

# Legal Bulletin

July 2008

<b>Administrative Law</b>	<b>1</b>
<b>Advertising</b>	<b>3</b>
<b>Banking Law</b>	<b>4</b>
<b>Commercial Law</b>	<b>6</b>
<b>Labor Law</b>	<b>7</b>

July 2008

## Legal Bulletin

### Administrative Law

Name of the enactment	Government Decision No. 717/2008 for the approval of the framework Procedure on the organization, performance and awarding of the management delegation agreements for Community services of public utilities, of the framework criteria for selection of the offers for Community services of public utilities and of the framework management delegation agreement of Community services of public utilities (“GD 717/2008”)
Publication	Official Gazette of Romania, Part I, No. 546/18.07.2008
Entry into force	18 July 2008
Connections with other enactments	<ul style="list-style-type: none"><li>• Law No. 51/2006 on Community services of public utilities, as further amended and completed (“Law 51/2006”);</li><li>• Law No. 241/2006 of the water supply and sewerage, as further amended and completed (“Law 241/2006”).</li></ul>
Main provisions	<p>GD 717/2008 approves the framework Procedure on the organization, performance and awarding of the delegation agreements for the water supply and sewerage service and of the public service of thermal energy supply (the “Procedure”), such services being included in the category of Community services of public utilities. Also, it approves the Criteria for the framework selection of the offers submitted as part of the procedures for the management delegation of such services and a rough form of the agreement for the delegation of management.</p> <p>The procedure is applicable for the delegation by administrative-territorial units or inter-Community development associations, in capacity of principals, in full or in part, of their own competences and responsibilities concerning such services, including the concession of the related public utility systems. The procedure is also applicable to the sub-delegation, by regional operators of the water supply and sewerage service, of the management of an activity / several activities as part of the service, in observance of the provisions of Article 21<sup>1</sup> para. (3) of Law 241/2006.</p> <p>The procedure regulates two procedures for the award of management delegation agreements:</p>

- Open public auction;
- Direct negotiation.

The procedure does not apply to exceptional cases where it is allowed to award directly the management delegation agreements, which are regulated by the provisions of Article 31<sup>1</sup> of Law 51/2006.

The delegation of the water supply and sewerage service and of the public service of thermal energy supply is performed mainly through the procedure of open public auction. The procedure of direct negotiation can be applied only when, after two open public auction procedures, the management delegation agreement could not be awarded.

The starting up of the procedure requires that the principal drafts a study of appropriateness for the grounding and establishing of the optimal solutions for the service management delegation.

The management delegation procedure is initiated by publishing an announcement in the Official Gazette of Romania, Part VI, in a national newspaper and a local newspaper and, optionally, in the Official Journal of the European Community.

The procedure establishes rules concerning the drafting of the documentation for the awarding of the management delegation agreement, the evaluation commission for the offers, requests of clarifications and answers thereto, the submission of offers and the other procedural issues related to the awarding of the management delegation agreements through the procedure of open public auction and direct negotiation.

In the process of awarding a management delegation agreement, the evaluation commission runs through two stages: (i) determining the business entities which fulfill the eligibility requirements and (ii) evaluating the offers of the business entities that fulfill the eligibility requirements, by applying the selection criteria.

In the case of the open public auction, the management delegation agreement can be awarded subject to the submission of at least 3 offers that fulfill the eligibility requirements. Otherwise, the open public auction procedure is repeated or the direct negotiation procedure can be applied, as the case may be.

If a winning offer is established further to the procedure of awarding the management delegation agreement, the bidding business entity is invited to conclude the management delegation agreement with the administrative-

territorial unit or the intra-Community development association.

The procedure provides for the elements that need to be provided in the management delegation agreement, including the categories of goods used for the performance of the agreement, classified as return goods, takeover goods and own goods.

The procedure also contains provisions concerning the monitoring and control of the management delegation process, the prerogatives in this sense being incumbent on the National Authority of Regulation for the Community Services of Public Utilities, the regulator vested with the prerogative of monitoring and controlling the process of delegating the management of the Community services of public utilities within its scope of regulation.

