

# Legal Bulletin

January 2007

Capital Markets	1
Employment	3
Energy Law	5
Private Pensions	7
Social Insurance	9
Tax Law	10

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### Capital Markets

Name of the enactment

Regulation No. 31/2006 on the completion of some guidelines issued by the National Securities Commission for the purpose of implementing certain provisions of the European directives, approved by Order 106/2006 of the National Securities Commission ("**NSC Regulation 31/2006**")

Publication

Official Gazette of Romania, Part I, No. 5/04.01.2007

Entry into force

4 January 2007

Connections with the  
Community legislation

This Regulation was issued for the implementation of the following relevant directives:

- 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 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC;
- Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;
- Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions;
- Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;

## Main provisions

- Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC;
- Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes;
- Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

In implementing the provisions of the above European enactments, NSC Regulation 31/2006 starts by amending the definition of important terms in the field of capital market, such as: financial instruments, securities and host member state.

Note should be taken of the introduction in the definition of the term "securities" of the criterion of *non-negotiable* or *negotiable* titles on the capital market. In relation to shares and other equivalent securities, the definition also includes those which, although not yet negotiated on the capital market (such as was the case of the previous definition), are negotiable.

NSC Regulation 31/2006 amends a number of provisions of NSC Regulation 13/2005 (on the authorization and operation of the central depository, of setoff houses and of central counterparties), Regulation 15/2005 (on financial investment services), Regulation 1/2006 (on issuers and securities), Regulation 3/2006 (on the authorization, organization and operation of the Investors' Setoff Fund), Regulation 11/2006 (on the securitization of debts).

Many of the amendments brought by NSC Regulation 31/2006 to the provisions of NSC Regulation 1/2006 refer to aspects related to cross-border public offers and to NSC competencies as a host state or as a state of origin, as the case may be, in respect of offer prospectuses.

The amendment of NSC Regulation 1/2006 also provides for the strict mention that the provisions related to public takeover offers and to the withdrawal of shareholders are not applicable to collective investment bodies set up as companies the shares whereof can be repurchased upon the request of shareholders or to securities issued by central banks of Member States.

A major specification has been added to the provisions of NSC Regulation 1/2006 related to the application of Article 203 para. (1) of Law 297/2004 in respect of the 33% threshold which, if exceeded, results in the obligation to make a public offer.

According to the new enactment, this threshold shall be calculated both in respect of direct and of indirect shareholdings.

With regard to the thresholds of *95% of the share capital* and, respectively, *90% of the shares considered within the offer*, which are relevant for the application of the squeeze-out rules (Article 206 of Law 297/2004), it is mentioned that they will be considered to mean *95% of the total number of voting shares and 95% of the voting rights* and, respectively, *90% of the total number of voting shares and 90% of the voting rights within the offer*.

The provisions related to NSC right to order the de-listing of or the prohibition to trade securities by admitting to this right not only where it is found that the legal provisions were not observed but also where there are sound reasons to suspect that the regulations in force are not observed (in other words, even before an ascertaining procedure as provided under the law).

In addition, NSC Regulation 31/2006 rephrases provisions of Regulation 1/2006 related to the financial aspects, aimed in particular at including and referring to the issuers for which Romania is only a host state.

Regulation 31/2006 expressly provides (as a finding) for the application, as of 1 January 2006, of certain regulations of the European Commission on the implementation of some relevant directives.

## Employment

### 1 Legal provisions concerning the conveying the general record register of employees in electronic format

Name of the enactment	Order No. 20/2007 of the Minister of Labor, Social Solidarity and Family on the approval of the Procedure for conveying the general record register of employees in electronic format (" <b>Order 20/2007</b> ")
Publication	Official Gazette of Romania, Part I, No. 59/25.01.2007
Entry into force	25 January 2007
Main provisions	Order 20/2007 was issued based on the provisions of Article 3 para. (5) of Government Decision No. 161/2006 on the drawing-up and filling-in of the general record register of employees (" <b>Government Decision 161/2006</b> ")  Employers, either individuals or legal entities, shall have the obligation to draw up, fill in and convey the general record register of employees in electronic format. Such obligation is not incumbent on diplomatic missions, foreign consular

offices headquartered in Romania or on the representative offices incorporated in Romania by foreign legal entities for the periods within which the individual employment agreements concluded with Romanian citizens are registered with the local labor inspectorate.

