romanian credit institutions in other Member States and by the credit institutions authorized and supervised by the competent authorities of other Member States in Romania.</p> <p>Regulation 10/2006 distinguishes between two cases:</p> <ul style="list-style-type: none">• the performance of specific activities by Romanian credit institutions in other Member States. Such credit institution will have the obligation to notify the central bank on its intention to perform, in a Member State, directly or through a branch, the activities that it can perform in Romania. A specific documentation needs to be appended to the notice. If the intention is to provide services in several Member States, a separate notice is needed for each State. Any intention to amend the elements referred to by the documentation accompanying the notice (e.g. the intention to change the persons ensuring the management of the branch in the Member State) is communicated to the Supervision Department of NBR. The performance of activities in Romania by credit institutions authorized and supervised by the competent authorities of the Member States.• a credit institution of a Member State can carry out in Romania, directly or through a branch, the activities for which it is authorized in the State of origin, no authorization from the Romanian central bank being required. However, the credit institution needs to communicate the date when the activity of the branch starts effectively to the National Bank of Romania – the Supervision Department. Moreover,

the credit institutions authorized and supervised by the competent authorities of other Member States can only perform in Romania, directly or through a representative, one or more activities provided under the authorization given by the competent authority of the Member State of origin based on the notice sent to NBR by the competent authority of the Member State of origin.

If the intention is to amend the aspects referred to by the information provided for the purpose of performing activities in Romania through a branch, a new notice needs to be sent by the credit institution to NBR.

6 Procedure of notification and registration of non-banking institutions

Name of the enactment

Norm No. 27/2006 of the National Bank of Romania for the amendment and completion of Norm No. 4/2006 of the National Bank of Romania on the procedure of notifying and registering the non-banking institutions (“NBRN 27/2006”)

Publication

Official Gazette of Romania, Part I, No. 1044/29.12.2006

Entry into force

29 December 2006

Connections with other enactments

- Norm No. 4/2006 on the procedure of notifying and registering the non-banking institutions (“NBRN 4/2006”)
- Ordinance No. 28/2006 regulating certain financial-fiscal measures, as amended and completed by Law 266/2006 („GO 28/2006”)

Main provisions

The main elements considered by the amendments and completions brought by NBRN 27/2006 are:

- the conditions for and the procedure of registering with the registers provided under the law, such as: (i) the obligation to make a list of the applicable internal norms, signed by the leader of that institution (according to the previous regulation, a statement given by the management of the institution in respect of the internal norms was sufficient); (ii) if the administrator of the institution is represented by a legal entity, the statement given on own account by the permanent representative; (iii) listing, among the causes for rejecting the application of registration with the General Registry, that related to the late submission of the documents provided by law for the purpose of reviewing the request; (iv) adding a new reason to those that might lead to the rejecting of the application to register with the Record Registry, namely the non-observance of the term set by the central

bank for the submission of additional documents;

- amendments and completions related to the procedure of notifying and registering the non-banking financial institutions as per the transitional provisions of GO 28/2006.

Civil Procedure

Name of the enactment	Law No. 459/2006 for the amendment and completion of the Code of Civil Procedure (" Law 459/2006 ")
Publication	Official Gazette of Romania, Part I, No. 994/13.12.2006
Entry into force	12 January 2007
Main provisions	<p>The new enactment provides for certain amendments for the purpose of avoiding the exercise in bad faith of the trial rights by the parties in a trial. Due to the same reason, the previous enactment issued for the amendment of the Code of Civil Procedure (Law No. 219/2005 for the approval of GEO 138/2000) set forth provisions prohibiting the challenge of all the judges in a court and provided that the petitions for the challenge of the higher court filed to the court settling a litigation are not admissible. The newly issued enactment provides that the inadmissibility is ascertained by the court where the petition is filed, in order to avoid procrastinate the settlement of the causes by filing abusive challenge petitions.</p> <p>Law No. 459/2006 mainly provides for amendments and completions of the legal provisions applicable in the field of the forced execution.</p> <p>In this respect, the enactment explicitly provides that a creditor may enforce simultaneously several types of forced execution. The solution concerned, accepted before the entry into force of Law 459/2006, was grounded on the provisions under the Civil Code in relation to the general pledge on the debtor's assets provided in favor of the creditor. Law No. 469/2002 on certain measures for the strengthening of the contractual discipline ("Law 469/2002"), which set a certain order for starting the procedures of forced execution, caused controversies related to the admitting of the creditor's possibility to simultaneously start several forced execution procedures. Although the regulation contained in Law 469/2002 was generally considered as a recommendation, the new amendment annuls any doubts in this respect.</p> <p>Another controversy clarified by the new enactment refers to the writs classified under the law as writs of execution. The previous regulation did not provide for a</p>