Author

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

## Advertising

Name of the enactment	Law No. 158/2008 on misleading advertising and comparative advertising (“ <b>Law 158/2008</b> ”)
Publication	Official Gazette of Romania, Part I, No. 559/24.07.2008
Entry into force	27 July 2008
Connections with other enactments	Law No. 148/2000 on advertising
Connections with Community norms	European Parliament and Council Directive 2006/114/CE concerning misleading and comparative advertising
Main provisions	Law 158/2008 transposes the Directive 2006/114/CE concerning misleading and comparative advertising.

Law 158/2008 defines the misleading advertising and prohibits the use of such. In order to determine whether advertising is misleading, the law establishes criteria such as: the characteristics of the goods and services, the price or the manner in which the price is calculated, as well as the nature, attributes and rights of the advertiser.

On the other hand, comparative advertising is permitted when the following conditions are cumulatively met:

- it is not misleading;
- it compares goods or services meeting the same needs or intended for

the same purposes;

- it does not discredit or denigrate the trademarks or the names of a competitor;
- in the case of products with designation of origin, it relates to products with the same designation;
- it does not take unfair advantage of the reputation of a trademark, a trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- it does not use the protected trademarks of other products;
- it does not create confusion among traders.

The law establishes that the Ministry of Economy and Finance is competent to settle any complaint filed by the persons who have a legitimate interest in respect of the advertisements that use misleading or unlawful comparative advertising. If the information is found to be grounded, the Ministry of Economy and Finance can prohibit the broadcast of such advertising. If the said misleading or unlawful comparative advertising is broadcast by the audiovisual media, the National Council of Audiovisual will issue a decision prohibiting the broadcast thereof after the prior communication of the decision taken by the Ministry of Economy and Finance.

The law also introduces misdemeanor sanctions of RON 3,000 to RON 30,000 for the use of misleading or unlawful comparative advertising. Also, the breach of the decisions issued by the Ministry of Economy and Finance to prohibit the broadcast of such advertising is sanctioned by a fine of RON 6,000 to RON 60,000.

Author

[roxana.chirita@tuca.ro](mailto:roxana.chirita@tuca.ro)

## Banking Law

Name of the enactment

Regulation No. 9/03.07.2008 of the National Bank of Romania on know your customer rules for the purpose of preventing money laundry and the financing of terrorism (the “**Regulation**”)

Publication

Official Gazette of Romania, Part I, No. 527/14.07.2008

Entry into force

14 July 2008

Main provisions

The purpose of the Regulation is the implementation by credit and financial institutions of know your customer rules for the purpose of preventing money laundry and the financing of terrorism, in consideration of Law No. 656/2002 for

the prevention and sanctioning of money laundry and of the enactments issued for its application.

Thus, the Regulation establishes the obligation of such institutions to draft and implement know your customer internal norms, according to the nature, volume, complexity and scope of their activity, adapted to the risk degree associated to the categories of clients of the institution and to the degree of risk of the marketed products/services. Such norms have to be drafted, approved internally and sent to the National Bank of Romania – the Supervision Department within at most 90 days after the entry into force of the Regulation.

The Regulation also provides for the main aspects that such norms must include (*inter alia*, the policy for accepting customers, the procedures for identifying and monitoring them, other know your customer rules, differentiated as per degrees of risk, the procedures of internal and external reporting, etc.).

Moreover, the Regulation also requires from the institutions to which it is addressed a number of procedural provisions concerning, *inter alia*, the systems for detecting dubious transactions and unusual transactions, the application of the standards concerning the existing clients that change their risk category, the archiving of documents, requirements applicable to the personnel and their access to documents and information, etc.

The Regulation also establishes for such institutions certain reporting obligations, concerning the clients and the operations performed for them, including any analysis that the institutions made in order to detect the unusual or suspect transactions or in order to determine the risk degree associated to a transaction or to a client – upon the request of the National Bank of Romania.

The sanctions provided for the breach of the provisions of the Regulation, in the cases determined as misdemeanors, are the fine, of RON 15,000 to RON 50,000, as well as the ancillary misdemeanor sanctions (for example: confiscations, the suspension or withdrawal of the endorsement, consent or authorization for the performance of the activity, closing the unit).

