

# Legal Bulletin

February 2007

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## Banking Law

### 1 Credit institutions

Name of the enactment	Regulation No. 1/2007 of the National Bank of Romania on the registry of credit institutions ("NBRR 1/2007")
Publication	Official Gazette of Romania, Part I, No. 119/16 February 2007
Entry into force	16 February 2007
Main provisions	<p>According to the provisions of NBRR 1/2007, Romanian credit institutions and the Romanian branches of foreign credit institutions shall be recorded in a registry of the credit institutions (the "<b>Registry</b>"), kept in electronic format by NBR. To this effect, NBRR 1/2007 provides that, within three business days as of the registration, the credit institution concerned shall be informed on the number and date of the entry into the Registry.</p> <p>The registry is available to the public on a permanent basis and contains a number of information on the individualization of the credit institutions operating in Romania: the name of the credit institution, the number and date of the entry into the registry, the address of the headquarters, etc.</p> <p>Also, the registry may contain, if the case, general information on the legal status of the credit institution in question, such as: withdrawal of the operation authorization, establishment of the special administration, merger, reorganization, etc.</p> <p>If a credit institution is prohibited under the law to carry out its specific activities, such credit institution will be erased from the registry.</p>
Repealed enactments	Norm No. 18/2002 of the National Bank of Romania on the banking registry and on the registry of credit cooperation organizations
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### 2 Non-banking financial institutions

Name of the enactment	<ul style="list-style-type: none"><li>• Norm No. 2/2007 of the National Bank of Romania</li></ul>
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Publication	<ul style="list-style-type: none"><li>• Norm No. 3/2007 of the National Bank of Romania</li><li>• Norm No. 4/2007 of the National Bank of Romania</li><li>• Order No. 4/2007 of the National Bank of Romania (collectively referred to as “<b>NBR Enactments</b>”)</li></ul> Official Gazette of Romania, Part I, No. 119/ 16.02.2007
Connections with other enactments	GO No. 28/2006 on the regulation of certain financial-fiscal measures (“ <b>GO 28/2006</b> ”)
Main provisions	<p>NBR Enactments provide certain amendments and completions as regards the legal regime applicable to non-banking financial institutions, and the most important is:</p> <ul style="list-style-type: none"><li>• the establishment of the possibilities of Romanian non-banking financial institutions to increase their share capital through the incorporation of issue, contribution or other premiums related to the share capital, provided that: (i) they were fully cashed; and (ii) they result from the amounts remaining after the non-depreciated expenses were covered by such operations. Also, the majority of the share capital will be operated by incorporating the reserves established based on such premiums.</li><li>• the entry in the Book of record for legal entities without an assimilated lucrative purpose, under the conditions of GO 28/2006, non-banking financial institutions.</li><li>• if a non-banking financial institution is erased from the Special Registry, it does not necessarily mean that it will be erased from the general Registry, as provided under the old regulation.</li><li>• also, NBR Enactments provide for obligations to report the situation of the indicators related to the criteria for the registration with the Special Registry. The reporting is done based on forms and in compliance with procedures which differ according to the categories of non-banking financial procedures, and by other specific criteria, as expressly provided by NBR Enactments.</li></ul>
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## Consumers` Protection

Name of the enactment	Order No. 92/2007 of the president of the National Authority for Consumer’s Protection, approving the Norm on certain measures for informing the natural person consumers, by the service providing undertakings, within the standard
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	terms agreements used by such undertakings
Publication	Official Gazette of Romania, Part I, No. 128/21.02.2007
Entry into force	23 March 2007
Connections with other enactments	GO No. 21/1992 on consumers' protection, republished as subsequently amended and completed
Main provisions	<p>The necessity to adopt such a regulation was determined by the increase in the number of complaints regarding the activity of the service providing undertakings.</p> <p>The standard terms agreement is that type of agreement entirely or almost entirely drafted by the service providing undertaking, the consumers having no possibility to modify or intervene in the contractual clauses, but only to accept them or not.</p> <p>The consumers' right to be informed consists in granting certain mandatory information within the standard terms agreement drafted by the service providing undertaking, <i>inter alia</i>, the most important is as follows:</p> <ul style="list-style-type: none"><li>• the commencement and termination dates of the agreement, with the possibility to unilaterally terminate it, subject to a 30-day prior notice, without any additional fees;</li><li>• notifying the consumers in writing, no less than 15 days prior to the interruption or termination with regard to the provision of such service;</li><li>• the modality to apply penalties to the undertakings, in case they do not comply with the quality terms or parameters for providing such service;</li><li>• the modality to pay for the services provided, by clearly and unequivocally mentioning the prices and tariffs to be paid by the consumers, such as: payment terms, discounts as per the invoice corresponding to the period during which the service was not provided due to the undertaking's default, payment delays, penalty charges etc.;</li><li>• complete information on the conditions for granting a loan, deposit conditions, leasing conditions, insurance conditions, as the case may be;</li><li>• complete information on the compensatory conditions for consumers, in case they incurred damages due to the undertakings' default;</li><li>• giving to the consumers the possibility to refuse that their personal</li></ul>