The general record register of employees in electronic format is conveyed to the local labor inspectorate under the terms and conditions provided under Government Decision 161/2006, by means of the following procedures:

- on-line transmission through the <http://itmonline.inspectiamuncii.ro> portal, which is made available by the Labor Inspection;
- e-mailing based on the electronic signature;
- submission to the local work inspectorate, in electronic format.

## **2 Legal provisions on the drawing-up and filling-in of the general record register of employees**

Name of the enactment	Government Decision No. 53/2007 for the amendment of para. (2) of Article 4 of Government Decision No. 161/2006 on the drawing-up and filling-in of the general record register of employees
Publication	Official Gazette of Romania, Part I, No. 64/26.01.2007
Entry into force	26 January 2007
Main provisions	Government Decision 53/2007 extends the term within which employers have the obligation to convey to the labor inspectorate the general record register of employees in electronic format.

In this respect, employers who, as at the entry into force of Government Decision 161/2006, that is, 1 September 2006, employed personnel based on individual employment agreements, have the obligation to convey the register in electronic format to the local labor inspectorate within 90 days as of the entry into force of Government Decision 161/2006.

## **3 The sole national collective bargaining agreement**

Name of the enactment	The sole national collective bargaining agreement for 2007-2010 No. 2895/2006
Publication	Official Gazette of Romania, Part I, No. 5/29.01.2007
Entry into force	The sole national collective bargaining agreement for 2007-2010 No. 2895/2006 (the " <b>Collective Agreement</b> ") applies as its registration with the Ministry of Labor, Social Solidarity Family, that is, 29 December 2006
Main provisions	The collective agreement sets forth the level of the minimal gross salary at

national level at RON 440for a full-time job, starting 1 January 2007.

In addition, the Collective Agreement amends the procedure for performing the prior disciplinary investigation. More specifically, the employee to be investigated for disciplinary purposes shall be summoned in writing at least 5 business days before the date of the investigation.

The collective agreement also amends the procedure of the collective redundancy. In this respect, it amends the terms within which the employer about to proceed to mass layoffs needs to start the discussions with the trade unions.

The collective agreement supersedes the Sole National Collective Agreement for 2006-2007 No. 2001/2005.

## Energy Law

Name of the enactment	Electricity Law No. 13/2007
Publication	Official Gazette of Romania, Part I, No. 51/23.01.2007
Entry into force	22 February 2007
Connections with the Community legislation	The law transposes Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC.
Main provisions	<p>The main amendments brought by the new energy law are:</p> <ul style="list-style-type: none"><li>• The electricity market, which is currently made up of the regulated market and of the competition market, will be opened by a progressive increase in the portion of the competition market. The regulated market for electricity and related services will operate until the full opening of the market. However, even after the full opening of the electricity market, the National Authority for Energy Field Regulations ("ANRE") will be enabled to set the prices and the contracted amounts for wholesale transactions between producers and the suppliers to households.</li><li>• In accordance with the Community legislation, the new electricity law introduces provisions related to the unbundling of the electricity distribution and electricity supply activities. According to the new provisions, if the distribution operator is part of a vertically integrated</li></ul>

undertaking, the former should be independent at least in terms of its legal form, organization and decision making from other activities not relating to distribution. The notion of “vertically integrated undertaking” means an undertaking or a group of undertakings whose mutual relationships are of control and where the undertaking/group concerned is performing at least one of the functions of transmission or distribution and at least one of the functions of generation or supply of electricity. The law sets forth the minimal criteria that need to be applied in order to ensure the independence of the distribution operator. The unbundling process needs to be implemented by the Romanian electricity distribution and supply companies no later than 30 June 2007.

- The provisions referring to independence between the distribution and supply activities also apply to the transmission and system operator that is part of a vertically integrated undertaking, as regards the activities not relating to electricity transmission.
- This law introduces the concept of last option supplier, i.e. the supplier appointed by ANRE for a period of 1 to 5 years, starting 1 July 2007, for the purpose of providing the supply service under specific regulated conditions. The last option supplier has the obligation to supply electricity to the eligible consumers in the licensed area that have exercised their right to select the supplier, but whose supplier is either about to lose its supply license or is unable to perform its electricity supply obligations, so that these eligible consumers have no other source of electricity supply upon the cease of the supplier’s activity. The electricity is supplied by the last option supplier against tariffs set in accordance with ANRE regulations.
- The new energy law regulates the right of the relevant ministry to initiate a public tender procedure in connection with the construction of new electricity generation capacities if, further to the authorization procedure, the electricity generation capacities that are being built or the measures taken in terms of managing the energy efficiency/demand are not sufficient for securing the electricity supply for the domestic consumption.
- The new electricity law introduces new provisions in respect of the requirements for exercising the rights of use (Romanian *drept de uz*) and easement (Romanian *drept de servitute*) on the private properties

