

# Legal Bulletin

June 2009

Capital market	1
Regulations concerning the gambling activity	2
Corporate	3
Financial services/Consumers' protection	4
Labour Law	5
Natural gas	6
Pharmacy Law	7
Public procurement and concessions	9
Railway transportation	11
Real estate	13

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## Legal Bulletin

### Capital market

Name of the enactment	Order No. 36/2009 of the National Securities Commission (“ <b>NSC</b> ”) approving Instruction No. 3/2009 on direct holdings and indirect holdings (“ <b>Instruction 3/2009</b> ”)
Publication	Official Gazette of Romania, Part I, No. 442/29.06.2009
Entry into force	29 June 2009 <ul style="list-style-type: none"><li>• Capital Market Law No. 297/2004, as further amended and supplemented;</li><li>• NSC Regulation No. 1/2006 on issuers of securities and securities operations, as further amended and supplemented.</li></ul>
Main provisions	<p>Instruction No. 3/2009 establishes the main rules for calculating the percentage of 33% from the voting rights that triggers the obligation to make mandatory public offers, taking into account the direct holdings as well as the indirect holdings.</p> <p>The direct holding of voting rights results from the capacity of shareholder of the concerned issuer.</p> <p>The indirect holding of voting rights is obtained if an entity holds voting rights through the persons with whom it acts concertedly, which are also issuers’ shareholders, in the following cases:</p> <ul style="list-style-type: none"><li>• The relevant entity participates in the shareholding of a shareholder of the issuer and, at the same time, is a shareholder of the issuer;</li><li>• The entity may influence the manner of exercising the voting right by a shareholder of the issuer, by (a) holding directly or indirectly, through a chain of holdings, the voting rights in that shareholder, or (b) controlling the management bodies of the issuer’s shareholder or, contractually, the manner of exercising the voting rights in the issuer’s shareholder. In the latter case, it is not mandatory for the entity to be at the same time a shareholder of the issuer, but in that case the obligation to make the mandatory public offer is applicable only in specific cases.</li></ul> <p>As temporary provisions, it is important to note that the entities holding, directly</p>

or indirectly, according to Instruction No. 3/2009, more than 33% of the voting rights in an issuer and which have not carried out any mandatory public offer according to Article 203 of Law 297/2004 have the obligation to launch such offer within 2 months from the entry into force of Instruction No. 3/2009. The breach of this obligation is sanctioned in accordance with the provisions of Law 207/2004.

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## Regulations concerning the gambling activity

Name of the enactment

Government Emergency Ordinance No. 77/2009 on the organization and operation of gambling activities ("GEO 77/2009")

Publication

Official Gazette of Romania, Part I, No. 439/26.06.2009

Entry into force

26 June 2009, except for certain articles with a delayed date of entry into force.

Main provisions

GEO 77/2009 was passed for the purposes of amending, improving and supplementing the old regulations establishing the legal framework applicable to the reorganization and operation of gambling games. The most important of the new provisions set forth by GEO 77/2009 are:

- It enshrines express definitions for each of the constitutive elements of a gambling game (i.e. game and/or set, participation fee or bet, winnings or prizes fund, game fixtures, organizer, participants);
- It specifies clearly the categories of gambling games for which the Gambling Authorization Commission grants the license for organization of gambling games / the permit for operation of gambling games, with representative definitions for each type of gambling game;
- It provides for the need to obtain, for the purpose of organizing and operating gambling games, a license for organization of gambling games (with a validity of 5 years), as well as a permit for operation of gambling games (with a validity of 1 year);
- It regulates the main issues related to obtaining the license for organization of gambling games and the permit for operation of gambling games (conditions for granting, validity term, related taxes, etc.);
- It expressly establishes the need for gambling game organizers to prove, upon the application for the license, a minimal value of the subscribed and paid-in share capital (such values are provided in the Appendix to GEO 77/2009);
- It regulates the introduction of gambling game fixtures in Romania, as well as

the trade and use thereof on the national territory;

- It regulates in detail the powers granted to the Gambling Authorization Commission, as well as the means it has available in exercising such powers;
- It regulates several new offenses in connection to activities in the gambling field (including the classification as offenses of pyramid-type gambling games or acts regarding advertisement, publicity or any other promotional activity concerning prohibited activities and gambling games), and it increases the punishments for the offenses that were also regulated by the former regulation.

