

Legal Bulletin

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Banking Law

Name of the enactment	Regulation No. 3/2008 of the National Bank of Romania concerning the recognition of foreign credit evaluation institutions (" Regulation 3/2008 ").
Publication	Official Gazette of Romania, Part I, No. 120/15.02.2008
Entry into force	15 February 2008
Connections with other enactments	<ul style="list-style-type: none">• Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy;• Regulation No. 14/19/2006 of the National Bank of Romania and of the National Securities Commission on the treatment of the credit risk for credit institutions and investment companies according to the standard approach ("Regulation 14/19/2006");• Regulation No. 21/26/2006 of the National Bank of Romania and of the National Securities Commission on the treatment of the credit risk related to the securitized exposures and of the securitization positions.
Main provisions	<p>Regulation 3/2008 establishes the procedure for recognizing the eligibility of foreign credit evaluation institutions for the purpose of granting permissions to credit institutions to use the ratings supplied by the abovementioned evaluation bodies.</p> <p>The eligibility of a foreign credit evaluation institution is acknowledged by the National Bank of Romania ("NBR"), upon request, by two methods:</p> <ul style="list-style-type: none">• direct acknowledgement – involves the performance by NBR of an independent evaluation concerning the meeting by the foreign institution of all the eligibility criteria;• indirect acknowledgement – based on the direct acknowledgement made by a competent authority of another Member State, without NBR carrying out its own evaluation of the compliance with the eligibility criteria. <p>Foreign credit evaluation institutions of a third state can be acknowledged as eligible by NBR only by direct acknowledgement.</p> <p>According to Regulation 3/2008, the application can be submitted to NBR either</p>

(i) by the foreign credit evaluation institution which will be subject to acknowledgement; or (ii) by the credit institution intending to use the ratings of that foreign credit evaluation institution.

The minimal documentation required in supporting an acknowledgement application is the one provided under Appendix No. I and Appendix No. II of Regulation 3/2008. If it considers necessary, NBR can request information in addition to that specified under Appendix No. I.

Also, Regulation 3/2008 expressly provides for the criteria used by NBR for the purpose of acknowledging the eligibility of a foreign credit evaluation institution. Such criteria are predominantly technical in nature.

The list of eligible foreign credit evaluation institutions is published by NBR on its website. Reference shall be made for each eligible institution to the correspondence of the ratings with the levels of the evaluation scale of the credit quality, determined in accordance with the provisions of Regulation 14/19/2006.

Author

ciprian.timofte@tuca.ro

Insurance – Court Practice

Decision

Decision No. XXIII of 19 March 2007 of the Unites Sections of the High Court of Cassation and Justice, published in the Official Gazette of Romania, Part I, No. 123/15.02.2008

Relevant field

Recourse action filed by the insurer against persons guilty for the occurrence of an accident

Connections with other enactments

- Law No. 136/1995 on Romanian insurances and reinsurances;
- Law No. 32/2000 on insurance and insurance supervision companies.

Content of the decision

The Unites Sections of the High Court of Cassation and Justice established that the legal nature of the redress claim filed by the insurance company against persons liable for the occurrence of an accident is a commercial one, not a civil one. Therefore, the legal relation between the insurer and the person liable for the occurrence of an accident is governed by the commercial law.

The decision of the High Court of Cassation and Justice is binding on courts as of its publication in the Official Gazette (15 February 2008).