data be processed for marketing purposes or that such data be assigned to third parties;

- the modality to notify the consumers in case of unilateral amendment of the conditions for the provision of the service by the undertaking, such as: the program schedule, tariffs, interest etc., by granting to the consumer the right to waive a service, without paying any additional costs; or
- to provide as mandatory that the size of the font to be used in drafting the entire text be minimum 10.

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## Employment

### 1 The adoption of a transnational procedure in Romania

Name of the enactment

Government Decision No. 104/2007 regulating the specific procedure concerning the posting of workers in the framework of the provision of transnational services inside the Romanian territory (“**GD No. 104/2007**”)

Publication

Official Gazette of Romania, Part I, No. 111/14.02.2007

Entry into force

14 February 2007

Connections with other enactments

Law No. 344/2006 concerning the posting of workers in the framework of the provision of cross-border services inside the Romanian territory (“**Law No. 344/2006**”)

Connections with the Community Law

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, published in the Official Journal of the European Communities, No. L 018/21.01.1997

Main provisions

GD No. 104/2007 provides for a series of obligations incumbent on both the employers inside the Romanian territory that take posted workers in service, and the employers in the Members States that post workers to Romania.

Thus, the employer that performs the posting and the beneficiary of the service provision performing activities in Romania should produce evidence regarding the existence of a collaboration relation between them by means of an agreement concluded in writing.

Also, in case the posting is ordered by a temporary employment undertaking or an employment agency, between them and the Romanian beneficiary of the

services provided by the posted workers a hiring-out agreement should be concluded in writing.

The employers in the EU or EEA Member States, posting employees in Romania, shall have the obligation to communicate a notification regarding the posting of the employees, in the Romanian language, to the territorial labor inspectorate in the territory of which the activity is to be performed, no less than 5 days before the employees posted in the Romanian territory initiate their activity, but no later than the first day of activity.

The employers in the EU or EEA Member States, posting employees in Romania shall be held liable for misdemeanors, under the Romanian law, for failure to observe the work conditions.

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## 2 Collective lay-offs

Name of the enactment

Government Emergency Ordinance No. 2/2007 amending and completing Government Emergency Ordinance No. 116/2006 on social protection granted to persons made redundant by collective lay-off procedures conducted further to the restructuring and reorganization of national companies, *regies autonomes* and business entities in which the State is the majority shareholder, and the business entities and *regies autonomes* subordinated to the local public administration authorities (“**GEO No. 2/2007**”)

Publication

Official Gazette of Romania, Part I, No. 113 of 14 February 2007

Entry into force

14 February 2007

Connections with other enactments

Government Emergency Ordinance No. 116/2006 on social protection granted to persons made redundant by collective lay-off procedures conducted further to the restructuring and reorganization of national companies, *regies autonomes* and business entities in which the State is the majority shareholder, and the business entities and *regies autonomes* subordinated to the local public administration authorities (“**OUG nr. 116/2006**”)

Main provisions

According to the amendments brought to GEO No. 2/2007, the persons that concluded individual employment agreements with the business entities provided under art. 1 of the ordinance no less than 12 months prior to dismissal may also benefit from the provisions of GEO No. 116/2006. According to the old regulation, those persons having employment agreements older than 24 months as at the dismissal date could benefit from the provisions of GEO No. 116/2006.

Also, according to the amendments brought by GEO No. 2/2007, the persons dismissed pursuant to GEO No. 116/2006 shall benefit from a compensation amounting to twice the value of the net base average salary valid in January, the year the dismissal was performed, as communicated by the National Institute of Statistics, as compared to the net average salary provided by the old regulation.

