

# Legal Bulletin

February 2009

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## Employment

### 1. New quotas for contribution to the social security budget

Name of the enactment	Law No. 19/2009 on the state budget of social security for the year 2009 ("Law 19/2009")
Publication	Official Gazette of Romania, Part I, No. 122/27.02.2009
Entry into force	2 March 2009
Main provisions	<p>Law 19/2009 establishes the quotas for the contributions to the public pensions budget (CAS) owed as of February 2009. The amount of the contributions borne by the employee, as well as by the employer is higher than those owed before February 2009:</p> <ul style="list-style-type: none"><li>• 31.3% for normal work conditions, of which 10.5% owed by employees and 20.8% owed by employers;</li><li>• 36.3% for abnormal work conditions, of which 10.5% owed by employees and 25.8% owed by employers;</li><li>• 41.3% for special work conditions, of which 10.5% owed by employees and 30.8% owed by employers.</li></ul> <p>The calculation base of the contribution owed by employees consists in the monthly gross revenue, and the calculation base for the contribution owed by the employer consists in the aggregate of the revenues that constitute the calculation base for the employer's own employees' contribution.</p> <p>The contribution quotas for unemployment and stimulation of employment established by Law 19/2009 are in the same amount as those paid until the enforcement of this law, i.e.:</p> <ul style="list-style-type: none"><li>• the contribution owed by employers to the unemployment insurance budget is of 0.5%;</li><li>• the individual contribution owed to the unemployment insurance state budget is of 0.5%;</li><li>• the contribution owed to the unemployment insurance budget by the persons insured based on the unemployment insurance agreement is</li></ul>

of 1%;

- the contribution owed by the employer to the Salary Debts Payment Guarantee Fund is of 0.25%.

As with the contributions owed to the public pensions budget, those owed for unemployment and the stimulation of employment are calculated, under the same conditions, in consideration of the same calculation base.

According to Law 19/2009, the contribution quotas owed by employers in accordance with the risk class, according to the provisions of Law No. 346/2002 on insurance for work accidents and professional diseases remain of the same value, i.e., they vary from 0.15% to 0.85%, applied to the aggregate of the gross revenues earned monthly by the employer's own employees.

Law 19/2009 establishes a higher level of the pension point, which is going to be increased from 1 April 2009 to RON 718.4 and from 1 October 2009 to RON 732.8.

Until 1 April 2009, the value of the pension point remains as established by Government Emergency Ordinance No. 226/2008 on certain financial-budgetary measures, i.e. RON 697.6.

Author

[mihai.anghel@tuca.ro](mailto:mihai.anghel@tuca.ro)

## 2. Holiday packages

Name of the enactment

Government Emergency Ordinance No. 8/2009 on granting holiday vouchers ("GEO 8/2009")

Publication

Official Gazette of Romania, Part I, No. 110/24.02.2009

Entry into force

24 February 2009

Main provisions

Through the issuance of GEO 8/2009, the Government contemplates the implementation of a measure to protect employees through the increase of salary revenues, as well as the encouraging of employers in granting facilities such as *holiday vouchers* in order to motivate the employees and stimulate their efficiency.

Thus, employers that hire personnel by executing an individual employment agreement *may grant* vouchers named *holiday packages*. The provision of services acquired through the intermediary of holiday packages is made in units authorized by the Ministry of Tourism. Holiday packages shall be issued by specialized units authorized by the Ministry of Public Finance.

The main provisions of GEO 8/2009 contemplate the following issues:

- the maximal level that may be granted to employees as holiday packages is the c/v of 6 minimal basic gross salaries as per country level guaranteed to be paid for an employee during a fiscal year;
- for the employer, the amounts corresponding to holiday packages are deductible in calculating the profit tax, and in calculating the revenue tax, in observance of the 6 salaries limit mentioned above;
- for the employee, the amounts corresponding to holiday packages are exempted from the payment of the revenue tax and of the related social security taxes;
- the amounts related to holiday packages are not taken into consideration, for the employer or for the employee, in establishing the rights and obligations determined in accordance with the salary;
- at the same time, the c/v of holiday packages is not taken into consideration upon establishing the salary;
- the employee that benefits from holiday packages no longer benefits from the holiday premium during the fiscal year;
- employers grant holiday packages only if they have obtained a profit or revenue during the previous fiscal year, as the case may be;
- the issuer of holiday packages with which the provision of the relevant services is contracted is established jointly by the employer and the trade union organizations duly organized and representing the employer or, where no trade union is established, with the employees' representatives. Public authorities and institutions in the budgetary sector contract such services in accordance with the procedures in force established for such entities.