unanimous perspective on the obligation to invest such writs with power of enforceability prior to the start of the forced execution. Law 459/2006 explicitly provides that such writs are enforceable and there is no need to invest them with power of enforceability.

A material amendment refers to the creditor's possibility to benefit from the updating by the bailiff of the amounts established under the writ of execution. The new element brought by Law 459/2006 is that it establishes the time as of which the amount due is updated to be the date when the decision has become enforceable, and, for the other writs of execution, the expiration date. As compared to the previous enactment according where to the amount was updated regardless of the nature of the title, as of the expiry date, the law-maker limited this possibility, considering the enforceability procedure is started based on a jurisdictional deed.

This enactment also clarifies the debtor's possibilities to challenge the judgment serving as a writ of execution. According to the previous regulation, the judgment admitting the request for investing with power of enforceability was not subject to any challenge procedure – which provision is maintained in the new enactment. As the illegality/failure to invest can lead to the cancellation of the execution forms, the debtor's criticisms of the judgment pronounced as a writ of execution were substantiated by challenging the execution, even if there was no provision in this respect. Law 459/2006 admits to the debtor's right to request, in the contestation to the execution, the cancellation of the judgment issued for the investment with power of enforceability.

For the purpose of a fast settlement of the challenge to the execution, Law 459/2006 provides for the court's obligation to ask the execution body to submit the execution file by the first hearing, which measure was taken, pursuant to the previous enactment, during the settlement of the case.

Another new element is that pertaining to the provisions on the direct sale of goods. This form of capitalization was also provided for by the previous enactment, which, however, did not provide details on the procedure to use, and this is why this method was not used. Law 459/2006 provides that the minimal price for selling an asset subject to the forced execution is that assessed by parties' consent or, for lack of such consent, by an expert's report.

Law 459/2006 explicitly provides that the amounts allocated for the payment of the salaries are not subject to garnishment under certain circumstances. The exception concerned, applicable as per the previous regulation based on a

provision under the Labor Code which can lead to various interpretations, was not free from criticism. The same article provides two other types of amounts not subject to the execution procedure under discussion, namely:

- non-refundable loans or financing amounts provided by international institutions or organizations for the performance of certain programs or projects;
- amounts meant for a special purpose provided by law and which the debtor lacks the right to dispose of freely.

Other amendments brought by Law 459/2006 refer to several aspects related to the forced execution.

Community Law

1 Abrogation of certain national legal enactments due to the accession to the European Union

Name of the enactment	Government Emergency Ordinance No. 119/2006 on certain measures for the application of Community regulations as of Romania's accession to the European Union (" GEO 119/2006 ")
Publication	Official Gazette of Romania, Part I, No. 1036/28.12.2006
Entry into force	28 December 2006
Main provisions	<p>GEO 119/2006 is issued for the abrogation, in full or in part, of certain internal regulations adopted for the purpose of applying beforehand a number of Community regulations and of creating an institutional framework for the implementation thereof under normal conditions after Romania's accession to the EU. The regulations are enactments pertaining to the Community law and are directly applicable in all the member States, the application of national enactments for transposition purposes not being required. The abrogation of the internal norm is required in order to avoid creating a non-unitary administrative and legal practice for applying the Community regulations.</p> <p>The main enactments that have been considered by GEO 119/2006 are:</p> <ul style="list-style-type: none"> • Law No. 187/2003 on the jurisdiction competency, the acknowledgment and implementation in Romania of the decision pertaining to the civil and commercial law issued in the Member States of the European Union (repealed in full), • Law No. 637/2002 on the regulation of the international private law

relations in the field of insolvency (repealed in part); and

- The provisions of Law No. 161/2003 on certain measures meant to ensure the transparency in exercising offices of public dignitaries, public positions and in the business field, the prevention and sanctioning of corruption (adapted to the provisions of the Community regulations).