GEO No. 2/2007 also brings amendments with respect to the monthly severance pay to be granted to the persons dismissed pursuant to GEO No. 116/2006, who are re-employed.

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## European Community Financing

Name of the enactment

Government Ordinance No. 12/2007 amending and completing Government Ordinance No. 79/2003 on control and recovery of community funds and related co-financing funds improperly used (“**GO No. 12/2007**”)

Publication

Official Gazette of Romania, Part I, No. 84/02.02.2007

Entry into force

5 February 2007

Connections with other enactments

Government Ordinance No. 92/2003 on the Fiscal Procedure Code

Main provisions

GO No. 12/2007 significantly amends the main enactment on the ascertainment and recovery of the inadequately paid amounts obtained from non-reimbursable financial assistance granted to Romania by the European Community, as well as the related co-financing funds, further to certain irregularities.

The amending deed subject to review is meant to ensure, for the receivables resulting further to irregularities or frauds regarding the use of non-reimbursable financial assistance granted to Romania by the European Community, a statute similar to the one of budgetary receivables. These are few examples in this respect: the receivable title shall be served in compliance with the provisions of the Fiscal Procedure Code; the recovery of receivables by forced execution shall be performed according to the terms provided by the same enactment; for failure to pay the receivables in due time, delay penalties shall be applied according to the legal provisions on the collection of fiscal receivables, etc.

Also, a new chapter was inserted, on the responsibilities and obligations of the authorities in charge of ascertaining the budgetary receivables resulting further to irregularities, and of other authorities with competence to control the way in which the community funds are managed. Such competent authorities are the

Ministry of Public Finances, the Audit Authority attached to the Court of Accounts of Romania and the Fight against Fraud Department – DLAF.

The right to establish the payment obligation is time-barred within 5 years following the closing date of the program. The interruption and suspension of the statute of limitation regarding the right to establish the payment obligation shall be performed in the cases and under the conditions provided by the ordinary law.

The right to apply for the forced execution of such receivables shall be time-barred within 5 years following the date when such right was born. The suspension and interruption of the statute of limitation regarding the right to apply for forced execution are regulated by the Fiscal Procedure Code.

The methodological norms for the application of GEO No. 79/2003 shall be amended and completed within 45 days following the entry into force of GO No. 12/2007.

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## Public Procurement

### 1 Norms on supervising the manner of awarding public procurement agreements

Name of the enactment

Order of the President of the National Authority for the Regulation and Monitoring of Public Acquisitions No. 26/2007 for the approval of the Regulation on the supervision of the award of public procurement agreements (“Order No. 26/2007”)

Publication

Official Gazette, Part I, No. 102/09.02.2007

Entry into force

9 February 2007

Connections with other enactments

Government Emergency Ordinance No. 34/2006 on the award of public procurement agreements, public works concession agreements and service concession agreements (“GEO No. 34/2006”)

Government Ordinance No. 2/2001 on the legal regime of misdemeanors

Main provisions

Order No. 26/2007 provides how the National Authority for the Regulation and Monitoring of Public Acquisitions (“ANRMAP”) finds the misdemeanors committed by the contracting authorities in relation to the public procurement procedures which they develop under GEO No. 34/2006 and enforces the relevant



sanctions.

To this end, ANRMAP is competent to exercise the position of public procurement supervision which involves the exercise of the following main powers:

- planned control on the basis of the monthly supervision plan;
- unplanned control, further to notices or requests from third parties or ex officio;
- to find the deeds infringing or circumventing the legal provisions in the field of public procurement;
- to punish the misdemeanors.

From a procedural point of view, ANRMAP, acting through control teams, exercises its powers by following these stages:

- to inform the contracting authority on the commencement of the supervision procedure, including the period when the control is to take place, the object of the control, the documents which must be provided by the controlled contracting authority;
- to control the award procedures applied by the contracting authorities;
- to draft the control note and to inform the contracting authority on the content thereof;
- to draft, if case, the misdemeanor finding and sanctioning minutes.

The control note is the document recording the infringement of the legal provisions on public procurement and on the basis of which the misdemeanor finding minutes is drafted.

The finding minutes is the document recording the supervision activity developed by ANRMAP and which officially finds that a misdemeanor was committed. By drafting the minutes, the applicable sanction and enforcement is set up. The legal regime applicable to this administrative act, which is special and individual from the perspective of its power as evidence and legal redress against such act, is the one which is set up by the general legislation on misdemeanors.