Author

[andreea.oprisan@tuca.ro](mailto:andreea.oprisan@tuca.ro)

## Healthcare

Name of the enactment

Order No. 75/2009 for the approval of the Norms concerning the manner of calculating the prices of medicinal products for human use ("Order 75/2009")

Publication

Official Gazette of Romania, Part I, No. 62/02.02.2009

Entry into force

2 February 2009

Connection with other enactments

Law 95/2006 on health care reform, as further amended and supplemented

Connections with the community law

Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems

Main provisions

The endorsement by the Ministry of Health (“MH”) in respect of the price has to be obtained for medicinal products sold based on a doctor’s prescription and whose sale is authorized by the National Agency of Medicinal Products or based on the decision of the European Commission issued in accordance with the centralized procedure as per the applicable law.

In respect of the medicinal products sold without a doctor’s prescription (“OTC”), the price is established and changed freely. The price of OTC medicinal products newly authorized for marketing as well as the changed price established by the titleholder of the marketing authorization or by its representative, are notified to MH within 30 days from the putting up for sale.

The price notified or submitted to MH for endorsement purposes is the production price (the CIP price according to INCOTERMS 2000). Such price is proposed by the marketing authorization titleholder or its representative in RON. The proposed price has to be lower than or at least equal to the lowest price of the same medicinal product on the list of countries with which the comparison is made (the Czech Republic, Bulgaria, Hungary, Poland, Slovakia, Austria, Belgium, Italy, Lithuania, Spain, Greece and Germany – this list of countries may be changed annually by MH depending on the possibility of collecting the necessary data). For the purposes of the comparative analysis, the transformation of the production prices into RON is made based on the foreign exchange rate used in making the budget for the ongoing year (for the year 2009, the EURO rate is of RON 4 /EUR 1).

The price is endorsed for a limited period of one year, calculated as of the endorsement date. Sixty days before the expiry of the one-year period for which the price was approved, the marketing authorization titleholder or its representative has the obligation to send to MH the new documentation for the endorsement of the price with a view to obtain the re-endorsement of the price by MH. The updating of the production prices in RON for all the medicinal products existing in the National Catalogue is made annually, during the last week of November, in accordance with the foreign exchange rate used in making the following year’s budget.

If the price proposed by the marketing authorization titleholder or its representative is not compliant with Order No. 75/2009, including in terms of the minimal level of comparison with the abovementioned countries, the marketing authorization titleholder shall be sanctioned by exclusion of the relevant medicinal product from the list of commercial names of medicinal products for human use granted to insured persons in ambulatory treatment with or without a personal contribution, based on a doctor's prescription, in the social security system for health. The exclusion is effective for one year's duration from the issuance of the decision to this effect. If the relevant medicinal product has not yet been included on the list of medicinal products for human use granted to insured persons in ambulatory treatment with or without personal contribution, based on a doctor's prescription, the sanction is the non-inclusion on the abovementioned list for one year's duration, calculated as of the date on which the legal conditions for inclusion would be complied with.

The prices recorded in the National Catalogue of prices for medicinal products authorized to be sold in Romania are maximal and may not be exceeded.

The distribution mark-up is calculated in consideration of the production price, i.e.:

- for a production price of RON 0 to RON 50 – the maximal mark-up is of 14%;
- for a production price of over RON 50 to RON 100 – the maximal mark-up is of 12%;
- for a production price of over RON 100 to RON 300 – the maximal mark-up is of 10%;
- for a production price of over RON 300 – the maximal mark-up is of RON 30.

The pharmacy commercial mark-up is calculated as follows:

- for the wholesale price of RON 0 to RON 25 – the maximal mark-up is of 24%;
- for the wholesale price of over RON 25 to RON 50 – the maximal mark-up is of 20%;
- for the wholesale price of over RON 50 to RON 100 – the maximal mark-up is of 16%;

- for the wholesale price of over RON 100 to RON 300 – the maximal mark-up is of 12%;
- for the wholesale price of over RON 300 – the maximal mark-up is of RON 35.