2 Organization and functioning of the statistic system for international trade of goods

Name of the enactment	Law No. 422/2006 on the organization and functioning of the statistic system for international trade of goods (“ Law 422/2006 ”)
Publication	Official Gazette of Romania, Part I, No. 967/04.12.2006
Entry into force	1 January 2007
Connections with the Community Law	Regulation (EC) No 638/2004 of the European Parliament and of the Council of 31 March 2004 on Community statistic relating to the trading of goods between Member States, published in the Official Journal of the European Union no. L 102 of 7 April 2004, and Council Regulation (EC) No 1172/95 of 22 May 1995 on the statistic relating to the trading of goods by the Community and its Member States with non-member countries.
Main provisions	<p>Law No. 422/2006 regulates the legal framework for the organization and functioning of the statistic system for the international trade of goods and is purported to the production of the statistic on trades of goods between Romania and the other Member States of the European Union, as well as the trades of goods between Romania and the Member States of the European Union.</p> <p>The statistic system of intra-Community trade of goods is hereinafter referred to as the Intrastat statistic system and the trade statistic system with non-Member States is hereinafter referred to as the Extrastat statistic system.</p> <p>The drafting of the statistic for international trade of goods is the competency of the National Statistic Institute, which collaborates for this purpose with the Ministry of Public Finance. The responsibilities of each institution involved are described in detail by the law in question.</p> <p>This law sets forth a number of material obligations for the operators in relation to the provisions of Intrastat statistic information. Thus, the operators registered in Romania for VAT purposes and exporting goods to another Member State or importing goods from another Member State are responsible, in accordance with</p>

the regulations of the European Union, with providing the Intrastat statistic information.

This obligation is valid insofar as the value of the intra-Community trade exceeds the threshold set annually by the National Statistic Institute, for each one of the two flows severally, i.e. for imports and exports. The statistic statement will be filled in and send monthly to the National Statistic Institute at the date set by the norms for the filling-in. The reference period considered for the filling-in of the statistic statement is the calendar month within which the intra-Community trades of goods are performed. The Intrastat statistic statement is submitted in an electronic format, based on the computer applications for the transmission of data, which are made available, free of charge, to the operators by the National Statistic Institute, or data files the structure whereof needs to be observant of the requirements of the National Statistic Institute.

Non-observance of the obligations related to the provision of Intrastat statistic information is a misdemeanor sanctioned by a fee of RON 7,500 to RON 15,000.

Repealed enactments

Government Decision No. 669/2004 on the preparation and implementation of the Intrastat external trade statistic system

Consumers` Protection

1 New provisions regarding consumers` protection

Name of the enactment

Law No. 476/2006 for the amendment and completion of Government Ordinance No. 21/1992 on consumers` protection (“**Law 476/2006**”)

Publication

Official Gazette of Romania, Part I, No. 1018/21.12.2006

Entry into force

24 December 2006

Connections with other enactments

Government Ordinance No. 21/1992 on consumers` protection („**GO 21/1992**”)

Main provisions

The main purpose of Law 476/2006 is to expand the scope of application of GO 21/1992, by establishing new rights in favor of consumers and, at the same time, by requiring additional obligations from operators.

In this respect, the concept of “abusive commercial practice” is amended and so is, therefore, the scope of application of GO 21/1992. The new regulation sets forth a clearer, more complete and thorough definition of the above concept.

The new regulation sets forth the consumers` right to be notified in writing 30 days before the term of the agreement the validity term whereof is extended

automatically, so that he/she can express an option of extension.

It sets forth additional obligations incumbent on operators, likely to lead to a more efficient notification to consumers, such as the sellers' obligation to inform consumers on the final price of the product (inclusive of VAT and other duties) or the obligation that all the deeds, documents or pieces of information related to the products or services offered to consumers, regardless of their origin, should be drafted in Romanian counterpart besides any potential counterpart in another language.