Author

ionut.serban@tuca.ro

Labor Law

1. Methodological norms for the calculation of the insurance contribution for work accidents and professional illnesses

Name of the enactment	Government Decision for the approval of the Methodological Norms for the calculation of the insurance contribution for work accidents and professional illnesses (“GD 144/2008”)
Publication	Official Gazette of Romania, Part I, No. 124/18.02.2008
Entry into force	18 February 2008
Connections with other enactments	Law No. 346/2002 on insurance for work accidents and professional illnesses, as further amended and completed (“Law 346/2002”)
Main provisions	<p>GD 144/2008 was issued for the application of Article 99 para. (1) of Law 346/2002.</p> <p>CD 144/2008 establishes the risk classes, which are determined based on several Frequency indices (the likelihood of occurrence of work accidents and of professional illnesses):</p> <ul style="list-style-type: none">• I₁ – the index representing the frequency of accidents and the number of persons suffering an accident in 1,000 employees;• I₂ – the index representing the frequency of work accidents resulting in invalidity and/or death and the number of employees who suffer accidents resulting in invalidity and/or death in 1,000 employees;• I₃ - the index representing the frequency of professional illnesses and the number of new cases of contracting professional illnesses in 1,000 employees;• I₄ – the index representing the frequency of employees working under special and hazardous conditions in 1,000 employees. <p>The term for submitting the statement and paying the contribution for work accidents and professional illnesses is up to the 25th of the month following the one for which the salary rights are paid.</p> <p>If the payment of the insurance contribution for work accidents and professional illnesses was not made by that time, the expenses for the insurance provisions and services provided for by law and performed by the insurer are recovered from the employer.</p> <p>The amounts will be recovered by the insurer, according to the legal provisions,</p>

after determining the work nature of the accident, or the professional nature of the illness, and the receipt of the supporting payment documents from the service providers.

2. Amendment of the methodological norms for the application of Law No. 76/2002 on the unemployment insurance system and stimulating the employment

Name of the enactment	Government Decision No. 149/2008 for the amendment of the Methodological Norms for the application of Law No. 76/2002 on the unemployment insurance system and stimulating the employment, approved by Government Decision 174/2002 („GD 149/2008”)
Publication	Official Gazette of Romania, Part I, No. 126 din 18/02/2008
Entry into force	18 February 2008
Connections with other enactments	Law No. 76/2002 on the unemployment insurance system and stimulating the employment (“ Law 76/2002 ”)
Main provisions	<p>This enactment amends the calculation basis on which employers have the obligation to withhold and pay the individual contribution to the unemployment insurance budget. It is represented by the gross income made on a monthly basis by the persons insured on a mandatory basis, by law, which is comprised of the following elements, for exemplification purposes:</p> <ul style="list-style-type: none">• the monthly basic gross salary, corresponding to the time actually worked, plus, as the case may be: the management allowance, the merit salary, as well as other salary-related rights which, according to the legal provisions, or to the collective bargaining agreements or the individual employment agreements, are part of the basic salary;• the monthly gross allowance for the persons who carry out their activity in elective positions, as well as for the persons who are appointed in the executive, legislative or court authority;• the remuneration of managers and the members of the directorate of stock companies, appointed under Company Law No. 31/1990, republished, as further amended and completed;• allowances for leaves, allowances for the temporary work incapacity periods, borne by units, according to the law, if the work or professional relations are suspended for temporary work incapacity, if it does not exceed 30 days, as well as any other allowances granted to

employees and bone by units, according to the law;

- the pecuniary rights granted as incentives, bonuses and premiums according to the legal provisions, or to the collective bargaining agreements or the individual employment agreements;
- any other amounts paid from the salary fund.

The calculation basis does not include the amounts which represent:

- the provisions borne from the state social insurance budget, including those granted for work accidents and professional illnesses;
- daily allowances for travel and delegation, allowances for delegation, secondment and transfer;
- royalties;
- the participation of employees in the company profit;
- the compensations granted according to the legal provisions, or to the collective bargaining agreements or individual employment agreements, to employees dismissed for reasons other than their fault.

In the months where the work or professional relations are established, terminated, suspended or resumed, except for the suspension for temporary work incapacity, if it does not exceed 30 days, the individual contribution to the unemployment insurance budget is calculated by applying the quota provided by law for the individual contribution on the calculation basis corresponding to the time actually worked that month.