Repealed enactment

Government Emergency Ordinance No. 69/1998 on authorizing activities in the gambling field

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## Corporate

Name of the enactment

Law No. 203/2009 approving Government Emergency Ordinance No. 79/2008 on economic-financial measures at the level of large business entities (“**Law 203/2009**”)

Publication

Official Gazette of Romania, Part I, No 389/09.06.2009

Entry into force

12 June 2009

Main provisions

Law 203/2009 approves with amendments and supplementations GEO 79/2008, which was initially passed in order to remove the unjustified possibility of two business entities management systems running in parallel, the first one applicable to private companies, established by Law 31/1990, according to which the executive management is delegated to the managers who exercise their powers pursuant to a mandate agreement, and the second one is applicable to *regies autonome*, national companies and enterprises, as well as companies in which the State or an administrative authority is a majority shareholder, established by GEO No. 79/2001 on strengthening economic-financial discipline and other financial provisions, according to which management powers are exercised by leaders based on a performance agreement, appended to the individual employment agreement.

The amendments and supplementations brought by Law 203/2009 refer to the following issues:

- Law 203/2009 eliminates the possibility of granting a prize to the president of a business entity pro rata to the aggregate degree of exceeding the performance objectives and criteria established in the mandate agreement, and maintains only the possibility, in the case of fulfilling during the period cumulated from the beginning of the year the performance objectives and criteria mentioned above, of restituting to the president of a business entity the amounts withheld from the monthly remuneration pro rata to the global degree of non-compliance with the performance objectives and criteria established in the mandate agreement;
- Law 203/2009 eliminates the possibility of granting, in addition to the increase of the average monthly gross salary as per the labor productivity increase index, the increase of the average salary based on savings resulting from the cut-down of expenses to RON 1,000 of revenues;
- Law 203/2009 sets forth the obligation to approve the specific indicators for creating the salary fund for companies that provide community services of public utilities defined by Law No. 51/2006 on community services of public utilities, as further amended and supplemented. The indexes will be drawn up and approved, through an order of the Minister of Administration and Interior, within 90 days from the publication of Law No. 203/2009 in the Official Gazette of Romania, Part I.

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## Financial services / Consumers' protection

Name of the enactment

Government Emergency Ordinance No. 65/2009 for the amendment of Government Ordinance No. 85/2004 on consumers' protection upon the execution and performance of distance contracts for financial services ("GEO 65/2009")

Publication

Official Gazette of Romania, Part I, No. 412/17.06.2009

Entry into force

17 July 2009

Connections with other enactments

Government Ordinance No. 85/2004 on consumers' protection upon the execution and performance of distance contracts for financial services ("GO 85/2004")

## Main provisions

The main amendments brought to GO 85/2004 refer to:

- The application of the requirements of GO 85/2004 in the case of agreements with successive performance of operations, i.e. (i) concerning the framework agreement, when there is one; (ii) concerning the first operation, when there is no framework agreement; and (iii) in respect of each operation carried out during a period longer than one year from the previous operation, when there is no framework agreement;
- The diversification/specification of the information that must be provided by the supplier to the consumer in respect of the intermediary's identification data, additional costs borne by the consumer, the consumer's rights to terminate the agreement, the language of the agreement and the language for the communications between the parties;
- The abrogation of certain cases for the non-application of the consumer's right to unilaterally terminate certain distance-concluded agreements (e.g. real estate credit agreements).