#### Repealed enactments

The enactment repeals:

- Norm No. 3/2002 of the National Bank of Romania on the standards for having knowledge of the client base, published in the Official Gazette of Romania, Part I, No. 154/04.03.2002, as further amended and completed;

and

- Regulation No. 8/2006 of the National Bank of Romania on the standards for having knowledge of the client base of non-banking financial institutions, as published in the Official Gazette of Romania, Part I, No. 941/21.11.2006.

Author

[patricia.enache@tuca.ro](mailto:patricia.enache@tuca.ro)

## Commercial Law

Name of the enactments

- Technical Norm No. 4/2008 on the cheque (issuer – the National Bank of Romania);
- Technical Norm No. 5/2008 on the bill of exchange and the promissory note (issuer – the National Bank of Romania);
- Norm No. 6/2008 for the amendment and completion of Framework Norm No. 7/1994 on the cheque trade (issuer – the National Bank of Romania);
- Norm No. 7/2008 for the amendment and completion of Framework Norm No. 8/ 1994 on the trade of bills of exchange and promissory notes (issuer – the National Bank of Romania).

Publication

- Technical Norm 4/2008 and Technical Norm 5/2008 were published in the Official Gazette of Romania, Part I, No. 500/03.07.2008;
- Norm No. 6/2008 was published in the Official Gazette of Romania, Part I, No. 509/07.07.2008;
- Norm No. 7/2008 was published in the Official Gazette of Romania, Part I, No. 512/08.07.2008.

Entry into force

- Technical Norm No. 4/2008 and Technical Norm No. 5/2008 enter into force on 1 September 2008;
- Norm No. 6/2008 and Norm No. 7/2008 enter into force on 10 October 2008.

Main provisions

Technical Norm No. 4/2008 and Technical Norm No. 5/2008 establish the technical conditions for printing, drafting and securing cheques, or bills of exchange and promissory notes.

Norm No. 6/2008 and Norm 7/2008 establish the conditions for completing, using and processing (by electronic processing inclusively) of cheques, or

bills of exchange and promissory notes. The four norms mentioned above establish the mechanisms for the implementation of Emergency Ordinance No. 38/2008 and Emergency Ordinance No. 39/2008 on the electronic processing of operations with cheques, bills of exchange and promissory notes through their electronic processing, their transmission in electronic form, the presentation, and acceptance for payment of such credit/payment instruments.

**Repealed enactments**

Technical Norm No. 4/ 2008 implicitly repeals Technical Norm No. 9/1994 on the cheque (issuer – the National Bank of Romania);

Technical Norm No. 5/ 2008 implicitly repeals Technical Norm No. 10/ 1994 on the bill of exchange and promissory note (issuer – the National Bank of Romania).

**Author**

[radu.ticleanu@tuca.ro](mailto:radu.ticleanu@tuca.ro)

## Labor Law

**Name of the enactment**

Law No. 134/2008 for the approval of Government Emergency Ordinance No. 56/2007 on the employment and secondment of foreign workers in Romania

**Publication**

Official Gazette of Romania, Part I, No. 522/10.07.2008

**Entry into force**

17 July 2007

**Main provisions**

The amendments brought to Government Emergency Ordinance 56/2007 by Law 134/2008 refer to the professional qualification of the employee under secondment, the documents that need to be submitted by the employer for the purpose of obtaining the labor permit for the permanent employees, as well as the person that may submit the documentation required for obtaining the labor permit for the foreign employees working in Romania. In addition, Law 134/2008 repeals the provision which provided that the labor permit for the employees under secondment is required for the performance of lucrative activities in Romania for a period of more than 60 days. Therefore, the labor permit must also be obtained if the employees under secondment carry out a lucrative activity in Romania for a period of less than 60 days. Finally, Law 134/2008 brings an amendment according to which the documents required in order to obtain the labor permit will no longer be supra-notarized, but only notarized.

**Author**

[gabriela.dinu@tuca.ro](mailto:gabriela.dinu@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

#### Disclaimer

This material is for reference only. It does not seek to provide final legal Advice, which may be requested according to each specific legal issue.

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)