It expressly admits to the consumers' possibility to request and obtain, under the law, the remedy of the moral damage incurred or of damages related to the remedy or to the replacement of the inadequate products or services.

Law 476/2006 also brings amendments and completions to the effect of performing the control on operators, of establishing their liability (for example, regulating an aggravating misdemeanor consisting in the perpetration of misdemeanors in the field of consumers' protection, if the deed resulted in the serious and repeated damage of the economic interest of one or more consumers), as well as the regulation of the bodies that are competent to ascertain and sanction the deeds considered to be misdemeanors as per Articles 46 and 46¹ of GO 21/1992.

2 Amendment of the Consumption Code

Name of the enactment	Law No. 425/2006 for the amendment and completion of Law No. 296/2004 on Consumption Code (" Law 425/2006 ")
Publication	Official Gazette of Romania, Part I, No. 968/03.12.2006
Entry into force	7 December 2006
Connections with other enactments	Law No. 296/2004 on the Consumption Code (the "Consumption Code")
Main provisions	One of the main objectives considered by the policy of consumer's protection is to increase the degree of consumers' education in respect of their rights, which objective can only be reached by the development of the special institutional framework in this field. A major role in reaching this strategic objective is held by consultative and non-governmental bodies of consumers. In this respect, the amendment brought to the Consumption Code by Law 425/2006 is aimed at a clearer description of the rights and obligations that such entities have under the law. Prior to this amendment, a series of prerogatives of such entities were provided, but there was no indication as to which ones were mandatory and

which ones were optional.

Law 425/2006 sets forth the following rights in favor of consumers' non-governmental organizations:

- the right to be supported with logistic means by the bodies of the central and local public administration, for the purpose of reaching their objectives;
- the right to receive amounts from the State budget and from the local budgets;
- the right to be consulted, on drafting the draft enactments, the standards or specifications defining the technical and quality features of the products and services provided to consumers;
- the right to file actions to court in defense of the consumers' legal rights and interests;
- the right to be informed on the price and quality features of products and services likely to help the consumer make a decision on the acquisition thereof.

The right mentioned under letter (e) was not provided under the previous enactment.

Also, Law 425/2006 provides for the obligations of the consumers' non-governmental organizations, as follows:

- the obligation to ask the competent authorities to take measures for the purpose of ceasing the production or withdrawing from the market the products or services that do not ensure the quality level required in the documents provided by law or which endanger the consumers' life, health or security;
- the obligation to propose to operators the performance of products and services under special conditions, for the purpose of meeting the needs of handicapped or elderly consumers;
- the obligation to request information on the price and quality features of the products and services likely to help the consumer make a decision on the acquisition thereof;
- the obligation to inform the public, through the mass-media, on the non-conformity of the products and services existing on the market, and on their possible proved damaging consequences for consumers.

Moreover, as compared to the previous provisions of the Consumption Code, which only referred to the possibility that the consumers' education may become

part of the school syllabus, Law 425/2006 expressly provides that such education “is part” of the school syllabus.

Employment

1 New legal provisions concerning the protection of the employees

Name of the enactment	Law No. 450/2006 for the amendment and completion of Law No. 130/1999 on certain measures for the protection of employees
Publication	Official Gazette of Romania, Part I, No. 1004/18.12.2006
Entry into force	21 December 2006
Main provisions	<p>According to the new provisions, employers that set up secondary offices in other counties than that where the employer has its headquarters can request that the work notebooks of employees who work in the secondary offices should be kept and filled in by the work inspectorates in the area whereof they operate.</p> <p>In this case, such employers have the obligation to register the individual employment agreements concluded with the employees and to submit monthly evidence for the calculation of the salary rights to the local work inspectorates within the area whereof the secondary office operates. Also, the writs registered in the work notebooks for the employees of such employers shall be certified by the local work inspectorates within the area whereof the secondary office operates.</p>