Within 30 days from the publication in the Official Gazette of Romania No. 75/2009, marketing authorization titleholders or their representatives have the obligation to submit to MH, for the medicinal products for which the prices were already endorsed, the price documentation provided by Order No. 75/2009, for the purpose of re-endorsement of the prices. Within 3 days from the expiry of the 30 days' period, MH publishes the new prices on the website [www.ms-preturi.ro](http://www.ms-preturi.ro). Within 60 days from the publication of Order 75/2009 in the Official Gazette, the prices published on the abovementioned website are included in the National Catalogue and are applied immediately. If the obligation to submit the documentation for purposes of the re-endorsement of the price is not fulfilled within 30 days, the relevant medicinal product may no longer be sold upon the expiry of the 60 days' term.

Repealed enactments

Order No. 612/2002 for approving the Norms on the calculation of prices for medicinal products of human use

Author

[vlad.cercel@tuca.ro](mailto:vlad.cercel@tuca.ro)

## Real Estate

### 1. Territory organization and urban planning

Name of the enactment

Government Emergency Ordinance No. 10/2009 on the prorogation of the term provided under Article IV of Government Ordinance No. 27/2008 for the amendment and supplementation of Law No. 350/2001 on territory organization and urban planning ("**GEO 10/2009**")

Publication

Official Gazette of Romania, Part I, No. 118/26.02.2009

Entry into force

26 February 2009

Connections with other enactments

- Government Ordinance No. 27/2008 for the amendment and supplementation of Law No. 350/2001 on territory organization and urban planning ("**GO 27/2008**");
- Law 350/2001 on territory organization and urban planning ("**Law 350/2001**").

Main provisions

Initially, Article IV of GO 27/2008 established that the approval of urban planning

documentations submitted before the entry into force of that enactment, i.e. before 1 September 2008, would be performed in accordance with the legal provisions in force upon the request, but no later than 6 months from the entry into force of GO 27/2008.

However, taking into consideration:

- the risk of a conflict between public authorities and investors, with serious economic implications;
- the very large number of urban planning documentations pending endorsement and approval requested by private investors and drafted based on urban planning certificates or technical urban planning endorsements issued by city/town halls or county councils before the entry into force of GO 27/2008;
- the high risk for such investors of being unable to realize their investments;
- the current international economic situation, taking into consideration that it is imperious to ensure a stable investment environment,

the Romanian Government has prorogated the term mentioned above until 30 April 2009.

Author

[cristina.buric@tuca.ro](mailto:cristina.buric@tuca.ro)

## **2. Amendment of the Law 10/2001**

Name of the enactment

Law No. 1/2009 for the amendment and supplementation of Law No. 10/2001 on the legal framework of real estates nationalized abusively during 6 March 1945-22 December 1989 ("**Law 1/2009**")

Publication

Official Gazette of Romania, Part I, No. 63/03.02.2009

Entry into force

6 February 2009

Connections with other enactments

- Law 10/2001 on the legal framework applicable to real estates nationalized abusively during 6 March 1945-22 December 1989 ("**Law 10/2001**");
- Law 112/1995 for the regulation of the legal status of nationalized real estates with residence purposes ("**Law 112/1995**");
- Law 213/1998 on public property and the legal framework applicable thereto ("**Law 213/1998**").

Main provisions

Law 1/2009 mainly defends the interests of the former tenants that have



concluded sale-purchase agreements in respect of nationalized dwellings in observance of the provisions under Law 112/1995, either by granting new rights or by eliminating interdictions and limitations provided for them by the old regulation.

In this respect, one amendment refers to the abrogation of the rule provided under Article 2, paragraph 2 of Law 10/2001, according to which the persons whose real estates were nationalized without a valid title kept the capacity as owners they had upon the nationalization, which they exercised after the receipt of the first decision or of the court order for restitution. Therefore, they are no longer considered to have held continuously the ownership right over such real estates.

Also, the enactment establishes a new category of persons that are not entitled to the restitution in kind or to equivalent reparations, i.e. those persons whose estates were acquired illegally, in accordance with the court resolutions pronounced until 6 March 1945.

One of the essential new elements brought by Law 1/2009 refers to the rule of restitution only in equivalent of real estates and related lands which were alienated based on Law 112/1995, the possibility of the restitution in kind being excluded in this case.

The new regulation grants rights to the tenants who, in accordance with Law 112/1995, bought in good faith the real estates in which they lived and whose sale-purchase agreements were cancelled, as follows:

- the right to priority insurance of a residence from the residence funds managed by local councils and/or the Ministry of Development, Public Works and Dwellings and/or owned or managed by the *Regie Autonome "Administrația Patrimoniului Protocolului de Stat"*;
- the right to rent these real states and to buy them. Moreover, the amount which they have paid for the purchase of the nationalized real estate and which was subsequently restituted to the owner may constitute an advance for the new real estate which would be offered for purchase.