affected by energy capacities. Unlike the energy capacities realized before the entry into force of the new electricity law, in relation to which the right of use and easement is exercised free of charge (the same solution was provided by the prior regulation), for the energy capacities built after the entry into force of the new electricity law, the means for exercising the rights of use and easement will be subject to framework agreements to be concluded between the owners of the respective plots of land and the holders of licenses and authorizations.

Repealed enactment

Electricity Law No. 318/2003

## Private Pensions

Name of the enactment

Law No. 23/2007 for the amendment and completion of Law No. 411/2004 on privately managed pension funds ("Law 23/2007")

Publication

Official Gazette of Romania, Part I, No. 61/25.01.2007

Entry into force

28 January 2007

Connections with other enactments

Law no. 411/2004 on privately managed pension funds ("Law 411/2004")

Main provisions

Law 23/2007 brings a number of material amendments and completions to Law 411/2004, setting the legal framework of Tier II of the pension system.

The most important amendments and completions brought to Law 411/2004 are:

- article 3 on the financial resources of the pension fund has been amended and completed;
- the management expenses are borne by the administrator;
- in the case of changing the place of work, the domicile or the residence to another state, the participants can opt between continuing to pay the contributions to a Romanian pension fund or to pay contributions to a pension fund located in the respective country, if this is not in breach of the legislation of that state;
- the name of the pension fund needs to contain the phrase "privately managed pension fund";
- the prospectus of the private pension plan is drafted and proposed by the administrator and its amendment is performed by the administrator based on the approval of the Commission for Supervision of the Private pension System (the "Commission") and the participants will be further informed on such amendment;
- the pension fund needs to be authorized by the Commission, after the



- authorization of the administrator and of the optional pension plan;
- the administrator needs to draft a written statement on the investment policy;
  - the investments of the assets of privately managed pension funds are exempted from tax;
  - the assets of the pension fund cannot be provided as security and cannot be used for granting loans, under the sanction of the absolute nullity of the documents providing the security or granting the loan;
  - the person who has not contracted a pension fund within 4 months as of the date it has the obligation to do so is allocated arbitrarily to a pension fund by the institution which has the legal prerogative to ensure the record of the persons insured in the public pension system (the registration institution);
  - the contribution and the transfer of cash to a pension fund are converted into units in the fund within at most two days as of their collection;
  - the new law repeals Article 53 of Law 411/2004, which provided that, if the profitability rate of a pension fund is lower than the minimal profitability rate of all the pension funds for 8 consecutive quarters, the Commission can withdraw the administrator's management authorization;
  - starting 1 January 2007, any entity authorized in another Member State or of the European Economic Area can be an administrator;
  - the minimal share capital for the administration of a pension fund has been reduced from EUR 5 million to EUR 4 million;
  - founders need to register the management company with the National Trade Register Office within 30 calendar days as of receipt of the decision to authorize the set-up;
  - the administrator needs to be authorized by the Commission for purposes of the management of privately managed pension funds;
  - the new law amends Article 88 of Law 411/2004 which refers to the management fee, so that such fee is made up of:
    - the deduction of a share in the paid contribution, but no more than 2.5% (the share was of 3.5% according to Law 411/2004), provided that such deduction is performed before the transformation of the contributions in fund units;
    - the deduction of a percentage from the net assets of the privately

managed pension fund, but no more than 0.05% per month, as determined in the prospectus of the private pension plan.

- the chapter on the reserve Fund (Chapter XIII of Law 411/2004) is repealed;
- the amount due for the private pension cannot be lower than the value of the paid contributions, reduced by the transfer penalties and by the legal fees; therefore, the law repeals the provisions on the adjustment of such pension by the consumption index of the prices which occurred from the payment date of the contribution to the date of the retirement;
- chapter XX of Law 411/2004 on the Pension Security Fund has been renamed "Technical provisions and guarantees regulated and supervised by the Commission", with a new content, in respect of the administrator's obligation to maintain a permanent volume of technical provisions adequate for the financial obligations resulting from the prospectuses of the private pension plans that it manages;
- within 4 months as of the granting of the authorizations to administrators, the Commission organizes and keeps track of the performance and completion of the procedure for electing and contracting the pension funds by participants and, within 30 calendar days as of the completion of the election procedure, the participants who did not express their option to the pension funds in spite of their obligation to do so are allocated ex officio. After the operation of allocating ex officio the participants to the pension funds is completed, the administrators begin to collect the contributions.