2 Framework procedure of informing and consulting employees

Name of the enactment	Law No. 467/2006 on the framework of informing and consulting employees
Publication	Official Gazette of Romania, Part I, No. 1006/18.12.2006
Entry into force	1 January 2007
Main provisions	<p>Law 467/2006 transposes Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.</p> <p>The provisions of this law are applicable to public or private entities performing an economic activity operated either for lucrative purposes or not and employing at least 20 employees.</p> <p>The employees have the obligation to inform and consult the employees’ representatives, as per the laws in force, in respect of:</p>

- the recent and estimated evolution of the activities and of the economical situation of the entity;
- the situation, structure and estimated evolution of the employment in the entity and of the potential estimation measures considered, especially when there is a threat to the places of work;
- the decisions that may lead to material amendments in the organization of work, in the contractual relations or in the work relations, including those considered by the Romanian laws on specific informing and consulting procedures in the case of mass lay-offs and of the protection of employers, in the case of the transfer of the entity.

The failure to inform the employees on the aspects provided under this law and the failure to observe the procedures provided for informing purposes are misdemeanors sanctioned by fees of RON 1,000 – 50,000.

Financial Institutions

1 Additional supervision measures on the financial institutions

Name of the enactment	Emergency Ordinance No. 98/2006 on the additional supervision of credit institutions, insurance and/or reinsurance companies, financial investment service companies and investment management companies in a financial corporation (“GEO 98/2006”)
Publication	Official Gazette of Romania, Part I, No. 1023/22.12.2006
Entry into force	1 January 2007
Connections with the Community Law	Directive No. 2002/87/CE of the European Parliament and Council of 16 December 2002, on the additional supervision of credit institutions, insurance undertakings and investment firms in a financial corporation
Main provisions	<p>GEO 98/2006 was passed for the fulfillment of the obligations undertaken by Romania during the pre-accession negotiations and aims at fully harmonizing the relevant legislation on the additional supervision of regulated entities with EC regulations.</p> <p>In this context, GEO 98/2006 is the framework enactment regulating the rules on the additional supervision of the regulated financial entities, Romanian legal entities, authorized as per the applicable relevant laws and which are part of a financial corporation, for the financial stability and protection of depositors,</p>

insured and investors.

GEO 98/2006 includes relevant definitions for the scope of this enactment.

The provisions of GEO No. 98/2006 apply to the following regulated entities:

- credit institutions;
- insurance companies;
- reinsurance companies;
- financial investment service companies;
- investment companies;
- investment management companies.

With a view to identify a financial corporation, GEO 98/2006 provides that a group operates mainly in the financial sector if the ratio of the total balance sheet assets of regulated and non-regulated financial entities within the group vs. the total balance sheet assets of the entire group exceeds 40%.

The competent Romanian authorities which authorized the regulated entities identify any group which falls under the scope of application of the additional supervision.

The regulated entities must have appropriate policies on capital compliance in the financial corporation.

Any sub-group of a group, which complies with the criteria for being a financial corporation, is subject to additional supervision.

In view of ensuring an appropriate additional supervision of the regulated entities from a financial corporation, a sole coordinator, in charge with coordinating and exercising the additional supervision, is appointed from among the competent authorities of the involved Member States, including those of the Member State where the central headquarters of the mixed financial holding company is located. The appointment of this coordinator is based on the criteria provided by this emergency ordinance. In addition, GEO 98/2006 sets forth the coordinator's powers of additional supervision. The coordinator has access to any documents drafted by the financial auditors as part of the audit operations.

The legal entities subject to additional supervision, regardless of whether they are regulated entities or not, must communicate to one another on any relevant information for the purpose of the additional supervision.

If a regulated entity uses its membership in a financial corporation in order to avoid, in full or in part, the application of sectoral rules, the competent

authorities may apply to the regulated entities under their supervision any of the measures or sanctions provided by the appropriate sectoral rules.