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## Labour Law

## Name of the enactment

Government Emergency Ordinance No. 71/2009 on the payment of certain amounts provided in writs of execution having as object the granting of salary rights to the personnel in the budgetary sector ("**GEO 71/2009**")

## Publication

Official Gazette of Romania, Part I, No. 416/18.06.2009

## Entry into force

18 June 2009

## Connections with other enactments

- Government Emergency Ordinance nr. 75/2008 establishing measures for the settlement of certain financial issues in the justice system, approved with amendments by Law 76/2009;
- Order No. 1.859/C/2.484/26.650/131/3.774/C/2008 of the Ministry of Justice, the Minister of Economy and Finance, the Chairman of the High Council of Magistrates, the President of the High Court of Cassation and Justice and the general prosecutor with the Prosecutor's Office attached to the High Court of Cassation and Justice, on the manner of breaking down the payment of the amounts provided in the writs of execution issued until the entry into force of Government Emergency Ordinance No. 75/2008 on establishing measures for

Main provisions	<p>settling certain financial issues in the justice system.</p> <p>GEO 71/2009 was passed in consideration of the difficulties concerning the implementation of the court orders that have as object salary rights established in favor of the personnel.</p> <p>GEO 71/2009 establishes a break-down of the payment of the amounts provided by court decisions having as object the granting of salary rights established in favor of the budgetary sector, which became enforceable until 31 December 2009, as follows: (i) 34% of the value of the writ of execution is paid in 2010; (ii) 33% of the value of the writ of execution is paid in 2011; (iii) 33% of the value of the writ of execution is paid in 2012.</p> <p>GEO 71/2009 provides that during the terms established for break-down, the forced execution is suspended automatically. In order to cover the damages caused by the delay in payment, the enactment establishes that the amounts paid in accordance with GEO 71/2009 are updated with the index of the consumption prices communicated by the National Statistics Institute.</p> <p>GEO 71/2009 provides that the procedure for making the payment for the writs of execution will be established by an order of the main credit managers.</p>
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## Natural Gas

Name of the enactment	Government Emergency Ordinance No. 54/2009 establishing provisional measures in the natural gas field ("GEO 54/2009")
Publication	Official Gazette of Romania, Part I, No. 400/12.06.2009
Entry into force	12 June 2009
Connections with other enactments	<ul style="list-style-type: none"><li>• Natural Gas Law No. 351/2004, as further amended and supplemented ("Natural Gas Law");</li><li>• Joint Order No. 102136/530/97/2006 of the Minister of Economy and Commerce and the presidents of ANRGN and ANRM, on the sale of natural gas amounts on the domestic market, and on measures for strengthening the discipline in the natural gas field, as further amended and supplemented.</li></ul>
Main provisions	<p>GEO 54/2009 establishes provisional measures applicable to eligible gas consumers opting for the status of interruptible consumer.</p> <p>The main consumers concerned are the business operators in the chemical</p>

industry and electricity and thermal energy producers.

GEO 54/2009 was passed in order to meet the need to combat the negative effects of the current economic and social context on the Romanian chemical industry and on the electricity generation industry, for the purpose of ensuring continuity in the activity of such business entities.

According to GEO 54/2009, such consumers will benefit, during the June-October 2009 period, from natural gas supplied exclusively from the domestic production, as the obligation to create the domestic-import natural gas mixture basket has been renounced.

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## Pharmacy Law

Name of the enactment

Law No. 236/2009 amending and supplementing Pharmacy Law No. 266/2008 (“**Law 236/2009**”)

Publication

Official Gazette of Romania, Part I, No. 404/15.06.2009

Entry into force

18 June 2009

Connections with other enactments

Pharmacy Law No. 266/2008 (“**Pharmacy Law**”)

Main provisions

In essence, the main amendments brought by Law 236/2009 focus on the following issues:

- The operation permit for the community pharmacy is issued by the Ministry of Health (“**MH**”), not by the National Agency of Medicine, as provided by Pharmacy Law;
- Law 236/2009 eliminates the obligation to comply with the demographic criterion as a condition for setting up a community pharmacy *in the rural environment*;
- It maintains, until 31 December 2010, the obligation to comply with the demographic criterion for setting up a community pharmacy *in the urban environment* (in Bucharest City – one pharmacy for 3,000 inhabitants, in county capitals – one pharmacy for 3,500 inhabitants, in the other towns – one pharmacy for 4,000 inhabitants), but the compliance with this obligation is proved based on *a certificate issued by the local public administration authority*, not by an advisability endorsement issued, based on the consultative endorsement of the Romanian Pharmacists’ College, by MH



through the public health authorities, as provided by the Pharmacy Law;