Author

costel.gilca@tuca.ro

Public Services

Name of the enactment

Government Emergency Ordinance No. 13/2008 for the amendment and completion of Public Utility Community Services Law No. 51/2006 and of Water Supply and Sewerage Service Law No. 241/2006 ("GEO 13/2008")

Publication

Official Gazette of Romania, Part I, No. 145/26.02.2008

Entry into force

26 February 2008

Connections with other enactments

- Public Utility Community Services Law No. 51/2006 ("Law 51/2006");
- Government Emergency Ordinance No. 34/2006 on the award of public procurement agreements, public works concession agreements and

service concession agreements, approved, with amendments and completions, by Law No. 337/2006, as further amended and completed ("GEO 34/2006");

- Water Supply and Sewerage Service Law No. 241/2006 ("Law 241/2006");
- Local Public Administration Law No. 215/2001, republished ("Law 215/2001").

Main provisions

GEO 13/2008 amends Law 51/2006 and Law 241/2006, considering the need to eliminate the contradictions between the relevant provisions between the two enactments Law 251/2006 and GEO 34/2006.

Considering that Law 215/2001 used the concept of "*intercommunity development association*", while Law 51/2006 used the concept of "*community development association*" to refer to the associations between several administrative-territorial units, GEO 13/2008 amends Law 51/2006 by replacing the concept of "*community development association*" with the concept of "*Intercommunity development association having as object of activity public utility services*", as a special category of the intercommunity development association.

Intercommunity development associations having as object of activity public utilities services have the legal status of associations and they are incorporated and organized under Government Ordinance No. 26/2000, unlike the previous text of Law 51/2006, which defined community development associations as intercommunity cooperation public institutions.

Unlike community development associations in general, which are managed by a board of directors, the management bodies of intercommunity development associations having as object of activity public utility services are the general meeting, the managing committee and the censors' commission. GEO 13/2008 then introduces specific rules for the exercise of the prerogatives of local public administration authorities which are members of such associations, as well as the legal regulation of public utility systems or of the components thereof jointly performed by investment programs within the associations.

GEO 13/2008 removes the possibility of deliberative authorities of the local public administration to establish other public utility community services than those provided by Law 51/2006.

GEO 13/2008 also made changes with regard to the ways of managing public utility community services.

In respect of the delegated management of public utility community services, GEO 13/2008 expressly states that the public utility systems related to the services are transferred to the operators by concession pursuant to a management delegation agreement.

GEO 13/2008 introduces a definition of the management delegation agreement, an agreement whereby one or more administrative-territorial units, in capacity of delegator, awards to an operator, in capacity of delegate acting on its own risk and responsibility, the right and obligation to supply/provide a public utility service or activities contained in such service, including the right and obligation to manage and operate the technical-administration infrastructure related to the service/activities in exchange for a royalty, as the case may be.

In respect of the procedure of awarding the agreements for the delegation of management of the public utility community services, GEO 13/2008 distinguishes among three categories of services. Thus, the delegation of the services for water supply, sewage and sewage treatment, catchment, sewerage and discharge of pluvial waters (water supply and sewerage services) and of the services for the generation, transportation, distribution and supply of thermal energy in a centralized system is made by open public auction and if, after conducting two open public auctions, the management delegation agreement is not awarded, then it can be awarded through direct negotiation. Also, GEO 13/2008 sets forth a number of provisions concerning the conditions for the organization and performance of such award procedures.

The management delegation agreement can be awarded directly, without any specific procedure, in certain exceptional cases, to regional operators or to companies acting as operators and incorporated by way of reorganization of *regies autonomes* of local or county range or of public services of local or county range which managed public utility assets, activities or services.

In the case of services consisting in the sanitation of towns, public lighting and administration of the public and private domain of administrative-territorial units, the delegation of their management is made in accordance with the procedures provided by GEO 34/2006.

In the case of the local public transportation service, the delegation of its management is made in accordance with the Framework Regulations issued by

the National Regulator of Public Utility Community Services pursuant to the special legislation on local public transportation.

The maximal duration of management delegation agreements, including their extension, cannot exceed 49 years, according to the amendments brought by GEO 13/2008.