2 Additional requirements for capital compliance, intra-group transactions and risk concentration at the level of a financial corporation

Name of the enactment	Common Order No. 23/120/113.136 of 15 December 2006 of the National Bank of Romania, the National Securities Commission and the Insurance Supervision Commission on the additional requirements for capital compliance, intra-group transactions and risk concentration at the level of a financial corporation (“ Order 23/2006 ”)
Publication	Official Gazette of Romania, Part I, No. 1031/27.12.2006
Entry into force	1 January 2007
Connections with other enactments	Emergency Ordinance No. 98/2006 on the additional supervision of credit institutions, insurance and/or reinsurance companies, financial investment service companies and investment management companies from a financial corporation
Main provisions	<p>Order 36/2006 establishes how to determine the additional requirements for capital compliance, identifying and reporting intra-group transactions and risk concentration at the level of a financial corporation.</p> <p>This enactment applies to the regulated entities, Romanian legal entities, which are subject to the additional supervision exercised by the coordinator at the level of a financial corporation.</p> <p>Order 23/2006 includes detailed provisions on the calculation rules and technical methods concerning capital compliance, intra-group transactions and the reporting thereof, as well as those regarding risk concentration at the level of a financial corporation, including identifying risk concentrations.</p>

3 Financing of investment projects that require more than one year to complete

Name of the enactment	Government Emergency Ordinance No. 111/2006 on the financing of investment projects that require more than one year to complete
Publication	Official Gazette of Romania, Part I, No. 1031/27.12.2006
Entry into force	27 December 2007
Main provisions	The provisions of this emergency ordinance apply to the investment projects and other similar expenses the beneficiaries whereof are main credit principals of the

State budget and which are performed within more than a year, the related payments to be performed by installments, during several years, as of the completion of the investment objective.

The main credit principals of the State budget shall provide annually, for approval purposes, as appendices to the own budgets, the provided investment projects the financing whereof is ensured as per the provisions of this emergency ordinance. Such investment projects are financed by financial institutions up to the completion thereof, through payments to suppliers/contractors, based on the certification by main credit principals of the contractual conditions set for the implementation of investment projects. The financial institutions which will finance the investment projects shall be selected in accordance with the laws in force, the financing requirements being approved by the main credit principals and the Ministry of Public Finance, prior to the conclusion of the documentation related to the financing.

Public Procurement

1 Rules regarding the award of advertisement agreements

Name of the enactment	Order No. 183/2006 of the president of the National Authority for Regulation and Monitoring of Public Procurement for the application of the provisions on the advertisement agreement (“ Order 183/2006 ”)
Publication	Official Gazette of Romania, Part I, No. 979/07.12.2006
Entry into force	7 December 2006
Connections with other enactments	Government Emergency Ordinance No. 34/2006 on the award of public procurement agreements, of public work concessions and of service concessions (“ GEO 34/2006 ”)
Main provisions	<p>Order 183/2006 sets forth the conditions and the procedure that the contracting authorities need to fulfill for the purpose of awarding an advertisement agreement. In this respect, the award of the advertisement agreement can be made through the “tender request” procedure. With regard to the award in itself, Order 183/2006 requires the coverage of the following steps:</p> <ul style="list-style-type: none"> • drafting a report on the advisability for the public procurement of advertisement services. The report has to contain, among other things, information on the basis of the advertisement procurement, the intended impact etc. • the invitation to participate in the awarding of the advertisement

agreement by “tender request”.

- preparing the file of the public procurement of advertisement services.
- concluding the advertisement procurement agreement; Order 183/2006 provides for the obligation to set forth a clause whereby the parties undertake to ensure the public’s access to certain information categories (on the final addressees of the advertisement funds, the criteria for the allocation of such funds etc.).
- drafting a report assessing the impact of the public procurement of advertisement services in the newspapers, audio-visual and electronic media for the promotion of an image, the information of clients etc

The documentation which needs to be prepared for each of the above-mentioned stages is provided under the appendices integral to Order 183/2006.

For the purpose of ensuring the observance of the transparency principle and of the equality in chances, certain advertisement requirements will need to be complied with, i.e. the publication of the announcements of intention, participation and award of the advertisement agreement in the Official Gazette of Romania, Part VI, in the Electronic System of Public Procurement (SEAP), on the website of the contracting authorities, if any, and in the Official Journal of the European Union (JOUE), in the cases provided under Government Emergency Order 34/2006.