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## **2 Methodological norms for the application of GEO 54/2006**

Name of the enactment

Government Decision No. 168/2007 for the approval of the Methodological Norms on the enforcement of Government Emergency Ordinance No. 54/2006 on the regime of concession agreements for public property assets (“**GD No. 168/2007**”)

Publication	Official Gazette, Part I, No. 146/28.02.2007
Entry into force	28 February 2007
Connections with other enactments	Government Emergency Ordinance No. 54/2006 on the regime of concession agreements for public property assets (“GEO No. 54/2006”)
Main provisions	<p>Secondary regulatory enactment in the field of concession agreements for public property assets, GD No. 168/2007 sets up a series of procedural provisions on the commencement and development of the procedures for awarding this category of agreements.</p> <p>Thus, in order to ensure the uniformity of documentation used by the concession grantor entities in the development of the procedures for awarding concession agreements, the new enactment details the standard content of certain acts, such as the tender book, the award documentation, the invitation to tender and the award notice.</p> <p>GD No. 168/2007 also provides for the establishment of the evaluation commission in charge with selecting the bidders and the procedural rules applicable to such commission.</p> <p>GD No. 168/2007 brings certain clarifications in relation to the award methods applied by the concession grantor entities, as follows:</p> <ul style="list-style-type: none"><li>• <b>tender:</b> article 25 sets up that, for a tender to take place, at least 3 bidders must participate. From a procedural point of view, after having reviewed the bids, the evaluation commission drafts a minutes mentioning the validity criteria and the reasons for excluding such from the award procedure.</li><li>• <b>direct negotiation:</b> this award method may be applied only to the extent that less than 3 valid offers were submitted within the second public tender. The negotiation is held with each separate bidder. The criteria for the validity of the bids are not negotiable.</li></ul> <p>GD No. 168/2007 also brings details on the application of award criteria. Thus, in case several bid selection criteria are determined, the share of the highest royalty criterion must be higher than 50%. In addition, the bids with equal scores shall be differentiated on the basis of the highest royalty criterion.</p> <p>GD No. 168/2007 also includes a framework concession agreement, provided as an example. Nevertheless, certain clauses are mandatory, such as the concessionaire’s commitment to pay a guarantee or the interdiction of a sub-concession, except</p>

for the cases expressly provided by GEO No. 54/2006.

Finally, the cases of termination for the concession agreement are detailed:

- upon the expiry of the period for which it was concluded, if the parties do not agree in writing on the extension thereof;
- the unilateral termination by the concession grantor in case the national or local interest requires it, against the payment of a fair and prior indemnification to the concessionaire;
- termination by legal action for either party's failure to comply with its contractual obligations;
- in case of disappearance, further to a Force Majeure case, of the good granted in concession or in case there is an objective impossibility of operating such asset.

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## Voluntary Health Insurance

Name of the enactment

Joint Order No. 365/1/2007 of the minister of public health and the president of the Insurance Supervisory Commission, approving the Methodological Norms regarding voluntary health insurances ("**Order No. 365/1/2007**")

Publication

Official Gazette of Romania, Part I, No. 147/28.02.2007

Entry into force

28 February 2007

Connections with other enactments

Law No. 95/2006 on health reform, as subsequently amended and completed ("**Law No. 95/2006**")

Main provisions

Order No. 365/1/2007, issued for the application of the provisions of Title X of Law No. 95/2006, approving the methodological rules that specify the provisions regarding the voluntary health insurance agreement and the relation with the medical services provider and the insurer providing voluntary health insurance.

Among the relevant issue provided in these methodological norms, the most significant are the following:

- voluntary health insurance represent an additional optional system of social insurance, which is the mandatory system; thus, by contracting a voluntary health insurance, one cannot waive the health insurance under the public system
- also the employer can undertake a voluntary health insurance agreement, the beneficiaries of such insurance being its employees

(group insurance);

- the insurers must provide to the insured, upon the execution of the voluntary health insurance agreement, all necessary information on the rights and obligations arising from this agreement;
- the information on the insured's health condition may only be disclosed with the express consent of the insured or in the cases provided by the law;
- it details the elements that a voluntary health insurance agreement and the medical services supply agreement must include;
- the medical services suppliers with which the insurers may conclude medical services supply agreements, within the limit of the contracting capacity, are only those authorized by the Ministry of Public Health.

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