GEO 13/2008 also brought certain amendments to the provisions of Law 241/2006 for the purpose of harmonizing the provisions thereof with the corresponding amendments brought to Law 51/2006.

A specification provided by GEO 13/2008 refers to the scope of activities included in the water supply and sewerage services. Thus, such services include activities related to water supply, sewerage and treatment of used waters, catchment, sewerage and discharge of pluvial waters.

Repealed enactments

- Government Decision No. 1591/2002 approving the Framework Organization and Operation Regulations of water supply and sewerage public services, as further amended;
- Government Decision No. 1353/2003 approving the Framework Regulations and the Framework Agreement for the delegation of management of water supply and sewerage public services;
- Government Decision No. 1561/2004 approving the Framework Regulations for public lighting services, as further amended;
- Government Decision No. 433/2004 approving the Framework Regulations for the organization and operation of sanitation public services, as further amended;
- Government Decision No. 346/2004 for the approval of the Framework Regulations for the delegation of management of sanitation public services of towns and of the Framework Agreement for the delegation of management of town sanitation public services by way of concession.

Author

vlad.cercel@tuca.ro

Contractual Discipline

Name of the enactment

Order of the Minister of Economy and Finances No. 527/2008 of 22 February 2008 concerning the persons competent to ascertain misdemeanors and apply the sanctions for the failure to observe the measures for strengthening contractual discipline

Publication	Official Gazette of Romania, Part I, No. 154/28.02.2008
Entry into force	28 February 2008
Connections with other enactments	Law No. 469/2002 on certain measures for strengthening contractual discipline, as further amended and completed
Main provisions	The ascertaining of misdemeanors and the application of the sanctions provided under Article 10 of Law No. 469/2002 on certain measures for strengthening contractual discipline, as further amended and completed, is made by the appointed persons from the tax-related inspection bodies of the National Agency of Tax Administration.

Author

bogdan.halcu@tuca.ro

Transfer of Receivables Recovered among EU Member States

Name of the enactment	Order No. 395 of the Ministry of Economy and Finance of 11 February 2008 on the procedure for the transfer of the amounts recovered in Romania for receivables created in other Member States of the European Union, as well as for the transfer of the amounts recovered by the competent authorities of other Member States for receivables created in Romania (“ Order 395/2008 ”)
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Publication	Official Gazette of Romania, Part I, No. 131/20.02.2008
Entry into force	20 February 2008
Connections with other enactments	Government Emergency No. 92/2003 on the Code of Fiscal Procedure, Chapter XIII (“International Issues”)
Main provisions	Order 395/2008 regulates two procedures: one for the transfer to other Member States of the receivables recovered in Romania but created in other states, and one for the transfer from other Member States of the receivables recovered there but created in Romania.

The regulated procedure is a technical one, as it sets out the circuit of the documents to be drafted and the prerogatives of the competent bodies involved in this procedure.

As a general rule applicable to both procedures, we underscore that the recovery of the receivables is made in the national currency of the state where the applicant authority is headquartered, and the amount of the recovered receivable is transferred in that currency to the applicant authority the month following the recovery.

For the commencement of the transfer procedure for the amounts recovered in Romania, Order 395/2008 provides for a minimal amount of EUR 1,500 at the exchange rate as at the signing date of the application for recovery by the applicant authority. No such limit is provided for the transfer of the amounts recovered abroad.

Author

andreea.lisievici@tuca.ro




Contact details:

Victoriei Square
4-8 Nicolae Titulescu Avenue
America House, West Wing, 8th Floor
Sector 1
011141 Bucharest
Romania

 (40-21) 204 88 90

 (40-21) 204 88 99

 office@tuca.ro

 www.tuca.ro

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For details and clarifications on any of the topics dealt in our Legal Bulletin, please contact the following lawyers:

Florentin Țuca, Managing Partner (florentin.tuca@tuca.ro)

Cornel Popa, Partner (cornel.popa@tuca.ro)

Cristina Metea, Senior Associate (cristina.metea@tuca.ro)