

# Legal Bulletin

March 2008

Capital Markets	1
Consumer's Protection	2
Forestry Code	3
Public Finances	5
Trade Registry	6

March 2008

## Legal Bulletin

### Capital Markets

Name of the enactment	NSC Order No. 28/2008 for the approval of Regulation No. 1/2008 of the National Securities Commission for the implementation of Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (the " <b>Regulation</b> ")
Publication	Official Gazette of Romania, Part I, No. 187/11.03.2008
Entry into force	11 March 2008
Connections with other enactments	<ul style="list-style-type: none"><li>• Capital Market Law No. 297/2004 ("<b>Law 297/2004</b>");</li><li>• NSC Regulation No. 1/2006 on securities issuers and operations ("<b>Regulation 1/2006</b>").</li></ul>
Connections with the Community legislation	Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.
Main provisions	<p>The Regulation establishes norms for the application of certain provisions of NSC Regulation 1/2006 as well as of Law 297/2004.</p> <p>The Regulation contains the minimal standards for the supply of the reports provided by Law 297/2004 and Regulation 1/2006. Moreover, the Regulation sets forth details on certain reporting obligations incumbent on issuers. Thus, it is provided that the issuers having the possibility to chose the Member State of origin have to make this choice public by drafting a report; also, it regulates the minimal content of the half-yearly accounting reporting when it is not drafted in accordance with the international accounting standards, as well as the major transactions concluded by the issuer with the persons who act concertedly and have to be included in the half-yearly report.</p> <p>The Regulation requires from market formers wishing to be released from the obligation to report the shareholdings that reach, exceed or drop under 5% threshold for the issuer for which they are market formers, the obligation to notify to NSC that they act as market formers within the term during which the</p>

reporting should have been made had they not been exempted.

Other details are brought in relation to the conditions that need to be complied with by the mother entity of an investment management company or of an investment firm if it wishes to be released from the obligation to consolidate its shareholdings with those of the subsidiary for the purpose of reporting the shareholdings that reach, exceed or drop below the legal thresholds.

The Regulation includes explanations and details concerning the obligations to report the shareholdings that reach, exceed or drop below the legal thresholds incumbent on the holders of financial instruments entitling to the purchase of the shares of an issuer. The details refer to the definition of the scope of the financial instruments, the content of the report that has to be sent to the holder thereof, its addressees and the time for sending the report concerned.

Author

[silvana.ivan@tuca.ro](mailto:silvana.ivan@tuca.ro)

## Consumer's Protection

Name of the enactment

Decision No. 321/2008 of the Romanian Government for the amendment and completion of several enactments regulating consumers' protection ("GD No. 321/2008")

Publication

Official Gazette of Romania, Part I, No. 240/27.03.2008

Entry into force

27 March 2008

Connections with other enactments

- Decision No. 187/2000 of the Romanian Government on imitations of food products liable to endanger consumers' health or security ("GD No. 187/2000");
- Decision No. 1328/2001 of the Romanian Government on the classification of tourist accommodation buildings ("GD No. 1328/2001");
- Decision No. 237/2001 of the Romanian Government for the approval of the norms concerning the access, registration and protection of tourists in tourist accommodation buildings ("GD No. 237/2001");
- Decision No. 348/2004 of the Romanian Government on the exercise of the trade of market products and services in several public areas ("GD No. 348/2004");
- Decision No. 947/2000 of the Romanian Government on the modality of indicating the prices of products for sale to consumers ("GD No. 947/2000").

## Main provisions

GD No. 321/2008 brings a number of amendments to several enactments in the field of consumer's protection. Among such, the most important ones are related to the amendment of GD No. 187/2000 and GD No. 348/2004.

According to the amendments brought to GD 187/2000, in addition to the production, trading and importation of products imitating food products, there is a prohibition and sanctioning by a fine of the exportation of this type of products as well.