## Social Insurance

Name of the enactment	Government Ordinance No. 3/2007 on certain financial-fiscal measures in the social security field ("GO 3/2007")
Publication	Official Gazette of Romania, Part I, No. 67/29.01.2007
Entry into force	1 February 2007
Connections with other enactments	Government Emergency Ordinance No. 148/2005 on health leaves and health social insurance allowances, as further amended and completed ("GEO 158/2005") Law No. 487/2006 of the State social security budget for 2007 ("Law 487/2006")
Main provisions	The amendment that has the most significant impact on the activity of Romanian

companies refers to the calculation of the contribution for health leaves and health social insurance allowances provided under GEO 158/2005. More specifically, such contribution will no longer be deducted from the quotas of the social insurance contributions (CAS) established by Law 487/2006. For example, the CAS due by the employer for normal work conditions will be of 19.5% and that due by employees will be of 9.5%.

## Tax Law

### 1 Legal provisions on the requesting of the registration certificate for VAT purposes by newly-established companies

Name of the enactment	Order No. 3/2007 of the President of ANAF on the Procedure of requesting the registration certificate for VAT purposes for the companies dealing in trading businesses registering for VAT purposes as of set-up (" <b>Order 3/2007</b> ")
Publication	Official Gazette of Romania, Part I, No. 19/11.01.2007
Entry into force	11 January 2007
Main provisions	<p>Tax-payers set up as of 1 January 2007 and requesting registration for VAT purposes as of registration have the obligation to request, after the registration with the trade register, the release of the certificate of registration for VAT purposes.</p> <p>For the purpose of obtaining the certificate of registration for VAT purposes, tax-payers submit to the fiscal body in the jurisdiction whereof their headquarters is located a special form together with a copy of the registration certificate issued by the trade register.</p> <p>The certificate of registration for VAT purposes is released within 24 hours after the registration with the competent fiscal body of an application for the release of the certificate of registration for VAT purposes.</p> <p>This administrative procedure bears no influence on the date as of which the registration for VAT purposes of the tax payer is valid. The date remains the date when the registration certificate is released by the trade register office of the tribunal.</p>
Repealed enactments	Order No. 545/2004 of the President of ANAF for the approval of the Procedure for granting the endorsement for registering the amendments related to the registration/de-registration of companies dealing in trading businesses as a payer of the value added tax.

**2 The submission of fiscal statements by electronic means of transmission**

Name of the enactment	Order No. 2210/2006 of the Ministry of Public Finance in respect of the submission of fiscal statements by electronic means of transmission
Publication	Official Gazette of Romania, Part I, No. 74/31.01.2007
Entry into force	31 January 2007
Main provisions	Legal entities which are payers of taxes and have their fiscal domicile in Bucharest City or in Ilfov County, except for large tax payers, which are administrated by the General Department for Administration of Large Tax Payers, have the possibility to submit certain fiscal statements by electronic means of transmission as an alternative for submitting their statements.

The fiscal statements considered are:

- the statement on the liabilities to the general consolidated budget, code 14.13.01.01/a;
- rectifying statement, code 14.13.01.00/r;
- the value added tax discount, code 14.13.01.02;
- the statement related to the profit tax, code 14.13.01.04;
- the special value added tax discount, code 14.13.01.02/s;
- refresher statement, code 14.13.01.02/r;
- discount related to excises, code 14.13.01.03;
- the discount related to the tax on the petrol and natural gas of domestic production, code 14.13.01.05; and
- the status of the main economic-financial indicators related to the gambling activity.

For submitting the fiscal statement the, the service to be used is that available on the website of the Ministry of Public Finance. The date of submitting the statement is the date of its registration on the website of the Ministry of Public Finance.

In order to use the electronic means for the submission of the statements through electronic means, tax payers have the obligation to request the digital certificate for the identification of the legal representative, which is valid for two years.




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