The tenants also benefit from an exemption from the payment of the stamp fee for requests or claims in court having as object the restitution of the market price of the real estates, concerning the sale-purchase agreements concluded in observance of the provisions of Law 112/1995 which were cancelled by final and

irrevocable court orders.

Pursuant to a new provision, sale-purchase agreements concluded based on Law 112/1995 are qualified, according to Law 1/2009, as authenticated deeds, constituting a title to property which may be opposed as of the conclusion thereof.

In respect of the obligation to indemnify the tenants for the added value they brought to the real estates with residence purposes through the necessary and useful improvements brought thereto, regardless of whether the real estate restituted according to Law 10/2001 was nationalized with or without a valid title, it is incumbent on the entitled persons.

Regarding the limitation brought to the ownership right of tenants to whom the apartments in which they lived were sold, in observance of the provisions under Law 112/1995, such limitation is repealed by the new regulation. Hence, Law 1/2009 eliminates the tenants' interdiction to alienate under any title the apartments in which they lived for 10 years after their purchase by any persons, except for the alienation to the entitled person who is the former owner of the real estate. Hence, in accordance with the current provisions, the former tenants who bought real estates based on Law 112/1995 may alienate them freely, regardless of the time elapsed from their acquisition.

In addition to the elements set out above, Law 1/2009 provides that, except if concluded in good faith, legal deeds for alienation will be declared null, including those executed as part of a privatization process, which have as object real estates nationalized without a valid title, considered thus only before the entry into force of Law 213/1998, unlike the former regulation which does not distinguish in relation to the date of finding the validity of the title under which the real estate is taken over. Law 1/2009 repeals the sanction by absolute nullity of the legal deeds for alienation, including those made as part of the privatization process, which have as object real estates taken over through the confiscation of assets, as a result of a court resolution condemning political crimes, provided by the criminal legislation, perpetrated as a manifestation of the opposition to the totalitarian communist system. From a procedural perspective, it is essential to refer to the provision for the obligation of the persons entitled to reparations according to Law No. 10/2001 to follow the procedures provided by this law after its entry into force, which procedures apply with priority.

Author

[cristina.buric@tuca.ro](mailto:cristina.buric@tuca.ro)

## State Aid

Name of the enactment	Order No. 138/2009 of the Ministry of Public Finance for the approval of the procedures concerning the contracting of Government public debt by issuing state guarantees (“ <b>Order 138/2009</b> ”)
Publication	Official Gazette of Romania, Part I, No. 62/02.02.2009
Entry into force	2 February 2009
Connections with other enactments	Government Emergency Ordinance No. 64/2007 on public debt, approved with amendments and supplementations by Law 109/2008, as further amended
Main provisions	<p>Order 138/2009 was issued with a view to meet the ever more serious funding needs of business entities, taking into consideration the current economic and financial context. Business entities have been forced lately to significantly limit or even cease their activity due to the impossibility to obtain loans from financial institutions. This enactment may facilitate the access to financing to the extent the interested business entities shall comply with the conditions imposed and, consequently, they will be able to contract a loan guaranteed by the Romanian state.</p> <p>In this respect, this Order approves the following procedures:</p> <ul style="list-style-type: none"><li>• the procedure of issuing the letter of guarantee for the contracting by business entities of a state-guaranteed loan from commercial banks;</li><li>• the procedure of business entities contracting a state-guaranteed loan from international financial institutions (IFI) or based on bilateral agreements (from foreign governments or government agencies);</li><li>• the procedure of issuing letters of guarantee for loans contracted by administrative-territorial units from commercial banks;</li><li>• the procedure of contracting by administrative-territorial units of a state-guaranteed loan from international financial institutions (IFI) or based on bilateral agreements (from foreign governments or government agencies).</li></ul> <p>These procedures provide in detail the stages to be completed and indicate the documents that business entities need to hold/obtain in order to receive financing funds.</p>

Author

[olga.cobasneanu@tuca.ro](mailto:olga.cobasneanu@tuca.ro)



Contact details:  
Victoriei Square  
4-8 Nicolae Titulescu Avenue  
America House, West Wing, 8<sup>th</sup> 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)

Cristian Radu, Senior Associate (cristian.radu@tuca.ro)