- It maintains the possibility to open a community pharmacy in railway stations, air stations and large shopping centers where retail activities in products and public food are carried out, located in a single building, which use a joint infrastructure and adequate units, but it introduces the obligation to include in the authorization file a proof, issued by the local public administration authority with jurisdiction, attesting to the compliance of the premises with such requirements;
- It changes the term for the issuance of the operation permit to 30 days from the inspection date, if it is not favorable (instead of 15 days, as provided by Pharmacy Law);
- It introduces a new case for the cancellation of the operation permit of the community pharmacy, i.e. the decease of the chief pharmacist;
- Supervision inspections in community pharmacies, closed circuit pharmacies and drugstores are carried out at least once in 3 years or whenever needed by the specialized personnel of MH (instead of 2 years, and the competent authority is the National Agency of Medicine together with representatives of the Romanian Pharmacists' College, as provided by the Pharmacy Law);
- The following charges are introduced for the issuance of the operation permit: (i) RON 3,000 for the establishment of pharmacies in the urban environment; (ii) RON 150 for the establishment of pharmacies in the rural environment; (iii) RON 100 for the establishment of a local distribution office; (iv) RON 2,000 for the establishment of drugstores in the urban environment; (v) RON 50 for establishing a drugstore in the rural environment. In the case of issuing a new operation permit for the pharmacy or the drugstore as a result of the change or loss thereof, the charges are of RON 100 for the urban environment and RON 50 for the rural environment. In the case of the transfer of the pharmacy or drugstore headquarters, the amount of the charges is the same as for establishment;
- It amends the term within which community pharmacies and drugstores holding valid operation permits have the obligation to change such permits, i.e. one year from the entry into force of Pharmacy Law (12 January 2009), instead of 3 years within which it was mandatory to reauthorize community pharmacies and drugstores or register them in the National Registry of Pharmacies or in the National Drugstore Registry (as provided by the

Pharmacy Law).

Pharmacy Law, as amended and supplemented by Law 236/2009, was republished in the Official Gazette of Romania, Part I, No. 448/30.06.2009.

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## Public procurement and concessions

Name of the enactment

Government Emergency Ordinance No. 72/2009 amending and supplementing Government Emergency Ordinance No. 34/2006 on the award of public procurement contracts, public works concession contracts and services concession contracts ("GEO 72/2009")

Publication

Official Gazette of Romania, Part I, No. 426/23.06.2009

Entry into force

23 June 2009

Connections with other enactments

- Government Emergency Ordinance No. 34/2006 on the award of public procurement contracts, public works concession contracts and services concession contracts, approved with amendments and supplementations by Law No. 337/2006, as further amended and supplemented ("GEO 34/2006");
- Law No. 554/2004 on administrative claims, as further amended and supplemented ("Law 554/2004").

Connections with the Community law

- Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;
- Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors;
- Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts;
- Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts;

## Main provisions

- Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

GEO 72/2009 amends and supplements GEO 34/2006, with the main purpose of improving the efficiency of the challenge procedures in court concerning the award of public procurement contracts. Some of the most important provisions are:

- **Extending the scope of application for which contestations are filed and ruled on as per the provisions of GEO 34/2006**

According to the amendments brought by GEO 34/2006, contestations filed with regard to the procedures for the award of service contracts included in appendix No. 2B to GEO 34/2006 are ruled on in accordance with the provisions of GEO 34/2006, even if, in the case of awarding the agreements of this category, the contracting authority does not have the obligation to apply the award procedures expressly regulated by GEO 34/2006.