The amendments brought to GD No. 348/2004 establish the obligation of the local authorities to identify the optimal locations for establishing movable marketplaces. Also, GD 321/2008 regulates the organization of the market police (consisting of mixed teams of police officers and troopers) acting in view of the observance of the legal provisions concerning the trade of products.

## Author

[bogdan.halcu@tuca.ro](mailto:bogdan.halcu@tuca.ro)

## Forestry Code

## Name of the enactment

Law No. 46/2008 on the Forestry Code (the "Forestry Code")

## Publication

Official Gazette of Romania, Part I, No. 238/27.03.2008

## Entry into force

30 March 2008

## Connections with other enactments

- Law No. 1/2000 for the reinstatement of the ownership right on agricultural and forestry lands, requested in accordance with the provisions of Real Estate Law No. 18/1991 and of Law No. 169/1997;
- Emergency Ordinance No. 57/2007 on the regime of the protected natural areas, the conservation of natural habitats, the wild flora and fauna.

## Main provisions

The Forestry Code is a new enactment, drafted in accordance with the relevant Community regulations, which regulates the forestry regime in a unitary manner, regardless of the form of ownership. The Forestry Code repeals Law No. 26/1996 (the former Forestry Code) and includes other enactments pertaining to the forestry field (consequently repealed).

The main Forestry Code's provisions stipulate the following:

- the harmonization of the technical solutions for the unitary management of forests by drafting the forestry arrangements "*at the level of the forestry divisions as per production units and/or protection units, in observance of the technical arrangement norms*" and the

prohibition of *"summary arrangement studies and for the transformation of forested pastures"*;

- the establishment of the technical management responsibility obligation of each forest property through a forestry division;
- the establishment of the obligation for forest owners, regardless of the form of ownership, to ensure the security of forests for the purpose of the illegal cutting of trees but also to perform the forestry works according to the provisions of the forestry arrangement or specialized studies;
- the diminishment of the cases where the reduction of the forest surface is allowed;
- the replacement of the principle of deficiency of inventorying the real estate *"based on the data contained in the forestry arrangements"*, which do not provide information on the forestry vegetation outside the forestry property, established by Law No. 26/1996, and, for the purpose of aligning as per the standards of the European Union, the creation of an institutional framework adequate for obtaining all the information for characterizing the forestry vegetation required for making decisions and drafting the forestry policies through the national forestry inventory realized with a substantiated periodicity and based on an institutionalized methodology;
- providing for a mixed administrative structure, according to which the forestry district can administrate at the same time private forests, as well as state forests, conditional upon the observance of the forestry regime, contrary to Law No. 26/1996, according to which the administration of the private forestry property was made by its owners, individually or in associations;
- defining a list of relevant specific terms (*"administration of forests"*, *"forest arrangement"*, etc.), contrary to Law No. 26/1996, which is a useful measure for an interpretation as accurate as possible and the avoidance of doubt in applying this law.

#### Repealed enactments

- Law No. 26/1996 – the Forestry Code;
- Government Ordinance No. 96/1998 on the regulation of the forestry regime and administration of the national forestry property, as further

amended and completed;

- Government Ordinance No. 81/1998 on certain measures for the amelioration by forestation of degraded lands, approved with amendments and completions by Law No. 107/1999.

Author

[maxim.dogoter@tuca.ro](mailto:maxim.dogoter@tuca.ro)

## Public Finances

Name of the enactment

Government Emergency Ordinance No. 28/2008 for the amendment and completion of Law No. 273/2006 on local public finances (“**GEO No. 28/2008**”).

Publication

Official Gazette of Romania, Part I, No. 217/21.03.2008

Entry into force

24 March 2008, except for items 4 and 5 of Article I (which come into force as of 1 October 2009 and are used for the allocation of the defalcated quotas of the income tax and of the amounts defalcated from state budget revenues meant for the equilibration of local budgets starting as of 2009.