2 Norms for application of the provisions on the award of public procurement agreements by electronic means

Name of the enactment	Government Decision No. 1660/2006 for the approval of the Norms for application of the provisions on the award of public procurement agreements by electronic means of Government Emergency Ordinance No. 34/2006 on the award of public procurement agreements, of public work concession agreements and of service concession agreements (“ GD 1660/2006 ”)
Publication	Official Gazette of Romania, Part I, No. 978/07.12.2006
Entry into force	7 December 2006
Connections with other enactments	Government Emergency Ordinance No. 34/2006 on the award of public procurement agreements, of public work concession agreements and of service concession agreements („ GEO 34/2006 ”)
Main provisions	GD 1660/2006 sets forth more detailed rules as compared to the general provisions of GEO 34/2006 in respect of the manner of preparing, starting and

performing the selection procedures through electronic means by the contracting authorities.

The new regulation contains provisions on the registration and renewal of the registration of the contracting authorities in the electronic system of public procurement (SEAP) and sets forth the conditions and procedure for performing the above-mentioned registrations. The registration procedure mainly consists in (i) filling in an on-line form; (ii) sending an application for registration to the SEAP operator and (iii) being provided, by the SEAP operator, the digital certificate of registration.

Also, GD 1660/2006 sets forth the detailed procedure for the performance of the award procedures through electronic means, namely: open auction, restricted auction, tender request and, as a distinct procedure, electronic auction as a final stage of an award procedure using electronic means, exclusively or along other means.

As a novelty, GD 1660/2006 grants to the operators registered with the SEAP the possibility to publish a catalogue containing the products, services or works which they offer and which, within the scope of EUR 5,000 in ROL equivalent, can be acquired directly by the contracting authority. Also, it provides for rules on the suspension of operators registered with the SEAP if such operators breach the use and security norms and procedures of the system.

Moreover, GD 1660/2006 sets forth the tariffs for the participation in the SEAP and for the use thereof.

Social Insurance

Name of the enactment	Law No. 487/2006 of the budget for State social insurance for 2007
Publication	Official Gazette of Romania, part I, No. 1047/29.12.2006
Entry into force	1 January 2007
Connections with other enactments	The enactments regulating the various social contributions due under the law (e.g. Law No. 19/2000 on the public pension system and other social insurance rights or Law No. 76/2002 on the unemployment insurance system and the stimulation of employment)
Main provisions	The main amendments related to the social contributions are the following: <ul style="list-style-type: none">• the average gross salary used for the calculation of the maximal thresholds for certain social contributions (e.g. CAS) was increased to

RON 1,270.

- the level of the social insurance contribution (CAS) was reduced by 1% for each type of work conditions. For example, the CAS level for normal work conditions will be of 29%, whereof the employee's individual contribution is of 9.5%.
- the contribution due by the employer for the unemployment social insurance fund was set at 2%, while the employee's contribution is still 1%. Moreover, the employer has the obligation to pay 0.25% to the security fund for the payment of the outstanding salaries, which fund is regulated by Law 200/2006.
- the quotas of the contribution to the insurance fund for accidents at work and professional diseases shall be set between 0.4% and 3.6%, according to the employer's object of activity (as per the CAEN codes).

State Aid

Name of the enactment	Emergency Ordinance No. 117/2006 of 21 December 2006 on the national procedures related to State aids ("GEO 117/2006")
Publication	Official Gazette of Romania, Part I, No. 1042/28.12.2006
Entry into force	1 January 2007
Connections with other enactments	<ul style="list-style-type: none"> • The regulation on the abrogation of certain regulations and guidelines passed by the Competition Council in the field of the State aid, published in the Official Gazette, Part I, No. 1057/30.12.2006 • Due to the fact that the provisions of the Community regulations become directly applicable in the field of State aids, as of the accession date, the Competition Council repeals the relevant secondary legislation which doubles the Community regulations.
Main provisions	<p>The competencies of authorizing State aids are transferred from the Competition Council to the European Commission and the Community legislation in the field of State aids shall be directly applicable in Romania.</p> <p>The procedure for examining the notices registered with the Competition Council based on Law 143/1999, republished, for which no decisions were issued until the enforcement of this emergency ordinance is terminated <i>de jure</i> as of that date.</p> <p>The pending investigations started as per the provisions of Law 143/1999, republished, are terminated <i>de jure</i> as of the entry into force of this emergency ordinance. The decisions of the Competition Council continue to be effective.</p>

The new State aid, which has to be notified, can only be granted after its authorization by the European Commission. Notices on the State aid measures, namely the reports on the State aid measures within the scope of application of exemptions from the reporting obligation as per categories, shall be communicated to the Competition Council, which will issue an endorsement.