- **The negotiation procedure with prior publication of a participation notice**

GEO 72/2009 introduces in GEO 34/2006 express provisions concerning the requests for clarifications and the answers thereto in the case of the negotiation procedure with prior publication of a participation notice, which requests and answers need to be sent in observance of certain terms before the deadline for the start of the negotiations.

- **Filing contestations before the National Council of Settlement of Contestations and before the courts of law**

According to the amendments brought by GEO 72/2009, if a contestation before the National Council for the Settlement of Contestations ("NCSC") and an action before the court of law are filed in respect of the same object, the latter may order, upon the parties' request or *ex officio*, the joining of the causes. The decision ordering such a solution may be challenged only on the merits of the case, and NCSC is to send the file within 3 days from the communication of the decision.

- **Effects of contestations. Elimination of the automatic suspension of the award procedure**

According to the amendments brought by GEO 72/2009, if a contestation is received by the contracting authority, for which no waiver was acknowledged, the public procurement contract may not be executed until the expiry of the 10-day term within which the decision of NCSC may be challenged by a complaint, only if the interested party did not file a complaint before the competent court, in which case the contract may not be concluded before the court has ruled on the case. In other words, the effect of submitting a contestation concerning the procedure of awarding public procurement contracts no longer consists in the automatic suspension of the procedure at a given time, but in the interdiction imposed to the contracting authority from concluding the public procurement contract upon the completion of the procedure.

- **Amendments concerning the calculation of the stamp fee**

GEO 72/2009 amended the calculation of the stamp fee for filing suits having as object contracts falling within the scope of application of GEO 34/2006. It eliminated the sole stamp fee equal to 2% of the contract value, and, according to the new provisions, the taxation for filing claims differs as per several contract value thresholds, for which the maximal limit is of RON 2,200.

In addition, the amount of the stamp fee related to requests for the cancellation of a non-patrimonial legal deed, the obligation of the contracting authority to issue a non-patrimonial legal deed, the acknowledgement of the price claimed and other such requests that do not have a pecuniary equivalent was reduced to RON 4 from the previous amount of RON 2,000.

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## Railway transportation

Name of the enactment

Government Emergency Ordinance No. 62/2009 for the amendment and supplementation of several enactments in the railway field (“**GEO 62/2009**”)

Publication

Official Gazette of Romania, Part I, No. 399/12.06.2009

Entry into force

12 June 2009

Connections with other enactments

- Government Emergency Ordinance No. 12/1998 on the transport on the Romanian railways and the reorganization of “Societatea Națională a

Connections with the  
Community law

- Căilor Ferate Române”, as further amended and supplemented (**GEO 12/1998**);
- Government Ordinance No. 89/2003 on the allocation of railway infrastructure capacity and the levying of charges for the use of the railway infrastructure, approved with amendments and supplementations by Law 8/2004, as further amended (**GO 89/2003**).
  - Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community’s railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (“**Directive 2007/58/CE**”);
  - Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (“**Directive 2001/14/CE**”).

Main provisions

GEO 62/2009 transposes in the national legislation the provisions of Directive 2007/58/CE and Directive 2001/14/CE and it amends the relevant enactments in the railway transportation field.

The main amendments brought by GEO 62/2009 concern GEO 12/1998, including:

- The possibility to grant concession over parts of the railway infrastructure to other national companies under the authority of the Ministry of Transports and Infrastructure;
- The right granted to railway transport operators in the EU Member States (“**foreign operators**”) to access the Romanian railway infrastructure for the purpose of providing the international railway passenger transport service.

In respect of the second amendment, the new version of GEO 12/1998 provides that:

- The foreign operators’ right of access will be effective as of 1 January 2010;
- If, in Romania, the international railway passenger transport makes up more than half of the number related to the variation of passengers who are clients of the railway transport operators, the foreign

operators' right of access will be granted only as of 1 January 2012;

- In accordance with the conditions provided by Article 181 paragraph 2 and paragraph 3 of GEO 12/1998, the Government has the possibility to limit foreign operators' access. For example, one of these cases is the Government's possibility to limit the passengers' right to get on- and off-board in the stations located in Romania on the route of an international passenger transport service, if an exclusive right has been granted to transport passengers between the relevant stations according to a concession contract awarded before 4 December 2007, for a period of maximum 15 years.