Connections with other enactments

Law No. 273/2006 on local public finances (“**Law No. 273/2006**”)

Main provisions

In a context where, during the period 2008 – 2013, Romania is the beneficiary of some major financial transfers as part of the cohesion policy of the European Union, it was necessary to take measures for the purpose of ensuring a high capacity of absorbing such funds.

GEO No. 28/2008 brought a number of amendments and completions to the provisions of Law No. 273/2006. Mainly, the purpose of the foregoing enactment was to ensure the increase of the financial autonomy of local public administration authorities, so that they can allocate financial resources for the co-financing of projects.

The most important amendments and completions brought to Law No. 273/2006 through the intermediary of GEO No. 28/2008 are as follows:

- the definition of the concept of “reimbursable financing”, representing the obligations of local public institutions resulting from binding financings through the instruments of local public debt, based on contracts or guaranteed by the local public administration authorities;
- the express provisions of the formula that needs to be used for calculating the indicators “average income tax per inhabitant / per

administrative-territorial unit”, respectively “average income tax per inhabitant / per county complex”, when the data concerning the income tax is not available at the end of the year for which the allocation is made;

- the establishment of the obligations of the local public administration authorities not to include in the local budgets investments whose financing is ensured from own revenues except if they have fully ensured the revenues required for covering the current expenses, contained in the operation section, for the performance of the prerogatives and competences established by law, specific to each administrative-territorial unit / administrative-territorial subdivision. By exception, the foregoing provisions do not apply to the investments whose financing is ensured based on contracting a local public debt, from transfers to the local budgets, from reserve funds, from the revenues allocated to national, regional, county development programs or projects, or from programs or projects benefiting from foreign funds.

Author

[ciprian.timofte@tuca.ro](mailto:ciprian.timofte@tuca.ro)

## Trade Registry

Name of the enactment

Decision No. 322/2008 of the Romanian Government on granting facilities for updating the scope of business according to the Classification of Activities in the National Economy – CAEN Rev. 2 („GD 322/2008”)

Publication

Official Gazette of Romania, Part I, No. 238/27.03.2008

Date of enforcement

27 March 2008

Connections with other enactments

- Trade Registry Law no. 26/1990;
- Company Law No. 31/1990;
- Order No. 337/2007 of the President of the National Institute of Statistics for updating the Classification of Activities in the National Economy – CAEN Rev. 2;
- Government Decision No. 913/2004 on the approval of charges and tariffs for the operations carried out by the trade registry offices attached to tribunals, as further amended and completed.

## Main provisions

GD No. 322/2008 sets forth a new procedure for updating the scope of business of companies and dismemberments (without legal personality) thereof, as well as of self-employed persons and family partnerships.

The updating of the scope of business is made by the trade registry without paying any charge for the registration of the amendments, upon request by the legal representatives of the company or by the person authorized by the company, based on a written application (a form for such application is enclosed to GD No. 322/2008). The applicant will specify in its request, in addition to the identification data of the company, the main scope of business that the company is to carry out.

The updating of the company's scope of business is registered with the Trade Registry based on the decision/resolution issued by the executive director of the trade registry, without any obligation to submit the updated Constitutive Act or the GMS decision.

The trade registry office will perform the updating and will issue to the applicants a new registration certificate which will include the main object of activity indicated in the applicant's request.

Upon request, the trade registry will issue an excerpt that will contain the company's updated object of activity.

The acknowledgment certificates issued according to Law 359/2004 as per the procedures for the settlement of the requests existing prior to the enforcement of Order No. 337/2007 of the President of the National Institute of Statistics shall remain valid accompanied by the above-mentioned registry excerpt.

The updating applications, accompanied by the documents stipulated by the regulations in force, may be sent by mail with declared value, and the receipt date is considered to be the registration date of the request.

Author

[gabriel.vasii@tuca.ro](mailto:gabriel.vasii@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)

Cristina Metea, Partner (cristina.metea@tuca.ro)