The Competition Council is the authority competent to communicate to the European Commission the notices, informative pieces and reports pertaining to the monitoring procedure. The Competition Council represents Romania before the European Commission in relation to the Community procedures on State aid. In supporting the notice before the European Commission, the Competition Council shall be assisted by the authority which issued the notice.

The Competition Council collaborates with the authority competent to represent Romania before the Court of Justice of the European Communities in the State-aid-related cases.

The Competition Council monitors the compliance of State aids with the provisions of the Community regulations referring to the monitoring actions, based on reports, information and data communicated by the suppliers of State aid. Also, the Competition Council issues the annual report on the State aids granted in Romania, subject to approval by the Government. For transparency purposes, the report is published in the Official Gazette of Romania, Part I, and is communicated to the European Commission.

Repealed enactments

Law No. 143/1999 on State aid is repealed as of 1 January 2007. In terms of the State aid, the repealed law is replaced by the provisions of Articles 87-89 of the Treaty for the set-up of the European Union and by the secondary legislation passed based on such provisions, directly applicable in the internal law as of the accession date.

Taxation

1 Amendment of the Fiscal Code

Name of the enactment

Government Emergency Ordinance No. 110 of 21 December 2006 for the amendment and completion of Law No. 571/2003 on the Fiscal Code

Publication

Official Gazette of Romania, Part I, No. 1028/27.12.2006

Entry into force

1 January 2007

Main provisions

If, throughout a fiscal year, a micro enterprise has consultancy and management

revenues exceeding 50% of the aggregate revenues, regardless of the value of such revenues, it will pay a tax on profit based on the revenues and expenses made as of the start of the fiscal year, without benefiting, during the following period, from the provisions on the taxation of micro enterprises.

The special tax for commercial cars and vehicles is also applicable to commercial vehicles having the authorized maximal weight of up to 3.5 tons including. For off-highway cars and vehicles which are registered in Romania for the first time after 1 January 2007 and for which excises were paid upon import or upon their purchase on the internal market during 2006, the special duty is no longer due.

2 Amendment of the Code of Fiscal Procedure

Name of the enactment	Law No. 505 of 28 December 2006 on the approval of Government Ordinance No. 35/2006 for the amendment and completion of Government Ordinance No. 92/2006 on the Code of Fiscal Procedure
Publication	Official Gazette of Romania, Part I, No. 1054/30.12.2006
Entry into force	1 January 2007
Main provisions	This enactment contains provisions on the order of the settlement of debts, if a tax payer owes several types of taxes, contributions and other amounts as fiscal debts and the amount paid is not enough to settle all the debts

3 Registration of operators that will buy excisable products from the Community after 1 January 2007

Name of the enactment	Order No. 2135 of the Minister of Public Finance of 12 December 2006 on the registration of operators that will buy excisable products from the Community after 1 January 2007
Publication	Official Gazette of Romania, Part I, No. 1029/27.12.2006
Entry into force	27 December 2006
Main provisions	Importers that purchase products subject to excises applicable by other Member States and intend to continue performing the same activity after 1 January 2007 and the companies that intend to perform such acquisitions after that date need to be authorized as registered operators. The authorization is provided by the Ministry of Public Finances – the Authorization Department in the case of the products subject to harmonized excises, and by the local fiscal authorities in the case of other excisable products. The registration consists in issuing a provisional authorization attesting the capacity of registered operators and the excise code

granted to it. Authorizations are effective as of 1 January 2007 to the issuance of the final registered operator authorization, provided that the operator ensures the compliance, by 1 March 2007, with the requirements of the Fiscal Code (related to the book keeping, the payment of excises, the acceptance of the stock checking and the presentation of the products upon the request of the control bodies).




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