The provisions above do not apply in the case of the railway passenger transport service provided in transit, which starts and ends outside the Community territory and do not impose the granting, before 1 January 2010, of a right of access to foreign operators which hold a license for railway transport in a Member State in which no similar access rights are granted.

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## Real estate

Name of the enactment

Government Emergency Ordinance No. 60/2009 on certain measures for the implementation of the "First House" program ("**GEO 60/2009**")

Publication

Official Gazette of Romania, Part I, No. 381/04.06.2009

Entry into force

4 June 2009

Connections with other enactments

Government Decision No. 717/2009 on the approval of the rules for implementation of the "First House" program ("**GD 717/2009**")

Main provisions

GEO 60/2009 approves the government program "First House" (the "**Program**") aiming to facilitate the individuals' access to the purchase of a dwelling based on loans. The beneficiaries of the Program are individuals who upon the entry into force of GEO 60/2009 do not own jointly or severally, with their spouses or with any other persons, any dwelling by any type of acquisition, nor do they have any ongoing mortgage loan. The dwellings so purchased are encumbered by a first rank mortgage in favor of the State throughout the duration of the loan agreement, subject to a 5-year interdiction to sell the dwelling.

GD 717/2009 approves the rules for implementation of the Program and

the eligibility criteria for beneficiaries and banks.

The National Fund for Guaranteeing Loans for Small and Medium Enterprises (the "Fund") guarantees loans in the name of the State; the guarantee threshold for 2009 is of EUR 1 billion. Banks conclude the guarantee convention with the Fund and the guarantee agreement is concluded between the beneficiary, the bank and the Fund.

Beneficiaries have to comply with the following eligibility criteria:

- They do not own any dwelling and they do not have any ongoing mortgage loan, according to the above;
- They purchase within the program: i) a completed dwelling in Romania, registered in the land book and free of any encumbrances, except for the seller's privilege to the price, or ii) a dwelling to be built or a dwelling under construction, in which case they need to provide the promissory agreement concluded with a building company;
- They comply with the specific conditions provided in the banks' internal rules for crediting;
- They have an advance of minimum 5% from the dwelling's purchase price, if its price is lower than or equal to EUR 60,000, or EUR 3,000 plus the difference between the purchase price of the dwelling and EUR 60,000, if the price thereof is of more than EUR 60,000;
- They undertake to create a collateral deposit in order to guarantee the interest, equal to the sum of 3 interest installments;
- They undertake not to sell the purchased dwelling within the first 5 years after purchase; after the expiry of such term, the third party to which the loan agreement is transferred has to meet the eligibility criteria for the beneficiaries of the Program;
- They undertake to create the first rank mortgage in favor of the State over the dwelling and accept the recording in the land book of the interdiction to sell it for 5 years' duration and the interdiction to create other encumbrances;
- They undertake to ensure the dwelling against all risks and they assign the indemnity rights to the Romanian State.

The main eligibility criteria for banks are the following:

- They have territorial coverage at national and/or county level;
- The aggregate cost of the granted funding consists of: the interest rate of EURIBOR for 3 months plus a margin of maximum 4.00% per year for EUR loans and ROBOR for 3 months plus a margin of maximum 2.50% per year for RON loans; the margin also includes the aggregate level of the commissions charged by the bank; the management commission owed to the Fund amounting to 0.37% per year, calculated as at the funding balance;
- They do not charge an anticipated reimbursement commission;
- The maximal duration of the loan is of 30 years;
- The loan agreement does not contain any clauses allowing the unilateral change thereof by the bank;
- They accept to perform the valuation of the dwelling and check the compliance with the beneficiary's obligation to insure the dwelling throughout the duration of the loan;
- They accept to establish and renew the first rank mortgage over the dwelling, in favor of the Romanian State;
- They comply with the prudential conditions provided by the banking legislation, certified for the Fund by the National Bank of Romania.

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